

Appendix 1

M&O CONTRACT AMENDED AND RESTATED FOR PERIOD 2

1 April 2008

THE NUCLEAR DECOMMISSIONING AUTHORITY

and

LLW REPOSITORY LIMITED

**SITE MANAGEMENT AND OPERATIONS
CONTRACT**

in respect of

The Low Level Waste Repository at Drigg

as amended and restated on 1 April 2013

NDA-T1-34-12

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THIS AGREEMENT is made on 1 April 2008

BETWEEN

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY**, a Non Departmental Public Body whose registered office is at Herdus House, West Lakes Science and Technology Park, Moor Row, Cumbria (the "**Authority**"); and
- (2) **LLW REPOSITORY LIMITED**, whose registered office is at Low Level Waste Repository, Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH a company incorporated under the laws of England and Wales with registered number 5608448 (the "**Contractor**"),

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

BACKGROUND

- (A) The Authority, the Contractor and the Parent Body Organisation have entered into the Parent Body Agreement on the date hereof.
- (B) The Parent Body Organisation holds all of the issued share capital in the Contractor.
- (C) The following events have occurred:
 - (i) the ONR, pursuant to Condition 36 of the Contractor's Nuclear Site Licence, has approved those organisational changes that are necessary to enable the implementation and commencement of the Contract;
 - (ii) the relevant licences, authorisations, registrations, permits and consents have been obtained from the ONR and Environment Agency; and
 - (iii) the Contractor has undertaken to comply with the Site security plan contained in its Internal Procedures relating to Site security and approved by ONR.
- (D) The Contractor, with the consent of the Parent Body Organisation, has entered into this Contract on the date hereof.

PARTNERSHIP PRINCIPLES

In working together to achieve the objectives of this Contract, the Authority and the Contractor will act consistently with, and have regard to, the following principles:

- (1) to work together in an open and honest environment and to act in a co-operative and non-adversarial manner;
- (2) to maintain a sound safety culture and to ensure the primacy of safety over profit;
- (3) to encourage innovation with a view to improving efficiency and reducing costs;
- (4) to monitor performance against targets with the aim of continuous improvements;
- (5) to ensure that pricing arrangements include proper incentives and, where relevant, gainshare principles;
- (6) to optimise competition for subcontracts;

- (7) to have a mechanism for a periodic review of the Contract;
- (8) to maintain a consistent balance of risk and reward over the Term;
- (9) to have due regard to the interests of personnel to the extent that they are engaged in, and to the interests of Third Parties directly affected by, the Contractor's business.

These partnership principles shall not be legally binding on either Party and shall not constitute legally binding rights and obligations for either Party. Accordingly, the Parties acknowledge and agree that the partnership principles shall not and are not intended to prevent either Party from exercising any right, or seeking or enforcing performance of any obligation under this Contract.

1. GENERAL

1.1 Definitions

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

"1990 Act" means the Town and Country Planning Act 1990 and any other legislation relating to town and country planning in force from time to time;

"Accounting Policies and Procedures" means the Contractor's accounting policies and procedures as created and maintained in accordance with Clause 6.4.1(C) (*Restrictions on changes to Accounting Policies and Procedures*);

"Acknowledged Trend" means the Contractor has recognised that a factor impacting the LTP and/or the Site/SLC Capital Budget and/or SLC/Annual Site Funding Limit exists requiring a Change and it submits to the Authority the relevant Change Proposal in accordance with PCP-05 (Change Control);

"acting independently" has the meaning given in Clause 1.16 (*Corrupt Gifts*);

"ADP02 Governance and Assurance Policy" means the Authority policy document that governs the interface with SLC internal audit functions, setting out the Authority's requirements concerning internal audit by a Site Licence Company, as amended from time to time;

"Advance Agreement" means the agreement between the Authority and the Contractor in respect of the allowability of a particular cost entered into in accordance with Paragraph 4 (*Advance Agreements*) of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*);

"Affected Party" has the meaning given in Clause 1.9.1 (*Performance of Obligations*);

"Affiliate" means:

- (i) the Parent Body Organisation;
- (ii) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than ten (10) % in the Parent Body Organisation;
- (iii) wholly owned subsidiaries of the Contractor or Parent Body Organisation;

- (iv) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than ten (10) % of the shares in issue;
- (v) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;
- (vi) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a ten (10) % economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- (vii) a company owned or controlled, directly or indirectly, to the extent of ten (10) % or more of the outstanding equities, securities or assets by any of the companies described in (i), (ii) or (iii) above;

"Agreed Interest Rate" means the non-default interest rate agreed between the Parties on a yearly basis;

"AiP" has the meaning given in Paragraph 4.2.4(A) (*Process for Sanction and Validation of Work Activities*) of Part 2 (*Work Activity Management – Financial Sanction Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"AiP 2 Submission" has the meaning given in Paragraph 7.1.1 (*Approval in Principle (AiP)*) of Part 2 (*Work Activity Management – Financial Sanction Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"Allowable Cost" has the meaning given in Paragraph 3 (*Allowable Costs*) of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*) and **"Allowable"** shall be construed accordingly;

"Amendment" has the meaning given in Clause 3.6.1(B) (*New Business and Amendments to Customer Contracts*);

"Analogous Standards" means the level of duty to exercise skill and care to which a skilled, diligent and prudent contractor would reasonably and ordinarily be subject in any jurisdiction where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom provided that for the purposes of assessing compliance with:

- (i) Regulatory Requirements, the only regulatory standards against which the Contractor will be judged under this Contract will be those relating to the United Kingdom; and
- (ii) Analogous Standards, any regulatory or other constraints to which the Contractor is subject and which would not reasonably be expected to constrain a contractor in the relevant jurisdiction or jurisdictions shall be taken into account;

"Annual Plan" means the Authority's approved annual plan for relevant Contract Year published on the Authority's website from time to time;

"Annual Reconciliation Report" means the report to be prepared by the Contractor at the end of each Contract Year and submitted to the Authority in accordance with Clause 6.13.2 (*Funding Limits*);

"Annual Site Funding Limit" or **"ASFL"** means the overall funding limit for the Site as specified in Part 3 (*Funding Limits and Total Maximum Fee*) of Schedule 6 (*Finance Schedule*) and adjusted (if at all) pursuant to Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*);

"Applicable Schemes" means the UKAEA Combined Pension Scheme including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan, the BNFL Group Pension Scheme, the Magnox Group of the Electricity Supply Pension Scheme, the CNPP and any other pension scheme set up and/or maintained by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act 2004;

"Approval" means that the approval required in relation to the relevant Change Proposal, as set out in Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) has been given by the appropriately authorised individual;

"Approved" means in relation to any Change Proposal that it has received Approval;

"Approved Working Capital Facilities" means all loan facilities entered into by the Contractor which:

- (i) have been negotiated pursuant to a funding competition approved by the Authority and are on terms that represent the best value for money of the proposals made by the proposed lenders pursuant to such competition or which have otherwise been approved by the Authority; or
- (ii) have been provided by an Affiliate and are on terms that represent the best value for money and which have been approved by the Authority; or
- (iii) have been negotiated with lenders with whom the Parent Body Organisation had arrangements with prior to its entering into the Parent Body Agreement, and in relation to which the Authority has given its prior written consent;

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

"Asset Purchase" means the purchase of supplies, goods, materials, equipment and/or utilities (including gas, electricity, water, sewerage, heat, cable and telecommunications) and excluding the creation, design, development or building by any Subcontractor of any supplies, goods, materials, equipment and/or utilities, and **"Asset Purchases"** shall be construed accordingly;

"Asset Register" means the asset register to be maintained by the Contractor in accordance with Clause 7.5 (*Maintenance of Site and Authority Assets*) to record all the Authority Assets on the Site;

"Associated Allowable Cost" means overhead costs (also known as burden) associable with activities, such costs to be allocated to activities on a cause and effect or resource consumption basis;

"Audit Close-Out Meeting" means a meeting following receipt by the Contractor of the Authority's audit findings to discuss those findings generally together with any areas identified in the findings as requiring Corrective Action;

"Authority" means the Nuclear Decommissioning Authority;

"Authority Agents" means the Authority's duly authorised representatives including advisers, consultants and agents acting on behalf of the Authority;

"Authority Assets" means all the assets (whether fixed or movable) on or off the Site which are currently owned by the Authority (whether leased to the Contractor or otherwise) including any New Assets acquired by the Contractor on behalf of the Authority in performing LTP pursuant to Clause 7.7 (*Right to Acquire New Assets*) but excluding any Subcontracts and Customer Contracts;

"Authority Default" means any of the events of default by the Authority set out in Clause 12.6 (*Authority Default*);

"Authority Defective Performance Notice" has the meaning given in Clause 2.13.2 (*Defective Performance*);

"Authority Direction" means a direction given by the Authority to the Contractor in accordance with its powers under section 18 of the Energy Act 2004;

"Authority Facing Work" means employment for Authority purposes as defined in the Energy Act 2004;

"Authority Field of Use" means use in carrying out the Authority's functions, duties and powers as prescribed in the Energy Act from time to time;

"Authority Information Asset Register" has the meaning given in Clause 4.3.3 (*Information Asset Registers*);

"Authority Insurances" means the insurances taken out by the Authority or on behalf of the Authority from time to time including those insurances referred to in Clause 11.1.1 (*Insurances taken out by the Authority*);

"Authority IP" means IP owned by or licensed to the Authority which relates to the activities to be undertaken by the Contractor or the Authority under the terms of this Contract and includes:

- (i) Parent IP licensed to the Authority under the provisions of Clause 8.3 (*IP Contributed by Parent Body Organisation*);
- (ii) Third Party IP licensed to the Authority under the provisions of Clause 8.7 (*Third Party IP*);

"Authority IT Systems" means all communications and information technology systems which are used by the Authority from time to time including all hardware, networks, Software and data comprised therein;

"Authority Knowledge Management Policy" means the Authority's document, **IMP05** as may be updated, amended or replaced from time to time by the Authority in consultation with the Knowledge and Information Management Governance Forum;

"Authority Owned IP" has the meaning given in Clause 8.5.1 (*Infringement of IP Owned by the Authority*);

"Authority Policies and Procedures" means policies and procedures published on the Authority's website and identified as Authority Policies and Procedures, including the Programme Control Procedures (PCPs);

"Authority Records" has the meaning given in Clause 4.2.1(A) (*Ownership of Records*);

"Authority's Termination Notice" has the meaning given to it in Clause 12.4 (*Termination or Remedy for Contractor Default*);

"Background IP" means any IP which a Subcontractor owns or rightfully possesses independent of its performance of the Subcontract (regardless of whether such independent ownership or rightful possession occurred immediately prior to the commencement of the relevant Subcontract or during the Subcontract term), which relates to the deliverables under that Subcontract, is to be used in the performance of that Subcontract and which could be reasonably judged necessary for the Authority, the Contractor or any licensee of the Authority or the Contractor to use or exploit the Developed IP;

"Balanced Scorecard" means the performance criteria set out in the PAF agreed on an annual basis between the Authority and the Contractor in respect of the balanced scorecard component of Fee Element 1 (as such term is defined in Paragraph 1.6 of Part 6 (*Use Of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*));

"Baseline Change" means a change to the scope, schedule or cost of any RC Task in the LTP or the addition of any Task to the LTP;

"Baseline Change Proposal" means a proposal to make a Baseline Change;

"Budgeted Cost of Work Scheduled" or **"BCWS"** means the estimated aggregate of all Allowable Costs (and Associated Allowable Costs) which are provided for in the Contract Baseline in respect of activities to be undertaken pursuant to this Agreement;

"BNF Company" means British Nuclear Fuels Limited (Co. no. 5027024) and every company or other entity which is or will be on or after 1 April 2005 a subsidiary of British Nuclear Fuels Limited (Co. no. 5027024) within the meaning set out in section 1159 of the Companies Act 2006 and, for the purposes of Clause 6.5 (*Historical Costs*) only, means the Authority and Direct Rail Services Limited (Co. no. 3020822);

"BNF Historical Costs" means Historical Costs which are properly attributable to a BNF Company other than the Contractor, excluding Contractor Historical Costs;

"Breach of the Same Type" means the recurrence of any of the events specified in Clause 12.2.1 (*Contractor Default*), whether or not such occurrence materially and adversely affects the performance of this Contract;

"Brussels Convention" means the Convention of 31st January 1963 Supplementary to the Paris Convention;

"Business Case" means a business case prepared by the Contractor in accordance with public sector good practice and guidance issued by the Authority from time to time;

"Calendar Day" means a period of twenty-four hours ending at twelve midnight;

"Capital Budget" means that proportion of the Annual Site Funding Limit which the Contractor is permitted to spend on Capital Costs, as set out in Part 3 (*Funding Limits and Total Maximum Fee*) of Schedule 6 (*Finance Schedule*) and adjusted (if at all) pursuant to Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*);

"Capital Costs" means expenditure that results in the recognition of an Authority funded asset, as determined in accordance with UK GAAP (for such time as the Authority

accounts under UK GAAP and thereafter in accordance with the accounting principles adopted from time to time by the Authority and notified to the Contractor) as modified by the application of FReM, and in respect of any individual item, or connected group of items, such as an information technology system, Capital Costs will include items of expenditure:

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

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

"Category 0 Change" means (without prejudice to the Authority's discretion to approve or reject a Change Proposal) any Change Proposal which, if implemented, would be reasonably likely to:

- (a) require any amendment to the Site M&O Contract (including any of its schedules, appendices or annexes); and/or
- (b) constitute a Change which the Contractor knows (or ought reasonably to know) is novel, contentious or repercussive;

and in any event shall include Change Proposals which, if implemented, are reasonably likely to require/entail:

- (i) a change to the Contract Baseline or Client Specification;
- (ii) any change to the Annual Site Funding Limit;
- (iii) any transfer of amounts between the Capital Budget and the Current Budget;
- (iv) any change to the circumstances in which Incentive Fee is payable, except to the extent that such change is already contemplated pursuant to Schedule 6 (*Finance Schedule*); or
- (v) any changes above the thresholds set out in the Schedule of Delegated Authority.

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

"Category I Revenue" means all monies received and receivable by the Contractor including:

- (i) from the Ministry of Defence;
- (ii) from Customers or Third Parties in consideration for the provision by the Contractor of any goods, services, works or products arising from or ancillary to the provision of low level waste services;

- (iii) in respect of interest (save for interest earned on the Contractor's Fee Account which shall be for the account of the Contractor in accordance with Clause 6.12.4 (*Contractor's Fee Account*)), dividends from any Subsidiaries and other finance receipts;
- (iv) in respect of proceeds from insurance claims;
- (v) from the sale of Authority Assets save for scrap;
- (vi) from UKAEA relating to refunds in respect of early retirement pensions paid to the Employees or Nominated Staff under the terms of the UKAEA Combined Pension Scheme;
- (vii) in respect of hedging activities carried out pursuant to the Currency Hedging Strategy,

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

"Category II Revenue" means all monies received and receivable by the Contractor:

- (i) from another SLC or UKAEA (as the case may be) (regardless of whether such monies are received or receivable under a legally binding contract, an Internal Procedure, an Inter-SLC Service Contract or otherwise);
- (ii) from the Parent Body Organisation or any Affiliate (regardless of whether such monies are received or receivable under a legally binding contract, an Internal Procedure, an Inter-SLC Service Contract or otherwise);
- (iii) in consideration for minor income generating activities not listed at items (ii) to (v) inclusive of the definition of Category I Revenue (including any local authority grants, apprentice training, secondment fees, restaurant receipts and bus receipts);
- (iv) from the sale of those Authority Assets which constitute scrap;

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

"Change" means a Baseline Change and/or a Funding Change as applicable undertaken in accordance with the Change Procedure;

"Change Control Log" means the document to record Changes maintained by the Contractor under Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) and in accordance with PCP-05 (*Change Control*);

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

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

"Change Procedure" means the contract change control procedure as contained in Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*);

"Change Proposal" means a Baseline Change Proposal, a Funding Change Proposal or a PBI Change Proposal;

"Claims Handling and Insurance Agreement" has the meaning given in the Parent Body Agreement;

"CNPP" means the Combined Nuclear Pension Plan set up by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;

"Collective Agreement" shall have the meaning given to it by section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992;

"Commencement Date" means 17 March 2008;

"Commercial Operations Tasks" means those Tasks in the LTP which generate Category I Revenue and/or Category II Revenue;

"Comptroller and Auditor General" means the Comptroller and Auditor General of the UK National Audit Office;

"Consent" means all approvals, consents, licences, authorisations, permissions, certificates and statutory agreements required from any competent authority and all consents and agreements from and with Third Parties such consents to include authorisation from the Financial Services Authority;

"Construction Industry Scheme Regulations" or **"CISR"** means the scheme prescribed by Chapter 3 of Part 3 of the Finance Act 2004 and the associated obligations under Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045), in each case to the extent that such regulations are in force;

"Construction Operations" means operations of any of the following descriptions:

- (i) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of the land (whether permanent or not);
- (ii) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice) to the foregoing) walls, roadworks, power lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
- (iii) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems;
- (iv) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
- (v) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying

of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works;

- (vi) painting or decorating the internal or external surfaces of any building or structure;
- (vii) drilling for, or extraction of, oil or natural gas;
- (viii) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works for this purpose;
- (ix) assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery; and
- (x) manufacture or delivery to the Site of:
 - (a) building or engineering components or equipment;
 - (b) materials, plant or machinery; or
 - (c) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems;

"Construction Regulations" means the Construction (Design and Management) Regulations 2007 (S.I. 2007 No. 320) as the same may be amended, revised, re-enacted or consolidated from time to time;

"Contract" means this agreement including the Schedules;

"Contract Baseline" means LTP13 as at 1 April 2013, as amended by any Category 0 Change;

"Contract Year" means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for the first Contract Year of this Contract which shall commence on the Commencement Date and end on 31 March 2014 and except for the last Contract Year of this Contract which shall commence on 1 April and end at the date of any termination in accordance with Clause 12.2 (*Contractor Default*);

"Contractor" means LLW Repository Limited (Co. No. 5608448);

"Contractor Default" means any of the events of default set out in Clause 12.2 (*Contractor Default*);

"Contractor Defective Performance Notice" has the meaning given in Clause 2.13.3 (*Contractor Defective Performance Notice*);

"Contractor Historical Costs" means Historical Costs which are properly attributable to the Contractor:

- (i) including Liability for Taxation;
- (ii) including those Historical Costs transferred into the Contractor by the Transfer Schemes; and

(iii) excluding those Historical Costs transferred from the Contractor by the Transfer Schemes; and

(iv) excluding BNF Historical Costs;

"Contractor Information Asset Register" has the meaning given in Clause 4.3.1 (*Information Asset Registers*);

"Contractor Knowledge Management Policy" means a policy to be adopted by the Contractor in accordance with Clause 1.28.1 (*Knowledge Management*);

"Contractor Records" has the meaning given in Clause 4.2.1(B) (*Ownership of Records*);

"Contracts Manager" means the individual appointed by the Authority to be contracts manager in relation to the Site as notified to the Contractor from time to time;

"Contractor's Fee Account" means the account with the following details:

[REDACTED]

[REDACTED]

[REDACTED]

"Contractor's Payments Account" means a bank account of the Contractor into which drawings made under the Approved Working Capital Facility are paid and which is separate from the Contractor's Receipts Account and which has the following details:

[REDACTED]

[REDACTED]

[REDACTED]

"Contractor's Prioritisation Procedure" means the Contractor's procedure for prioritising Tasks, created pursuant to Clause 2.9 (*Contractor's Internal Procedures*);

"Contractor's Receipts Account" means the account with the following details:

[REDACTED]

[REDACTED]

[REDACTED]

"Contractor's Termination Notice" has the meaning given in Clause 12.7.1 (*Termination or Remedy for Authority Default*);

"Control" means:

(i) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or

remove directors exists the provisions of section 1159(3) and Schedule 6 of the Companies Act 2006 shall apply); and/or

- (ii) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof ten (10) per cent. or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters;

"COP 10" means the Code of Practice 10 Submission comprising the letter of 1 March 2005 sent to HM Revenue & Customs by Herbert Smith and any subsequent correspondence between Herbert Smith, the Authority and HM Revenue & Customs or any subsequent correspondence approved by the Authority;

"Corrective Action" means action required to be taken by the Contractor in response to the Authority's audit findings;

"Cost" means a sum of money which the Contractor is legally obliged to pay to a Third Party and/or, where a Cost is Allowable, a sum of money paid by the Contractor to a Third Party in respect of which the Contractor has obtained an Advance Agreement;

"Cost Reimbursement" means the reimbursement of Allowable Costs;

"Critical Site IT Systems" means the Site IT Systems described in Schedule 9 (*Information Technology*);

"Cross-SLC Initiatives" means those strategies, policies and procedures developed in respect of activities performed by or in relation to, or relevant to, more than one SLC by governance boards established by the Authority for implementation across the relevant SLC;

"Currency Hedging Strategy" means the strategy for hedging currency which the Authority permits the Contractor to use as amended from time to time;

"Current Budget" means that proportion of the Annual Site Funding Limit for the relevant Contract Year which the Contractor is permitted to spend on non-capital costs, as set out in Part 3 (*Funding Limit and Available Fee*) of Schedule 6 (*Finance Schedule*) as adjusted (if at all) pursuant to Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*);

"Current Contract Term" means Period 2 and thereafter, if this Contract is renewed in accordance with clause 2.2 (*Term*) of the Parent Body Agreement, the then current Subsequent Period;

"Current Costs" means all Costs incurred by the Contractor other than Capital Costs;

"Customer" means any counterparty or former or prospective counterparty to a Customer Contract;

"Customer Contract" means a Work Activity contract transferred to the Authority pursuant to the Energy Act or entered into by the Contractor that aims to generate profitable income or revenue in return for an investment. A Customer Contract may also include a Commercial Operations Task and **"Customer Contracts"** shall be construed accordingly;

"Customer Contract Log" has the meaning given in Clause 3.7 (*Customer Contract Log*);

"Customer Group" means any group or trade organisation of counterparties or former or prospective counterparties to Customer Contracts;

"Data" means facilities, information, books of account, records or other documentation (including any stored in electronic form);

"Deed of Participation" means the Deed of Participation for the Combined Nuclear Pension Plan attached as Part 4 (*Deed of Participation*) of Schedule 4 (*Employee Schedule*);

"Default Interest Rate" means a rate of three per cent (3%) above the base rate of Lloyds TSB Bank plc;

"Defective Performance" has the meaning set out in Clause 2.13 (*Defective Performance*);

"Delegation of Authority" means the written authorisation issued from time to time by the Authority and copied to the Contractor in respect of certain of the Authority's staff members or the written authorisation issued from time to time by the Contractor and copied to the Authority in respect of certain of the Contractor's staff members in accordance with Clause 1.5.2 (*Delegation of Authority*);

"Deleterious" means in the context of a material used or proposed to be used in the subject matter of the relevant Subcontract or Series of Subcontracts (whether alone or in combination or annexure with other materials) it:

- (i) poses a threat to health and safety and in particular to the health and safety of those involved in the construction, maintenance, repair or use of the subject matter of the relevant Subcontract or Series of Subcontracts; or
- (ii) poses a threat to the structural stability or performance or the physical integrity of the subject matter of the relevant Subcontract or Series of Subcontracts or any part thereof or any component therein; or

which would or could have the effect of reducing the normal life expectancy of the subject matter of the relevant Subcontract or Series of Subcontracts or any part thereof or any component therein;

"Deleterious Materials" means any materials which at the time of use are generally accepted or are reasonably suspected of being:

- (i) Deleterious in themselves;
- (ii) becoming Deleterious when used in a particular situation or in combination with other materials;
- (iii) becoming Deleterious with passage of time;
- (iv) becoming Deleterious without a level of maintenance which is higher than that which would normally be expected in a structure of the type under construction; or

- (v) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed;

"Demand" means any written demand for payment served in accordance with Clause 1.13 (*Notices and Communications*) by the Authority on the Parent Body Organisation pursuant to Clause 6.12.6 (*Payments to Parent*);

"Designated Sites" means sites designated under Section 3 of the Energy Act 2004;

"Detailed Project Plans" means all the documentation produced by the Contractor underlying the LTP and setting out how Tasks will be undertaken and to what standard;

"Developed IP" means any IP created or developed by or on behalf of the Contractor and/or a Subcontractor in the course of performance of this Contract;

"Disallowable Cost" means a cost incurred by the Contractor which is determined to be Disallowable in accordance with the criteria in Part 5 (*Cost Principles and Procedures*) of Schedule 6 (*Finance Schedule*) and/or is specified as a Disallowable Cost under this Contract;

"Dispute" means any dispute or difference arising out of or in connection with the Contract including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination;

"Dispute or Claim Negotiation" means any Third Party claim brought against the Contractor where there is reasonable expectation that the financial value of any settlement may exceed the sum of [REDACTED];

"Dispute Resolution Procedure" means the dispute resolution rules attached at Schedule 12 (*Dispute Management Schedule*);

"DPA" means the Data Protection Act 1998;

"EA" means the Environment Agency;

"Earned Profit" means all Fee, all profit in the Extended ESC Task and any other amounts owing to the Contractor from the Authority in relation to any additional incentivisation mechanisms;

"Effective Date" for the purposes of Clause 1.16 (*Corrupt Gifts*), means 1 April 2013;

"Effective Notice" has the meaning given in Clause 6.12.7(C)(2) (*Payment*);

"e-Government Metadata Standard (e-GMS)" means the e-GMS Standard Version 3.0 of 29 April 2004 as updated from time to time;

"EIR" means the Environmental Information Regulations 2004 as amended, notified or re-enacted from time to time;

"Emergency Action" means an action taken by the Contractor pursuant to the Contractor's genuine belief that the risk to life, limb or the environment requires immediate action and includes assistance to the Authority or to another SLC in respect of an emergency on another nuclear site or in response to an urgent request from a Third Party to assist in a radiological incident not on a nuclear site. For the avoidance of doubt, Emergency Action includes urgent requests for assistance from the National Radiological Protection Board and urgent assistance required in accordance with the RADS SAFE Emergency Plan;

"Emergency Action Notification" means the written notification sent by the Contractor to the Authority in accordance with Paragraph 11.2 (*Emergency Notification*) of Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*);

"Employee Schedule" means the schedule affixed as Schedule 4 (*Employee Schedule*);

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

"EMU" means European Economic and Monetary Union;

"Energy Act" means the Energy Act 2004;

"Escrow Agent" means NCC Group Escrow Limited (Co. no. 03081952), with its registered office at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, or such reasonable alternative as the Authority shall designate in writing from time to time;

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

"EU Procurement Rules" means Council Directives 89/665/EEC and 92/13/EEC, European Parliament and Council Directives 2004/17/EC and 2004/18/EC and any other EU measures adopted from time to time in relation to procurement, together with the United Kingdom implementing measures and all applicable EC Treaty principles;

"Exceptional Cost" means:

- (i) Allowable Costs payable by the Contractor to creditors in respect of which the invoice is for an amount exceeding [REDACTED] (adjusted for RPIX) excluding VAT;
- (ii) Allowable Costs of a cost type that has been agreed by the Parties should be treated as an Exceptional Cost (or as such cost types and the threshold are amended by the Parties pursuant to Clause 6.7.6 (*Exceptional Costs*));

"Exceptional Cost Agreement" has the meaning given in Clause 6.7.2(A) (*Exceptional Costs*);

"Exceptional Costs Information" has the meaning given in Clause 6.7.2(A) (*Exceptional Costs*);

"Exceptional Historical Cost" means a Contractor's Historical Cost in respect of which the invoice payable by the Contractor to the creditor is in respect of an amount greater than [REDACTED] (adjusted for RPIX) excluding VAT;

"Exceptional Historical Costs Information" has the meaning given in Clause 6.7.2(B) (*Exceptional Costs*);

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

established or does not have such a schedule of contributions in place as at the date of this Contract, to the extent that they exceed the contributions which are required to be paid as at the date of this Contract under the schedule of contributions (prepared under section 58 of the Pensions Act 1995 or section 227 of the Pensions Act 2004, as appropriate) of the UKAEA Combined Pension Scheme;

"Exceptional Pension Costs Information" has the meaning given in Clause 6.7.3 (*Exceptional Costs*);

"Existing Agreements" means all legally binding agreements relating to the activities at the Site entered into by Sellafield Limited (Co. No. 1002607) prior to 1 April 2005, excluding the Secondment Agreement;

"Extended ESC Task" means any service required by the Authority to be provided by the Contractor in order to implement the Services, including any associated services which are incidental to or are required to be provided as a consequence of providing such Services;

"Failure to Protect the Supply Chain" means that in the reasonable opinion of the Authority the Contractor, acting other than on the written instruction of the Authority, has behaved in a manner calculated to result in any of:

- (i) suppliers withdrawing from opportunities to supply goods or services to the Contractor;
- (ii) agreement of the terms of contracts for the supply of goods or services to the Contractor becoming unreasonably delayed; or
- (iii) flowdown terms set out in Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*),

being wilfully misinterpreted or bids from suppliers to supply goods or services to the Contractor becoming uncompetitive with the result in any of the foregoing circumstances being that such goods or services are supplied by Affiliates;

"Fall Due" means in accordance with the legal terms governing the relevant obligation to make payment;

"Fee" means any monies paid or payable by the Authority to the Contractor:

- (A) as Incentive Fee; and
- (B) pursuant to any other incentivisation mechanism agreed between the Authority and the Contractor to be paid or payable and which will not attrite the Annual Site Funding Limit;

"Final Date for Payment" has the meaning given in Clause 6.12.7(A) (*Payment*);

"Fee Element" means any of Fee Element 1, Fee Element 2, Fee Element 3 and Fee Element 4 as each of those terms is defined in Paragraph 1.6 of Part 6 (*Use Of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*) and **"Fee Elements"** shall mean all of them;

"Final Performance Warning Notice" has the meaning given in Clause 12.3.2 (*Termination for Breach of the Same Type*);

"First Secretary of State" means the First Secretary of State or such other minister or authority for the time being having the right to exercise the powers now conferred on the First Secretary of State under the 1990 Act;

"FOIA" means the Freedom of Information Act 2000 as amended from time to time;

"Force Majeure Event" means any act, event or occurrence affecting any Party's performance of its obligations under this Contract, the cause of which is not of such Party's making nor within that Party's reasonable control (having acted in accordance with Good Industry Practice), and which is not attributable to any act or failure to take preventative action consistent with the standards expected on a nuclear site by the Party concerned, including (to the extent not of that Party's making nor within that Party's reasonable control) but not limited to:

- (i) war, hostilities (whether or not war has been declared), terrorist acts, or acts of any civil or military authority;
- (ii) riot, insurrection, civil commotion, public demonstration, sabotage, or acts of vandalism;
- (iii) fire, flood, earthquake, extreme weather conditions, epidemic, or explosion;
- (iv) impact from Third Party aircraft or things falling from Third Party aircraft;
- (v) any strike, lock-out or trade dispute not involving solely the employees or subcontractors of that Party and not originating with that Party's employees or subcontractors or the employees or subcontractors of any Affiliate of that Party;
- (vi) Acts of God;
- (vii) delay in transport or communications;
- (viii) accidental damage to equipment; and
- (ix) structural shift or subsidence;

but expressly excluding:

- (a) any unlawful act of a Third Party who has gained entry to the Site due to a failure of the Contractor to comply with the Security Plan or other failure to comply with its obligations under Part 2 (*Contractor's Obligations*) of this Contract;
- (b) any unauthorised release of ionising radiation from, or contamination by radioactivity from an occurrence involving nuclear matter on, the Site or from materials in the course of transportation to or from the Site save to the extent that such unauthorised release or contamination is caused by any of the events listed in (i) to (ix) of this definition;
- (c) any radioactive, chemical or biological contamination on the Site or emanating from the Site or matter in the course of transportation to or from the Site save to the extent that such contamination is caused by any of the events listed in (i) to (ix) of this definition; and
- (d) failure to obtain or maintain a Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other material requisite licence or permit;

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

"FReM" means the Government Financial Reporting Manual as maintained and issued by the UK Government;

"FSA" means the Financial Services Authority;

"Funding Change" means a change to the Current Budget, the Capital Budget and/or the Annual Site Funding Limit ;

"Funding Change Proposal" means a proposal to make a Funding Change;

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

"Future Transfer Scheme" means a nuclear transfer scheme made under Section 40(2) of the Energy Act made in order to facilitate a Shared Services Project;

"Good Industry Practice" means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged (in the United Kingdom or in any jurisdiction with Analogous Standards) in activities of a similar scope and complexity to those that are the subject of this Contract and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable Law and Regulatory Requirements;

"Government Payment Obligations" means the guidance contained in sections 16.3.1 to 16.3.4, Box 16.2 and Annexes 16.1 and 16.2 of Government Accounting 2000;

"Grievance" means any grievance where the subject matter of that grievance has a real prospect of resulting in the pursuance of a claim in the Employment Tribunal or in the County Court or the High Court in relation to the relevant person's employment;

"Guidelines on Managing Information" means the guidelines issued by the Cabinet Office, HMG (or any relevant governmental body) including the HM Treasury Good Practice Guide: the internal audit role in information assurance (January 2010), the HMG Security Policy Framework (December 2008);

"Historical Costs" means Costs arising in relation to the period prior to (and excluding) the Commencement Date excluding any Pension Deficit Contribution Costs which relate to benefits accrued in respect of pensionable service before the Commencement Date;

"HR Internal Procedure" means the Contractor's Internal Procedures referred to in Clause 2.9 (*Contractor's Internal Procedures*);

"HSE" means the Health and Safety Executive;

"Impartiality Undertaking" means the undertaking in the form set out in Part 5 (*Pro Forma Impartiality Undertaking*) of Schedule 4 (*Employee Schedule*);

"Incentive Fee" means the amount of fee which the Contractor may earn in each Contract Year dependent on its fulfilment of the PBIs in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*);

"Income Tax Act" means the Income Tax Act 2007;

"Incoming Parent" means the organisation which has successfully bid to replace the Parent Body Organisation in relation to the Contractor;

"Index" means all items retail price index (excluding mortgage interest payments) published by the Office for National Statistics from time to time or, failing such publication, such other index as may replace or supersede the same or, in the absence of a replacement or superseding index, such other index as the Parties may agree;

"Information" has the meaning given in Clause 10.3 (*Disclosure by the Authority*);

"Information Asset Register" means a register holding metadata to the e-GMS standard about the information holdings for the Contractor as defined by and agreed with the Authority;

"Initial Period" has the meaning given to it in the Parent Body Agreement;

"Insolvency Event" means the occurrence of any of the following:

- (i) the presentation of a petition for the appointment of an administrator;
- (ii) the court making an administration order;
- (iii) the presentation of a petition for winding up;
- (iv) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (v) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (vi) the appointment of a receiver or manager or administrative receiver; and/or
- (vii) any event or proceeding, in any jurisdiction, which has an effect equivalent or similar to any of the events mentioned in Paragraphs (i) to (vi) above,

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

"Instructions Notice" has the meaning given in Clause 3.6.3(C) (*Authority's right to instruct*);

"Inter-SLC Service Contracts" means the inter-SLC services contracts entered into in accordance with Clause 2.10 (*Inter-SLC Service Contracts*);

"Integrated Assurance and Approvals Plan" or **"IAAP"** has the meaning given in Paragraph 4.2.2 (*Process for Sanction and Validation of Work Activities*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) to Schedule 2 (*Programme Management and Change Procedure*);

"Internal Procedures" means all internal company documentation of the Contractor (regardless of the manner in which it is held, stored or collated) which:

- (i) in the reasonable opinion of the Authority, constitutes a mandatory internal guideline, standard, procedure or policy;

- (ii) in the reasonable opinion of the Authority, relates directly or indirectly to the Contractor's structure, operation and management; and
- (iii) relates materially and directly to the duties imposed on the Contractor in accordance with Clause 2.1 (*Nature of the Contractor's Obligations*) and/or the manner in which the Contractor chooses to fulfil its contractual, legal and regulatory obligations therein,

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

"Investment Opportunity" means a Work Activity not currently identified in the Lifetime Plan which, if pursued, may result in a cost and/or schedule benefit to the Authority;

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

"IP Commercial Guidance" means the Authority's document, **CMG 02** setting out the requirements in relation to the management and ownership of IP and the processes to be adopted by the Parties as may be updated, amended or replaced from time to time by the Authority in consultation with the Contractor, and which following such agreement are to be followed by the Parties in implementing the provisions of Clause 8 (*Intellectual Property*);

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

"IT Programme" means a coordinated portfolio of IT Projects designed to achieve a set of specified outcomes and benefits;

"IT System" means any communications and/or information technology system including:

- (i) all hardware, including servers, desktop and laptop PCs and other terminal equipment, printers, scanners and other peripherals;
- (ii) networks and network equipment;
- (iii) Software; and
- (iv) data comprised or used therein;

"Key Personnel" means the individuals, whether Nominated Staff or Employees, identified by the Authority and named as key personnel in accordance with Clause 5.2 (*Key Personnel*) and listed in Part 2 (*Key Personnel*) of Schedule 4 (*Employee Schedule*) as amended from time to time;

"Law" means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any

enforceable community right within the meaning of section 2 of the European Communities Act 1972, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the Contractor's obligations under this Contract are carried out;

"Lease" has the meaning given in Clause 7.9 (*Contractor's obligations relating to the Site*);

"Legal Proceedings" means any litigation, arbitration, adjudication, defence, dispute, compromise or appeal;

"Liability for Taxation" means a liability of the Contractor to make a payment of or in respect of any Taxation or of an amount representing, equal to, equivalent to, or deemed to be, Taxation;

"Licence Condition 36" means standard condition 36 of the Nuclear Site Licence;

"Lifetime Plan" or **"LTP"** means the over-arching document for the Site that describes the totality of activities required to take the Site from its current state and mission to the assumed or agreed site end-state. The LTP is continuously updated in line with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Control*) (as referred to in the PCP-Manual). For the purposes of this Contract the terms **"Lifetime Plan"**, **"LTP Performance Plan"** and **"Lifetime Plan Performance Baseline"** have the same meaning and are interchangeable;

"Long Term Force Majeure" has the meaning given in Clause 1.9.8 (*Force Majeure*);

"Major Incident" means the issue of more than one enforcement notice in relation to, or a successful prosecution as a result of, the incidents that arise from:

- (a) the loss of control of a significant quantity of radioactive waste;
- (b) exposure of a member of the public to ionising radiation;
- (c) exposure of a worker in excess of dose constraint;
- (d) release of harmful material that causes significant damage to the environment; or
- (e) a fatality or major injury;

"Make-or-Buy Plan" means the Contractor's plan setting out the extent to which it proposes to subcontract Tasks it currently performs;

"Month" means a calendar month which is a period of time consisting of thirty (30) days if the period commences in April, June, September and November, and thirty one (31) days if it commences in any other month excepting February when it consists of twenty-eight (28) days, or twenty-nine (29) in a leap year and **"Monthly"** shall be construed accordingly;

"Monthly Invoice" has the meaning given in Clause 6.12.1(A) (*Invoicing of Allowable Costs and Other Costs*);

"Monthly Reconciliation Report" has the meaning given in Clause 6.13 (*Funding Limits*);

"Multi-Year PBI" has the meaning given in Paragraph 7.2.1(D) (*Performance Agreement Form*) of Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*);

"National Insurance Contributions" means contributions and sums payable to HM Revenue & Customs under the PAYE system in respect of emoluments and benefits paid or payable by the Contractor, taking into account all deductions and retentions which should be made in accordance with the applicable law;

"NDA Agreements" means any and all obligations and agreements relating to or affecting the Site upon which the Subcontract or Series of Subcontracts is or are to be carried out (including the design and execution thereof) or any part thereof which have been or shall be entered into by the Authority and disclosed to the Contractor (whether before, on or after the Commencement Date), together with the terms upon which any approvals are granted pursuant to such NDA Agreements;

"Negotiation Mandate" means the authorisation by the Authority to the Contractor to proceed with negotiation of a Customer Contract as detailed in PCP-17;

"New Assets" means any assets, whether new or second-hand, acquired by the Contractor pursuant to Clause 7.7 (*Right to Acquire New Assets*) on or after the Commencement Date, excluding any Subcontracts and Customer Contracts;

"New Customer Contract" has the meaning given in Clause 3.6.1(A) (*Authority Rights in Respect of Customer Contracts*);

"NIA 1965" means the Nuclear Installations Act 1965;

"NISR" means the Nuclear Industries Security Regulations 2003, as amended, modified or re-enacted from time to time;

"Nominated Staff" means the individuals who are seconded to the Contractor from the Parent Body Organisation and/or a Relevant Affiliate pursuant to a Secondment Agreement and who are listed in Part 1 (*Nominated Staff*) of Schedule 4 (*Employee Schedule*) (as updated from time to time in accordance with Clause 5.1.4 (*Nominated Staff*));

"not acting independently" has the meaning given in Clause 1.16 (*Corrupt Gifts*);

"Notice" has the meaning given in Clause 1.13 (*Notices and Communications*);

"Nuclear Decommissioning Authority" or **"NDA"** has the same meaning as the Authority;

"Nuclear Site Licence" means the nuclear site licence granted to the Contractor pursuant to Section 1 of the NIA 1965 (as amended);

"Objection Notice" has the meaning given in Paragraph 3.2 of Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*);

"ONR" means the Office for Nuclear Regulation or any body having responsibility for civil nuclear safety security and regulation in the United Kingdom which substantially replaces the same from time to time;

"ONR Security Policy Framework" means the ONR security requirements for the protection of Sensitive Nuclear Information and personnel security in the civil nuclear industry reference TRIM Ref:4.4.2.4890.SB1/6;

"Open Book System" means a system which complies fully with the Contractor's obligations in relation to inspection and audit by the Authority under Clause 4.5.1 (*Inspection and Audit*);

"OPG Payments Account" means OPG account number [REDACTED]

"OPG Receipts Account" means OPG account number [REDACTED] with the following details:

For BACS Receipts: [REDACTED]

[REDACTED]

For CHAPS Receipts: [REDACTED]

[REDACTED]

"Organisational Structure" means the roles ascribed to Employees and Nominated Staff in the document set out at Schedule 11 (*Organisational Structure*);

"Other Costs" has the meaning given in Clause 6.11.1 (*Basis of Reimbursement*);

"Overarching Costs Management Agreements" means each of the agreements of that name entered into by (1) the Authority (2) Sellafield Limited (3) certain Group Companies and (4) Direct Rail Services (Co. no. 3020822) on the 1 April 2005 as such rights and liabilities that relate to the SLC were transferred to the SLC by nuclear transfer scheme on 29 July 2007 and the agreement of that name entered into by Sellafield Limited and the SLC on 31 March 2008 in relation to the nuclear transfer scheme on 29 July 2007;

"Overpayment Notice" has the meaning given in Clause 6.10.2 (*Receipts Accounts*);

"PAF" has the meaning given in Paragraph 1.6 (*Purpose/ Definitions*) of Part 6 (*Use of Performance Based Incentives*) to Schedule 6 (*Finance Schedule*);

"Parent Body Agreement" means the agreement of that name entered into on or about the date of this Contract between the Authority, the Contractor and the Parent Body Organisation having effect from 1 April 2008;

"Parent Body Organisation" means UK Nuclear Waste Management Limited, Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1HX (Company no. 06040606);

"Parent IP" has the meaning given in Clause 8.3.1 (*IP Contributed by Parent Body Organisation*);

"Paris Convention" means the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982;

"Partnering Arrangement" means any agreement through which any party would, in the reasonable opinion of the Authority, acquire significant influence over the Contractor's or over the Parent Body Organisation's performance of its respective obligations under this Contract and/or the Parent Body Agreement excluding the agreements which in the reasonable opinion of the Authority are entered into in the ordinary course of business;

"PBI Change" means a change to any aspect of any PBI;

"PBI Change Proposal" means a proposal to make a change to any aspect of any PBI;

"PCP-17" means the Authority's Sanction Programme Controls Procedure as contained in the PCP-M;

"PCP-M Contractor Annexe" means the Baseline Management System Programme Controls Procedures LLWR Annexe;

"PCP-M" means the Authority Project Controls Framework Document containing the Programme Control Procedures as amended from time to time;

"PCP Change Control Form" means the form attached at Appendix B of PCP-05 (*Change Control*);

"Pension Costs" means any contributions for which the Contractor (or any subsidiary of the Contractor) is liable including, for the avoidance of doubt pensions deficit contributions;

"Pension Deficit Contribution Costs" means any pension deficit contribution costs for which the Contractor is liable in relation to the Applicable Schemes in accordance with 5.12 (*Pensions*) or otherwise;

"Performance Based Incentives" or **"PBIs"** means the performance objectives and milestones determined in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*), including Multi-Year PBIs;

"Performance Warning Notice" has the meaning given in Clause 12.3.1 (*Termination for Breach of the Same Type*);

"Period 2" has the meaning given in clause 1.1 (*definitions*) of the Parent Body Agreement;

"Permitted Activities" means the Contractor's rights in respect of the Customer Contracts as set out in Part 1 (*Permitted Activities*) of Schedule 3 (*Commercial Schedule*) as may be amended from time to time on the instruction or with the agreement of the Authority in accordance with Clause 3.6.4 (*Permitted Activities*);

"PIA" means the Post Investment Appraisal;

"Portfolio Management Process" means the management process contained in Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*);

"Post Investment Appraisal" means the appraisal provided by the Contractor to the Authority in accordance with paragraph 11 (*Work Activity Completion and Post Investment Appraisal*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17;

"Principal Employer" has the meaning given by the Applicable Scheme;

"Process" has the meaning given in paragraph 3.1 (*Contractor Gating Process*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"Programme Control Procedures" or **"PCPs"** means the Authority Programme Control Procedures as set out in the PCP-M;

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

"Prohibited Acts" means:

- (i) offering, promising, giving or agreeing to give to another person any financial or other advantage whether offered, promised or given directly or indirectly as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (ii) requesting, agreeing to receive or accepting from another person any financial or other advantage, whether requested, agreed to received or accepted directly or indirectly, as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (iii) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (iv) committing any offence:
 - (a) under the Bribery Act 2010;
 - (b) under any applicable Law creating offences in respect of fraudulent acts; or;
 - (c) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority;
- (v) breaching any Relevant Policies or Relevant Requirements; or
- (vi) defrauding or attempting to defraud or conspiring to defraud the Authority;

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

- (i) a finite and defined lifespan;

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

"Protected Employees" means those employees who benefit from pension protection pursuant to the Energy Act 2004;

"Project Level Acquisition Strategy" means the project level procurement plan and high level procurement approach referred to in paragraph 15 (*Project Level Acquisition Strategy*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17;

"Property Manager" means the person appointed from time to time by the Contractor pursuant to the terms of Clause 7.5.4 (*Maintenance of Site and Authority Assets*);

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

"Re-baseline" means the re-write of scope, schedule and cost of any part of the LTP;

"Reach Back Services" means those services provided by an Ultimate Parent or a subsidiary of an Ultimate Parent where such services do not require competitive tender under the EU Procurement Rules (or where the Authority has agreed with the Contractor in advance, in writing, that in a particular case it is not necessary to adhere to the EU Procurement Rules);

"Records Agreements" means:

- (i) the agreement of that name entered into on 1 April 2005 between (1) the Authority and (2) British Nuclear Group Sellafield Limited (Co. No. 1002607) and the Deed of Adherence of the same date signed by the Contractor; and
- (ii) the agreement of that name entered into on 29 July 2007 between (1) Sellafield Limited (Co. No. 1002607) and (2) the Contractor, as amended by a Deed of Amendment dated 31 March 2008;

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

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

"Regulators" means the Health and Safety Executive (HSE), the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), the Office for Nuclear Regulation (ONR), the Scottish Executive, the Financial Services Authority (FSA), the Pensions Regulator, the Pension Protection Fund, others specific to the Contractor's obligations under this Contract and as applicable in the relevant jurisdiction (including in

relation to international waters) where the Contractor's obligations under this Contract are carried out and "**Regulator**" shall mean each or any one of them;

"**Regulatory Requirements**" means any legally enforceable requirement of any Regulator;

"**Reimbursable Cost Tasks**" or "**RC Tasks**" means the services, operations, projects and activities to be undertaken by the Contractor in the LTP on a cost reimbursable basis (as amended by the Change Procedure in Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) where applicable);

"**Relevant Affiliate**" means an Affiliate that is incorporated in a jurisdiction that is a signatory to the Paris Convention and/or the Brussels Convention from which a member of Nominated Staff is to be or has been seconded;

"**Relevant Policies**" means the Ministry of Justice guidance in respect of anti –bribery published in March 2011;

"**Relevant Requirements**" means all applicable Laws and codes relating to anti-bribery and anti corruption including but not limited to the Bribery Act 2010;

"**Remediation Programme**" has the meaning given in Clause 12.4.4 (*Termination or Remedy for Contractor Default*);

"**Reporting Matrix**" means the matrix which sets out the reporting requirements of the Authority in relation to the Contractor and/or Site including in respect of nuclear safety, radiological protection, industrial health & safety, the environment, the transport of radioactive material, nuclear safeguards, nuclear material accountancy (NMA), security regulations and key achievements, as such matrix is either agreed by the Parties prior to the commencement of Period 2 or pursuant to Clause 4.1.1 (*Reporting and Reviewing Programme*);

"**Reporting Schedule**" means the Schedule attached as Schedule 13 (*Reporting Schedule*);

"**Reports**" has the meaning given in Clause 4.1.2 (*Required Reports*);

"**Requirement/Output Specification**" means the requirements of the Authority as agreed by the Contractor as set out in Schedule 1 (*Requirement/Output Specification*);

"**Re-Sanction**" has the meaning given in paragraph 10.1.1 (*Re-Sanction*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"**Re-Sanction Submission**" has the meaning given in paragraph 10.1.2 (*Re-Sanction*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"**RPIX**" means that where any sum is stated to be "**adjusted for RPIX**" then, at such time, the said sum shall be multiplied by I where I equals:

$$\text{RPIX}_n \text{ divided by } \text{RPIX}_o$$

where RPIX_n means the Index calculated for the relevant Month of the Term; and

where RPIX_o means the Index calculated for the month of the Commencement Date;

"**RSS**" has the meaning given in Paragraph 12 (*Schedule of Work Activity Sanctions*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"**Sanction**" has the meaning given in Paragraph 4.2.4(B) (*Process for Sanction and Validation of Work Activities*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) to Schedule 2 (*Programme Management and Change Procedure*);

"**Sanction Submission**" has the meaning given in Paragraph 9.1.1 (*Sanction*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);

"**SaV**" means Sanction and Validation as referred to in PCP-17;

"**SaV Form**" means the Sanction & Validation of Work Activity Template used for any Authority sanction and validation approval points as referred to and contained in Appendix C of PCP-17;

"**SaV Process**" means the Sanctioning and Validation Process as set out in PCP-17;

"**Schedule of Delegated Authority**" means the current notification to the Contractor of levels of financial delegated authority against specific work activity thresholds in accordance with the relevant agreement in place at the time between the Parties (as may be amended by agreement from time to time);

"**Scheme Documents**" has the meaning given in the Deed of Participation;

"**Scheme Trustee**" means the trustee for the time being of the CNPP;

"**Scope Trend**" means a trend that results from an anticipated Change to the scope of work to be performed, typically as a result of emerging issues, changes in priorities or better understanding of the scope to be performed. If acknowledged, scope trends are incorporated into the baseline through the Change Procedure;

"**Secondment Agreement**" means an agreement entered into by the Parent Body Organisation and/or a Relevant Affiliate and Nominated Staff in the form attached at Part 3 (*Pro Forma Secondment Agreement*) of Schedule 4 (*Employee Schedule*);

"**Security Interest**" means any mortgage, assignment, charge, lien, hypothecation, pledge, encumbrance, trust arrangement or any other security interest or arrangement for the purpose of providing to any person security or a priority in right of payment except for any lien arising by operation of law;

"**Security Requirements**" means the requirements specified in the Nuclear Industries Security Regulations 2003 (S.I. 2003, No. 403), and any subsequent amendment, revision, re-enactment or consolidation and any such other further requirements relating to security matters that may be issued in writing by the Regulators and / or the Authority to the Contractor from time to time;

"**Security Plan**" means the security plan defined by and approved for the Site in accordance with the Nuclear Industries Security Regulations 2003 (S.I. 2003, No. 403);

"**SEPA**" means the Scottish Environment Protection Agency;

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

"Series of Subcontracts" means more than one contract for the procurement of the same or substantially similar goods or services between the Contractor and the same supplier or subcontractor;

"Shared Services Project" means the implementation of a strategy developed by the Authority to facilitate the provision of services that are performed for more than one SLC in support of the decommissioning, clean up or commercial operations on the Site or the Authority's other designated sites that in the Authority's reasonable opinion will improve efficiency or effectiveness;

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

"Site" means the land known as the Low Level Waste Repository Site, Old Shore Road, Drigg, Holmrook, Cumbria CA19 1XH and land appurtenant thereto (being the land demised by a lease dated 17 February 2011 made between the Authority (1) and the Contractor (2) for a 35 year term commencing on 1 April 2008);

"Site IT Systems" means IT Systems on the Site or used by or on behalf of the Contractor in respect of the Site;

"Site Licence Company" or **"SLC"** means a company which holds the nuclear site licence under the NIA 1965 for a site which has been designated as the financial responsibility of the Authority under the Energy Act 2004;

"Site Management and Operations Contract" or **"Site M&O Contract"** means a contract between the Authority and an SLC to manage and operate a site;

"Site Meetings" means all meetings held or to be held by the Contractor on the Site (or, in respect of the Commercial Operations Tasks at any other locations which the Contractor uses in its performance of the Commercial Operations Tasks) with or without Third Parties present (and excluding Regulator Meetings if applicable) which are agreed by the Parties prior to each Contract Year;

"Site Maintenance Register" means the Site Maintenance Register to be maintained by the Contractor in accordance with Clause 7.5.2 (*Maintenance of Authority Assets*);

"Site Programme Manager" means the individual appointed by the Authority to be site programme manager in relation to the Site as notified to the Contractor from time to time;

"Socio-Economic Development Plan" means the document to be provided pursuant to Clause 2.5 (*Socio-Economic Development*);

"Software" means all computer software, together with any related supporting documentation and materials necessary to enable a user to make full use of the functionality of, or to administer effectively, such software;

"Source Code" means, in respect of any Software, the entirety of such Software in an eye-readable form in which such Software can be interpreted by a programmer of reasonable skill and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation reasonably necessary for the use, reproduction, modification and enhancement of such Software;

"Specification" means the technical data forming the subject matter of each Subcontract or Series of Subcontracts (including benchmarking, performance requirements,

procurement of materials (including material component flow) and labour, method statements, deliverability, access requirements, restrictions and limitations, impact and risk assessments, quality management, hours of working, programmes and policies relating to fire safety, safety, training and industrial relations);

"Standalone Procurement" means an individual procurement by the Contractor or fundamental agreement for supply of goods or services, including extensions, amendments or renewals which is not part of a Project, Programme or Customer Contract;

"State Aid Decision" means the Commission Decision of 4 April 2006 on the State Aid which the United Kingdom implemented for the establishment of the Nuclear Decommissioning Authority (2006/643/EC);

"Strategic Interest" means those technologies, processes and systems which are listed in the record held by the Contractor for such purpose as being of strategic interest to the Authority, as such record may be amended by the Authority from time to time and notified to the Contractor. As at the commencement date of Period 2, the technologies, processes and systems which are to be listed in such record are those:

- (a) set out in the IP Commercial Guidance; and
- (b) relating to plutonium monitoring and handling where it relates to proliferation;

"Subcontract" means any agreement entered into by the Contractor in connection with the performance of its obligations under this Contract, including Asset Purchases;

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

"Subcontractor IP" means Developed IP owned by a Subcontractor or licensed to a Subcontractor with appropriate sublicense rights;

"Subcontractor Procurement Schedule" means the subcontract procurement schedule attached as Schedule 5 (*Subcontracting/Procurement Schedule*);

"Subcontract Strategy" means the detailed strategy for procurement of an individual product or service;

"Subsequent Period" has the meaning given in clause 2.2.1 (*Term*) of the Parent Body Agreement relating to the periods for the extension of the term of the Parent Body Agreement;

"Sub-Subcontract" means any agreement entered into by any Subcontractor with any Sub-Subcontractor or any Sub-Subcontractor with any other Sub-Subcontractor;

"Sub-Subcontractor" means any contractor not being the Contractor or a Subcontractor entering into any Sub-Subcontract at any level in the supply chain in connection with the services to be provided by the Contractor under this Contract;

"Tasks" means Reimbursable Cost Tasks and the Extended ESC Task;

"Taxation" or **"Tax"** means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) any tax on gross or net income profit or gains (including income tax required to be deducted or withheld from or accounted for

in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, wealth taxes, development land tax, petroleum revenue tax, value added tax, customs duties, excise duties, turnover taxes, lottery duty, air passenger duty, insurance premium tax, rates (including the uniform business rate), stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, PAYE, national insurance and other similar contributions, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, in the nature of, replaced by or replacing any of them together with any interest, penalty or fine in connection with any taxation, and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to the Contractor, a subsidiary or any other person and of whether any amount in respect of any of them is recoverable from any other person;

"Taxation Authority" means any local municipal, governmental, state, federal or other fiscal, customs or excise authority, body or official anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of taxation;

"Taxes Act" means Income and Corporation Taxes Act 1988;

"Term" has the meaning given in the Parent Body Agreement;

"Termination for Convenience" has the meaning given in Clause 12.8 (*Termination for Convenience*);

"Termination Invoice" has the meaning given in Clause 6.12.3 (*Termination Invoice*);

"Third Party" means any person other than the Parties and the Parent Body Organisation;

"Third Party IP" has the meaning given in Clause 8.7 (*Third Party IP*);

"Total Incentive Fee" means the total amount of Incentive Fee earned by the Contractor in the then current Contract Year;

"Total Maximum Fee" has the meaning given in Paragraph 3.2 of Part 3 (*Funding Limits and Total Maximum Fee*) of Schedule 6 (*Finance Schedule*);

"Transfer Scheme Losses" means the Costs paid or payable by the Contractor to Third Parties in respect of compensation under Paragraph 11 of Schedule 5 of the Energy Act;

"Transition Agreement" means the transition agreement entered into between the Authority and the Parent Body Organisation on 19 March 2008;

"Transitional Balance Sheet" means a balance sheet extracted from the Contractor's books of account as at the close of business on the last business day before the Commencement Date; the Transitional Balance Sheet will be prepared in accordance with approved Accounting Policies and Procedures and may be audited by the Authority;

"Transitional Balances" means those Allowable Costs incurred by the Contractor before the Commencement Date but in respect of which the Contractor has not drawn down funds from the OPG Payments Account before the Commencement Date;

"Transition In Plan" means the plan of the Incoming Parent to enable it, when it is preparing to hold the shares in the Contractor or when it is first holding the shares in the Contractor, to prepare to manage and hold the shares in the Contractor, including in respect

of enabling the Contractor to continue to comply, and the Incoming Parent to comply, with Law and Regulatory Requirements;

"Transition Out Plan" means a plan of the Parent Body Organisation to enable it and the Contractor, when it is preparing to transfer the shares back to the Authority, to continue to comply with Law and Regulatory Requirements and to facilitate the Transition In Plan of the Incoming Parent;

"Transition Period" has the meaning given in the Transition Agreement;

"Treaty" means the Treaty establishing the European Communities, as amended by the Treaty on European Union;

"Trend Log" means a log of trend data undertaken in accordance with the provisions of PCP-05 (Change Control).

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

"UKAEA" means the United Kingdom Atomic Energy Authority;

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

"Ultimate Parent" means URS Corporation (EIN: 94-1381538), Studsvik AB (Registered Company No: 556501-0997), Areva Societes des Participations du Commissariat a l'Energie Atomique (registered in France under number: 712 054 923 RCS Paris), and, other than for the purpose of provisions in respect of the Parent Company Guarantee, and any of their subsidiary companies and any of their permitted assignees;

"Variation" has the meaning given in Clause 1.17.2 (*Variation*);

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

"VATA" means Value Added Tax Act 1994;

"VAT Agreement" means the Agreement dated 1 April 2005 between Customs & Excise and the Authority;

"VLLW" means very low level radioactive waste as further defined in paragraph 5 of the policy document published on 26 March 2007 by the Department for the Environment, Food and Rural Affairs entitled 'Policy for the Long Term Management of Solid Low Level Radioactive Waste in the United Kingdom';

"Work Activity" means any Task carried out by the Contractor, in-house or procured, which has been identified by the Authority or by the Contractor as requiring Contractor sanctioning (and/or subsequent Authority approval) under Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17 and **"Work Activities"** shall be construed accordingly;

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

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

"Working Day" means Monday to Friday except any day which is generally recognised as a public holiday in England;

"Year End Sum" has the meaning given in Clause 6.12.6 (*Payments to Parent*).

1.2 Interpretation

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

- 1.2.1 in the event of any conflict between the Contract Clauses contained in Parts 1-13 of these conditions and the Schedules and Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*), the Contract Clauses shall take precedence over the Schedules. If there is any further conflict, this Contract shall first be read and construed as a whole and any conflict then remaining shall be dealt with under Clause 13 (*Dispute Management*);
- 1.2.2 In the event of any conflict between the Definitions contained in this Contract and the definitions contained in the Authority's Policies and Procedures, the Definitions in this Contract shall take precedence over the Authority's Policies and Procedures. Any further conflict remaining shall be dealt with under Clause 13 (*Dispute Management*);
- 1.2.3 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Contract;
- 1.2.4 all references to Clauses, Schedules and to appendices are references to clauses of, the schedules and to this Contract and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to parts, sections and Paragraphs contained in and annexes and appendices to the Schedules;
- 1.2.5 the Schedules (including any appendices to such Schedules) are an integral part of this Contract and reference to this Contract includes reference to the Schedules and any Appendices;
- 1.2.6 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.7 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.8 words importing the singular include the plural and vice versa;

- 1.2.9 words importing a particular gender include all genders;
- 1.2.10 **"person"** includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.11 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.12 references to **"Party"** and **"Parties"** means a party or the parties to this Contract as applicable;
- 1.2.13 all monetary amounts are expressed in pounds sterling;
- 1.2.14 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.15 references to the word **"includes"** or **"including"** are to be construed without limitation;
- 1.2.16 references to a document being **"in the agreed form"** means a copy of such document initialled for the purposes of identification by the Parties;
- 1.2.17 any reference in this Contract to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.18 a reference to the **"Site"** shall include any part of the site; and
- 1.2.19 all references to a time of day are references to UK time.

1.3 **Commencement and Duration**

This Contract shall take effect on the Commencement Date and shall remain in full force and effect unless it terminates in which case this Contract shall, subject to Clause 1.29 (*Survival of Rights and Obligations*), cease to have effect from the date on which termination is effective in accordance with Clause 1.9 (*Force Majeure*) or Clause 12 (*Termination*).

1.4 **State Aid**

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

1.5 **Representatives and Authority to Act**

1.5.1 **Co-operation**

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

1.5.2 **Delegation of Authority**

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

1.5.3 **Authority to Act**

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

1.5.4 **Extent of Authority**

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

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

1.6 **Liaison with Regulators**

1.6.1 **Communications with Regulators**

Save in relation to correspondence, or parts thereof, relating to Regulator enforcement action (whether potential or actual) against the Contractor or any of its management, or where a Regulatory Requirement prohibits the Contractor from doing so, the Contractor shall promptly copy to the Authority all material correspondence or other communications received from and sent to a Regulator in relation to the Site and the Contractor's activities under this Contract.

1.6.2 **Regulator Meetings**

- (A) The Contractor shall use all reasonable endeavours to give the Authority prompt notice of all Regulator Meetings.
- (B) Save in relation to the meetings, or parts thereof, relating to Regulator enforcement action against the Contractor or any of its management, or where a Regulatory Requirement prevents the Authority from doing so, the Authority may attend Regulator Meetings. The attendance of the Authority at Regulator Meetings shall at all times be at the discretion of the relevant Regulator(s).

- (C) Whether or not the Authority attends Regulator Meetings, the Contractor shall keep the Authority apprised of the Contractor's approach in discussions or negotiations with the Regulator within the constraints of the timetable set by the relevant Regulator. Where the Authority does not attend any Regulator Meeting, the Contractor shall keep the Authority informed on a timely basis of the outcome of the meeting.

1.6.3 Notification of Breach

If the Contractor becomes aware of any circumstances that will or may lead or have led to a breach of one or more Regulatory Requirements, the Contractor shall, as soon as reasonably practicable, notify the Authority of such circumstances. This obligation is without prejudice to the Contractor's overriding obligation to notify the relevant Regulator of such circumstances pursuant to relevant Regulatory Requirements.

1.7 Site Meetings

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

1.7.2 The Contractor shall:

- (A) maintain a timetable of all Site Meetings;
- (B) give the Authority reasonable notice of all proposed Site Meetings in order to enable the Authority to attend; and
- (C) provide the Authority with copies of the minutes of all Site meetings and progress reports of actions arising from such Site meetings.

1.8 Other Meetings

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

1.9 Force Majeure

1.9.1 Performance of Obligations

Subject to Clause 1.9.2 (*Notification and Mitigation*), if a Party (the "**Affected Party**") is, or could reasonably be expected to be, materially hindered, prevented or delayed from performing any of its obligations under this Contract by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event except that the Contractor shall not be excused from the due and punctual performance of any of its obligations under this Contract by reason of any circumstances to the extent that the impact of such circumstances on the Contractor's ability to perform its obligations could have been reasonably avoided or mitigated by the

maintenance of business continuity and disaster recovery plans in accordance with Clause 1.31 (*Disaster Recovery Plan*) and Clause 9.4 (*Maintenance and Support and Business Continuity*) and the implementation of such plans.

1.9.2 Notification and Mitigation

- (A) The Affected Party shall, immediately on becoming aware of a Force Majeure Event, notify the other Party in writing of:
 - (1) the nature of the Force Majeure Event relied on;
 - (2) the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Contract; and
 - (3) the period for which it is estimated the Force Majeure Event will continue.
- (B) As soon as reasonably practicable following notification pursuant to this Clause 1.9.2 (*Notification and Mitigation*), the Parties shall consult with each other and use all reasonable endeavours to agree appropriate arrangements to mitigate the effects of the Force Majeure Event and facilitate the resumption of the affected obligation.

1.9.3 The Affected Party shall:

- (A) use all reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under this Contract;
- (B) where it is the Contractor, provide written reports as often as the Authority reasonably requires in the circumstances of the Contractor's progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume; and where the Affected Party is the Authority, provide updates to the Contractor as often as is reasonably possible in the circumstances of the Authority's progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume;
- (C) so far as reasonably practicable provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and
- (D) (without prejudice to any applicable Law and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense.

1.9.4 Where the Affected Party is the Contractor, the Contractor shall at all times during which a Force Majeure Event is subsisting, take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

1.9.5 If the Authority is the Affected Party, the Authority shall at all times during which a Force Majeure Event is subsisting take all steps reasonably necessary to overcome or minimise the consequences of the Force Majeure Event.

1.9.6 As soon as reasonably practicable after the cessation of a Force Majeure Event, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended, and subject to Clause 1.9.9 (*Requirement to instigate a Change Proposal*) and to the Change Proposal being approved (and without prejudice to applicable Law and/or any Regulatory Requirement) shall resume the full performance of its obligations under this Contract in accordance with the approved Change as soon as is reasonably practicable.

1.9.7 For the avoidance of doubt, save to the extent stipulated in this Clause 1.9 (*Force Majeure*), neither Party shall be released from any of its obligations under this Contract as a result of a Force Majeure Event.

1.9.8 If the performance by the Affected Party of substantially all of its obligations or those material to compliance with the Nuclear Site Licence under this Contract is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than ninety (90) consecutive Calendar Days ("**Long Term Force Majeure**"), the other Party may terminate this Contract with immediate effect by notice to the Affected Party on or at any time after the expiry of such ninety (90) Calendar Day period.

1.9.9 **Requirement to instigate a Change Proposal**

In the case of a Force Majeure Event affecting the Contractor, the Contractor shall be required to bring a Baseline Change Proposal, Funding Change Proposal and/or PBI Change Proposal (as appropriate) pursuant to Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) prior to resuming the performance of the affected obligations, save to the extent that Emergency Action is required, in which case the provisions of Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) relating to Emergency Action shall apply.

1.10 **Emergency Action**

The Contractor shall be entitled to take Emergency Action at any time notwithstanding the other provisions of this Contract but, for the avoidance of doubt, without prejudice to its compliance with Law and Regulatory Requirements.

1.11 **Warranties**

1.11.1 **Authority Warranties**

The Authority warrants and undertakes that as at the Commencement Date:

- (A) it has the requisite power and authority to enter into and exercise its rights and perform its obligations under this Contract which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and
- (B) has taken all necessary action to authorise the execution and the performance of its obligations under this Contract.

1.11.2 **Contractor's Warranties**

The Contractor warrants and undertakes that as at the Commencement Date:

- (A) it has the requisite power and authority to enter into and exercise its rights and perform its obligations under this Contract which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and
- (B) has taken all necessary action to authorise the execution and the performance of its obligations under this Contract.

1.12 **Severability**

- 1.12.1 If any condition, clause or provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.
- 1.12.2 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 1.12.3 The Parties agree, in the circumstances referred to in Clause 1.12.2 (*Severability*), to attempt to substitute for any invalid or enforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

1.13 **Notices and Communications**

- 1.13.1 A notice, approval, consent, electronic mail (in the case of Clause 1.13.3 (*Notices and Communications*) below only) or other communication ("**Notice**") in connection with this Contract and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 1.13.2 (*Notices and Communications*) below or, for the purposes of Clause 1.13.3 (*Notices and Communications*) below only, by electronic mail to an address for the time being notified for that purpose to the Party giving notice.
- 1.13.2 All Notices must be marked for the attention of the addressee.

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

Authority:

Nuclear Decommissioning Authority

Address: Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU

Facsimile: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contractor:

LLW Repository Limited

Address: Pelham House, Pelham Drive, Calderbridge, Cumbria, CA20 1DB

Facsimile: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with this Clause 1.13 (*Notices and Communications*). The Parties' respective addresses and facsimile numbers must be within the United Kingdom.

1.13.3 If an electronic mail address has been provided pursuant to Clause 1.13.1 (*Notices and Communications*), the following Notices may be sent by electronic mail:

- (A) electronic transmittal of a scanned image of an original executed Notice;
- (B) day-to-day communication in connection with this Contract and the documents referred to in it; and

(C) Authority approval/consent given in accordance with Clause 2.8 (*Subcontracting/Procurement*) and Paragraph 3.3 of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*),

but must be followed on the same day by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom).

1.13.4 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 1.13.5 (*Notices and Communications*) below.

1.13.5 Subject to Clause 1.13 (*Notices and Communications*), a Notice is deemed to be received:

(A) where delivered by hand, upon delivery at the address of the addressee;

(B) where delivered by posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;

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

(D) where sent by electronic mail (where applicable), on the second day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 1.13.2 (*Notices and Communications*) above.

1.13.6 A Notice received or deemed to be received in accordance with Clause 1.13.5 (*Notices and Communications*) above on a day which is not a Working Day or after 5p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.

1.13.7 Notwithstanding Clauses 1.13.1 and 1.13.2 (*Notices and Communications*) above, if the Authority determines, in its absolute discretion, that any Notice is to be protectively marked and should be delivered in a secure manner, it shall inform the Contractor of this and shall also provide the Contractor with details of the name of the person to whom such Notice should be delivered and the method by which such Notice should be delivered.

1.13.8 Where the Contractor receives a Notice from the Authority that is from someone other than the LLWR Contract Manager, the Contractor shall notify the LLWR Contract Manager of such Notice and seek confirmation of whether or not to act upon it. For the avoidance of doubt, the Contractor shall not act upon such a Notice until such confirmation is received from the LLWR Contract Manager.

1.14 **Waiver**

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

any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing and signed by the Party granting it.

1.15 **Entire Agreement**

1.15.1 Each of the Parties to this Contract confirms that this Contract together with the Parent Body Agreement, the Transition Agreement, the Overarching Costs Management Agreements, the Ultimate Parent Company Guarantees and Indemnities, the Records Agreements and any and all of the Claims Handling and Insurance Agreement(s) and the documents referred to in them, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Law or by custom.

1.15.2 The Contractor confirms that:

- (A) in entering into this Contract it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Contract, the Parent Body Agreement or the documents referred to in them; and
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Contract or the Parent Body Agreement or the documents referred to in them are those contained or referred to in this Contract, the Parent Body Agreement or such documents, and for the avoidance of doubt and without limitation, the Contractor has no other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Contract).

1.15.3 The Authority confirms that:

- (A) in entering into this Contract it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Contract, the Parent Body Agreement or the documents referred to in them; and
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Contract or the Parent Body Agreement or the documents referred to in them are those contained or referred to in this Contract, the Parent Body Agreement or such documents, and for the avoidance of doubt and without limitation, the Authority has no other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Contract).

1.16 **Corrupt Gifts**

1.16.1 The Contractor shall, and shall procure that persons associated with it or other persons who are performing services or providing goods to it in connection with this Contract shall:

- (A) comply with all Relevant Requirements and Relevant Policies, including but not limited to the Bribery Act 2010;
- (B) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (C) not do, or omit to do, any act that will cause or lead the Authority to be in breach of any of the Relevant Requirements or Relevant Policies;
- (D) have and shall maintain in place throughout the term of this Contract its own policies, procedures or processes, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and this Clause 1.16 (*Corrupt Gifts*), and will enforce them where appropriate;
- (E) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor or any person working for or engaged by the Contractor in connection with the performance of this Contract;
- (F) within thirty (30) Calendar Days of the Effective Date certify to the Authority in writing signed by an officer of the Contractor compliance with this Clause 1.16 (*Corrupt Gifts*) by the Contractor. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.
- (G) if requested, other than in relation to a breach of this Clause 1.16 (*Corrupt Gifts*), provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;

1.16.2 The Contractor warrants and represents that neither the Contractor nor any of its officers, employees or other persons associated with it:

- (A) having made reasonable enquiries, so far as it is aware, has been convicted of any offence involving bribery or corruption, fraud or dishonesty such as to cause the Contractor to be in breach of its obligations under 1.16.1 (*Corrupt Gifts*) above;
- (B) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
- (C) has been or is listed by any Government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible

for participation in Government procurement programmes or other Government contracts;

(D) has not committed any Prohibited Act

and it undertakes not to do any of the Prohibited Acts.

1.16.3 The Contractor shall immediately notify the Authority if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to comply with this Clause 1.16 (*Corrupt Gifts*) or repeat the warranties set out in Clause 1.16.2 (*Corrupt Gifts*) above at the relevant time.

1.16.4 **Remedies**

(A) If the Contractor or any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commit any Prohibited Act, the Authority shall be entitled to act in accordance with Clauses 1.16.4(B) to 1.16.4(D) (*Remedies*) below.

(B) If the Prohibited Act is committed by an Employee, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to procure the performance of such part of the Tasks by another person.

(C) If the Prohibited Act is committed by a Subcontractor or Sub-Subcontractor or by an employee of either of them not acting independently, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to terminate the relevant Subcontract or Sub-Subcontract or require the Subcontractor to terminate the relevant Sub-Subcontract and procure the performance of such part of the Tasks by another person.

(D) If the Prohibited Act is committed by an employee of a Subcontractor or Sub-Subcontractor acting independently of them, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to procure that the Subcontractor or Sub-Subcontractor (as the case may be) procures the performance of such part of the Tasks by another person.

(E) If the Prohibited Act is committed by a person not falling within Clauses 1.16.4(B) to 1.16.4(D) (*Remedies*) above, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to procure the termination of such person's involvement in the Tasks and (if necessary) procure the performance of such part of the Tasks by another person.

(F) Any Notice under this Clause 1.16 (*Corrupt Gifts*) shall specify:

(1) the nature of the Prohibited Act; and

(2) the identity of the person whom the Authority believes has committed the Prohibited Act.

In this Clause 1.16 (*Corrupt Gifts*), "**acting independently**" shall mean where a person does not act under the authority of or with the knowledge of a director or other management of a Subcontractor or Sub-Subcontractor and "**not acting independently**" shall be construed accordingly.

1.17 **Variation**

1.17.1 **Unilateral Variation**

The Authority shall be entitled to unilaterally vary the following provisions of this Contract:

- (A) Clause 2.10 (*Inter-SLC Service Contracts*);
- (B) Clause 2.14 (*Transition Out*);
- (C) Clause 3.6 (*Authority rights in respect of Customer Contracts*);
- (D) Clause 4 (*Performance Management, Performance Assurance and Records*);
- (E) Clause 5.11 (*Removal of Contractor or Subcontractor Employees from Site*);
- (F) Clause 6.14 (*Reports*);
- (G) Clause 6.15 (*Cost Transparency and Auditing*);
- (H) Clause 9 (*Information Governance*);
- (I) Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*); and
- (J) references to accounting standards, policies and procedures.

In exercising its rights under this Clause 1.17.1 (*Unilateral Variation*), the Authority shall consult with the Contractor, such consultation to be without prejudice to the Authority's right set out in this Clause 1.17.1 (*Unilateral Variation*) to vary the Contract in its absolute discretion.

1.17.2 Subject and without prejudice to the Authority's rights under Clause 1.17.1 (*Unilateral Variation*) above, and except where expressly provided otherwise in this Contract, no variation of this Contract (or any document referred to in it) shall be effective unless it is in writing (which, for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "**variation**" includes supplement, deletion or replacement, howsoever effected.

1.17.3 The Parties shall follow the procedures set out in Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) should they wish to exercise their right to vary this Contract pursuant to this Clause 1.17 (*Variation*).

1.18 **Assignment**

Subject to Clause 2.8 (*Subcontracting/Procurement*), the Contractor shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and

whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Contract or any part of it.

1.19 **Contracts (Rights of Third Parties) Act 1999**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract other than the Parent Body Organisation and, in respect of Clause 1.20 (*Shared Services and Consents*) only, the Secretary of State.

1.20 **Shared Services and Consents**

1.20.1 The Contractor acknowledges that the Authority is developing a Shared Services Project. In order to enable the implementation of the Shared Services Project, the Authority and the Contractor agree the following:

- (A) The Contractor agrees to use its reasonable endeavours to assist the Authority with the development and implementation of the Shared Services Project including the provision of information to the Authority for the purposes of development and implementation of the Shared Services Project;
- (B) The Contractor agrees to participate in any discussion forum established by the Authority to facilitate the purchase of Shared Services; and
- (C) The Contractor acknowledges that the Authority may require changes to the Lifetime Plan in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) in order to implement the Shared Services Project including when a Shared Services Project results in the performance of certain services by centralised functions rather than by the Contractor or another SLC.

1.20.2 Section 40(2) of the Energy Act provides that a Future Transfer Scheme which would operate to transfer property, rights and liabilities to a publicly owned company (as defined in the Energy Act) or the Authority from the Contractor can be carried out only if the Contractor consents to that Future Transfer Scheme.

1.20.3 For Future Transfer Schemes that meet the requirements set down in Clause 1.20.4 (*Shared Services and Consents*) below, the Contractor agrees that, whenever during this Contract, a Future Transfer Scheme or Future Transfer Schemes has or have been proposed by the Secretary of State, under which property, rights or liabilities are proposed to be transferred from the Contractor by virtue of Section 40(2) of the Energy Act, the Contractor will consent to their transfer in accordance with such Future Transfer Scheme(s) (and such consent will constitute 'consent in accordance with a nuclear transfer scheme') for the purposes of Section 40 of the Energy Act.

1.20.4 The requirements described in Clause 1.20.3 (*Shared Services and Consents*) above are that:

- (A) the Future Transfer Scheme(s) is/are designed to facilitate the Shared Services Project;
- (B) the Future Transfer Scheme(s) does/do not operate to transfer rights or liabilities in relation to any Nominated Staff or employment contracts

related to Nominated Staff (including but not limited to Secondment Agreements); and

- (C) the Future Transfer Scheme(s) does/do not operate to alter the Parties to this Contract or the Parent Body Agreement.

1.20.5 The provisions of this Clause 1.20 (*Shared Services and Consents*) confer rights and benefits on the Secretary of State, which rights and benefits are intended to be enforceable by the Secretary of State under the Contracts (Rights of Third Parties) Act 1999.

1.20.6 For the avoidance of doubt, all reasonable costs incurred by the Contractor in complying with its obligations set out in Clause 1.20.1 (*Shared Services and Consents*) above shall be Allowable Costs.

1.21 **Examination**

Without limitation to Clause 1.15.3 (*Entire Agreement*), no enquiry or examination or lack of enquiry or examination by the Authority into any matter nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, (nor any absence of the same) shall in any respect relieve or absolve the Contractor from any obligation or liability under or in connection with this Contract.

1.22 **Inspections**

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

1.23 **Contractor's Documents**

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

1.24 **Approvals**

If the Contractor fails to seek the Authority's approval where it is obliged to do so under this Contract, the Authority shall be entitled to take this into account when assessing the Balanced Scorecard.

1.25 **Counterparts**

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

1.26 **Governing Law and Jurisdiction**

1.26.1 This Contract shall be governed by, and construed in accordance with English Law.

1.26.2 Subject to Clause 13 (*Dispute Management*) and Clause 1.26.3 (*Governing Law and Jurisdiction*), if any claim, legal action or proceedings arise out of or in connection with a dispute concerning this Contract and any matter arising there from, each Party irrevocably:

- (A) agrees to submit to the exclusive jurisdiction of the courts of England and Wales; and
- (B) waives any right that it may have to object to an action being brought in the courts of England and Wales on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

1.26.3 The submission to the jurisdiction of the courts of England and Wales shall not (and shall not be construed so as to) limit the right of the Authority to enforce legal proceedings in any court of competent jurisdiction in the Ultimate Parent's domicile.

1.27 **Claims Handling**

Subject to the provisions in Clause 8 (*Intellectual Property*) of this Contract, all Legal Proceedings shall be handled in accordance with the Parent Body Agreement.

1.28 **Knowledge Management**

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

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

- (A) the identification and analysis of available and required knowledge, and the subsequent planning and control of actions to develop knowledge assets so as to fulfil the Authority's and the Contractor's organisational objectives;
- (B) a systematic and organised attempt to use knowledge within the Contractor's organisation to transform its ability to store and use knowledge to improve performance.

1.29 **Survival of Rights and Obligations**

1.29.1 **Survival of Provisions**

Upon termination of this Contract:

- (A) the provisions of Clause 1.1 (*Definitions*), Clause 1.2 (*Interpretation*), Clause 1.5 (*Representatives and Authority to Act*), Clause 1.6 (*Liaison with Regulators*), Clause 1.12 (*Severability*), Clause 1.13 (*Notices and Communications*), Clause 1.14 (*Waiver*), Clause 1.15 (*Entire Agreement*), Clause 1.16 (*Corrupt Gifts*), Clause 1.17 (*Variation*), Clause 1.18 (*Assignment*), Clause 1.19 (*Contracts (Rights of Third Parties) Act 1999*), Clause 1.21 (*Examination*), Clause 1.22 (*Inspections*), Clause 1.23 (*Contractor's Documents*), Clause 1.26 (*Governing Law and Jurisdiction*), Clause 1.27 (*Claims Handling*), Clause 1.28 (*Knowledge Management*),

Clause 1.29 (*Survival of Rights and Obligations*), Clause 2.14 (*Transition Out*), Clause 4.2 (*Records*), Clause 4.5 (*Inspection and Audit*), Clause 6.3 (*Restriction on Payments to Parent Body Organisation*), Clause 6.12.3 (*Termination Invoice*), Clause 6.16 (*Reconciliation for Mid-Year Termination*), Clause 6.17 (*Taxation*), Clause 8 (*Intellectual Property*), Clause 9.7 (*Release of Source Code*), Clause 10 (*Confidentiality, Security and Compliance with Law*), Clause 11 (*Indemnity, Liability and Insurance*), Clause 12.9 (*Reasonable Costs on Termination*), Clause 13 (*Dispute Management*). Schedule 12 (*Dispute Management Schedule*) and Paragraph 9.2 of Schedule 21 (*Extended Environmental Safety Case*); and

- (B) any other provisions in this Contract (including any Schedule) which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination,

shall survive.

1.29.2 **Rights and Obligations**

Save as expressly provided in this Contract, upon termination of this Contract (for whatever cause):

- (A) any accrued rights or obligations to which either the Authority or the Contractor may be entitled or be subject before such date shall remain in full force and effect; and
- (B) termination of this Contract shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any right to damages or other remedy which either Party may have in respect of any breach of this Contract which existed at or before the date of termination.

1.29.3 **Ceasing of Rights and Obligations**

Save as provided for in Clause 1.29.1 (*Survival of Provisions*) and 1.29.2 (*Rights and Obligations*), all rights and obligations of the Authority and the Contractor under this Contract shall cease and be of no further force and effect upon expiry or termination of this Contract.

1.30 **Cross-SLC Initiatives**

The Contractor acknowledges that the Authority is developing Cross-SLC Initiatives through governance boards and other discussion forums. The Contractor agrees to participate in and comply with any Cross-SLC Initiatives and to assist the Authority with the development and implementation of the Cross-SLC Initiatives, including by providing information to the Authority and relevant governance boards or other discussion forums for the purposes of development and implementation of the Cross-SLC Initiatives.

1.31 **Disaster Recovery Plan**

The Contractor shall keep, implement and maintain a disaster recovery plan in a form approved by the Authority in respect of monitoring of operations at the Site including in relation to its Nuclear Site Licence.

2. CONTRACTOR'S OBLIGATIONS

2.1 Nature of Contractor's Obligations

The Contractor shall:

- 2.1.1 keep the Site secure in accordance with the Internal Procedures relating to safety and Site security;
- 2.1.2 comply with all applicable Law;
- 2.1.3 comply with all applicable Regulatory Requirements;
- 2.1.4 meet Historical Costs in accordance with Clause 6.5 (*Historical Costs*);
- 2.1.5 comply with Clause 2.2 (*Standard of Performance*);
- 2.1.6 comply with the Customer Contracts in accordance with their terms;
- 2.1.7 except to the extent otherwise provided and subject to Clause 2.1.8 (*Nature of Contractor's Obligations*) below, comply with any of its other obligations under Parts 1 to 13 of this Contract not expressly made an absolute obligation;
- 2.1.8 without prejudice to the absolute obligations set out above in sub-clauses 2.1.1 to 2.1.7, use its reasonable endeavours to provide all of the Tasks for the relevant Current Contract Term set out in the LTP insofar as they are additional to those listed in Clauses 2.1.1 to 2.1.7 (*Nature of Contractor's Obligations*) above and, insofar as in relation to those Tasks for which it is required, approval under Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) has been received. For the avoidance of doubt, the Contractor must use its reasonable endeavours to obtain the relevant approvals under Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*);
- 2.1.9 at the request of the Authority, share information in relation to processes, knowledge, experience and know how and participate in initiatives made by the Authority including compliance with the Authority Knowledge Management Policy and adoption of a Contractor Knowledge Management Policy in relation to such sharing and shall co-operate with the Authority or its nominee to facilitate such sharing, provided always that the provisions of this Clause 2.1.9 (*Nature of Contractor's Obligations*) shall be subject and without prejudice to the Contractor's rights pursuant to Clause 10.2 (*Contractor Right to Request Confidentiality*); and

2.2 Standard of Performance

The Contractor shall perform its obligations under this Contract:

- 2.2.1 in a safe, secure, efficient and cost effective manner; and
- 2.2.2 exercising Good Industry Practice; and
- 2.2.3 in a transparent and co-operative manner with both the Authority and the Regulators; and

- 2.2.4 ensuring that all aspects of any works, services or undertakings comply with the requirements of this Contract including the specific requirements of the Extended ESC Task; and
- 2.2.5 in a manner that is consistent with the Authority discharging its functions and statutory duties and that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party insofar as the same may be reasonably ascertained, provided that no action taken by the Contractor pursuant to Part 13 (*Dispute Management*) shall amount to a breach of this Clause 2.2.5 (*Standard of Performance*); and
- 2.2.6 in a manner which enables the Authority to fulfil its statutory functions and duties and the Contractor to fulfil its obligations under its Nuclear Site Licence and recognised industry documents; and
- 2.2.7 in respect of the Commercial Operations Tasks, in a professional manner befitting an adviser acting with reasonable competence, with integrity, impartiality, objectivity and confidentiality, avoiding conflicts of interest (and for the avoidance of doubt, notifying the Authority promptly of any potential for conflict of interest which arises).

2.3 **No Activities Outside Current Contract Year of LTP**

- 2.3.1 In any current Contract Year, the Contractor shall not undertake any activities which are not (in the reasonable opinion of the Authority) included in the relevant current Contract Year of the LTP or otherwise necessary to the compliant performance of this Contract in the relevant Contract Year (except in relation to meeting Historical Costs), unless:
 - (A) the Contractor is permitted to do so pursuant to the Authority's approval of a Change Proposal in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*); or
 - (B) the Contractor is directed to do so pursuant to a direction issued by the Authority in accordance with Clause 3.1 (*Authority Directions*); or
 - (C) the Contractor is permitted to do so by its Permitted Activities or a consent given by the Authority under Clause 3.6 (*Authority Rights in Respect of Customer Contracts*) or is instructed to do so by the Authority pursuant to Clause 3.6 (*Authority Rights in Respect of Customer Contracts*); or
 - (D) the Contractor is obliged to do so or has the right to do so under the Records Agreements; or
 - (E) the Authority otherwise agrees in writing; or
 - (F) such works, operations, services or other activities constitute an Emergency Action in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).
- 2.3.2 For the avoidance of doubt:
 - (A) the Contractor's compliance with or entry into Customer Contracts and/or Subcontracts which are structured with multi-year incentives beyond the

current Contract Year or obligations shall not, in itself, constitute a breach of Clause 2.3.1 (*No Activities Outside Current Contract Year of LTP*); and

- (B) the Contractor exceeding the budget set out in the LTP for the corresponding activity in the current Contract Year shall not, in itself, constitute a breach of Clause 2.3.1 (*No activities outside current Contract Year of LTP*) (this is without prejudice to the Contractor's obligation to comply with Clause 2.6 (*Setting the LTP*)); and
- (C) the Contractor may carry out any works, operations, services or other activities which constitute an Emergency Action.

2.3.3 **Cost and Risk of activities outside Current Contract Year**

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

- (A) the Costs incurred which shall be Disallowable Costs in accordance with Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*); and
- (B) any Costs which will also be Disallowable Costs in accordance with Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*) which arise directly as a result of such activities being undertaken.

2.4 **Quality Management System**

- 2.4.1 The Contractor shall procure that all aspects of its performance of this Contract are the subject of proper quality management systems and in accordance with Good Industry Practice.
- 2.4.2 The Contractor's quality management systems shall be internationally accepted quality management systems. The Contractor will maintain and ensure continued compliance with those quality management systems at all times during the Contract.
- 2.4.3 The Contractor shall monitor, review and update its quality management systems from time to time as necessary to comply with Good Industry Practice and to ensure continued accreditation.
- 2.4.4 The Contractor shall submit any changes it considers necessary to its quality management systems to the Authority for approval if such a change will affect (or is likely to affect) or will lead (or is likely to lead) to the loss of the Contractor's accreditation. The Authority may only withhold its consent to such a change if, in its reasonable opinion, the proposed change is not in accordance with internationally accepted quality management systems at the time of the request.
- 2.4.5 When responding to any Contractor request for the Authority's approval of changes to the Contractor's quality management systems, the Authority shall:
 - (A) respond in writing and without unreasonable delay; and

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

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

2.5 **Socio-Economic Development**

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

2.5.2 No later than forty-five (45) Calendar Days after 1 April 2008 and, thereafter, annually, the Contractor shall submit to the Authority a Socio-Economic Development Plan which shall, to the reasonable satisfaction of the Authority, provide details of:

- (A) the events, activities or functions which the Contractor intends to fund pursuant to its obligations under Clause 2.5.1 (*Socio-Economic Development*) above;
- (B) the costs of these intended events, activities or functions;
- (C) the reasons for the selection of these events by the Contractor; and
- (D) the ways in which social or economic benefits are intended to be conferred on the relevant communities as a result.

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

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

- (A) respond in writing and without unreasonable delay;
- (B) provide reasons for any determination that the Contractor's proposed events, activities or functions are unsuitable; and
- (C) not wilfully impede the Contractor from being able to comply with any schedule set out in such Socio-Economic Development Plan.

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

2.6 **Setting the LTP**

The Contractor shall revise and update the LTP in accordance with the procedures detailed in Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*) as such procedures may be amended and updated by the Authority from time to time.

2.7 **Pricing Tasks**

In respect of the pricing of any Task, the provisions of Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*) shall apply as such procedures may be amended and updated by the Authority from time to time.

2.8 **Subcontracting/Procurement**

The Contractor shall:

- 2.8.1 comply with the provisions of Part 1 (*Work Activity Management – Subcontracts and Procurement*) and Part 2 (*Inter-SLC Service Contract Pro Forma*) of Schedule 5 (*Subcontracting/Procurement Schedule*) (as applicable);
- 2.8.2 ensure that the requirements to comply with Good Industry Practice (or Analogous Standards) and cost transparency are incorporated into any Subcontract or Sub-Subcontract; and
- 2.8.3 ensure that in respect of any proposal to use a Reach Back Service the provisions of Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) shall be followed.

The Contractor acknowledges that it is a Contracting Authority for the purposes of the EU Procurement Rules and undertakes that it will comply with such EU Procurement Rules.

2.9 **Contractor's Internal Procedures**

- 2.9.1 The Contractor shall ensure that it has in place all such Internal Procedures as may be necessary to satisfy its legal obligations and to ensure that it is able to operate safely, securely and efficiently. The Contractor shall also ensure that it has in place Internal Procedures that comply with the Authority Programme Control Procedures as listed in Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*).
- 2.9.2 The Contractor shall, upon the Authority's request, supply a detailed list of all existing and applicable Internal Procedures together with copies of any such Internal Procedures as may be required by the Authority.
- 2.9.3 When requested by the Authority to do so, the Contractor shall provide to the Authority the underlying basis and rationale for the creation or modification of any such Internal Procedures and how this reflects Good Industry Practice.
- 2.9.4 The Contractor shall within such reasonable period of time specified by the Authority, prepare and submit for the Authority's approval any further Internal Procedures and modifications to existing Internal Procedures reasonably identified as being required by the Authority.

2.9.5 **Failure to comply with an Authority Internal Procedure change request**

If the Contractor:

- (A) fails to comply with the Authority's request to introduce a new Internal Procedure within the time specified in Clause 2.9.4 (*Contractor's Internal Procedures*); and/or
- (B) fails to establish or comply with an Internal Procedure to the extent that the Authority reasonably considers that such non-compliance materially hinders the Contractor's ability to perform its obligations in accordance with this Contract or that it is otherwise unable to comply with the provisions of Clause 2.9.1 (*Contractor's Internal Procedures*), and when requested by the Authority does not to the satisfaction of the Authority substantiate the reason for this action or inaction, then the Authority shall be entitled to take this into account when assessing the Balanced Scorecard.

2.10 **Inter-SLC Service Contracts**

2.10.1 To govern each operational interrelationship between the Contractor and other SLCs or between the Contractor and UKAEA, each of which shall take effect under both this Contract and the Site Management and Operations Contracts between the Authority and such other SLCs or UKAEA (as the case may be), the Contractor shall enter into Inter-SLC Service Contracts in accordance with the pro forma template included as Part 2 (*Inter-SLC Service Contract Pro Forma*) of Schedule 5 (*Subcontracting/Procurement Schedule*) and where the scope of the operational interrelationship is to be subject to competition and where such competition will include contractors external to other SLCs or UKAEA then the Contractor may use its standard terms and conditions for both the competition and any ensuing contract.

2.10.2 Each Inter-SLC Service Contract shall set out the goods and/or services to be provided by or to the Contractor and the associated operational responsibilities of the Contractor and the relevant SLC or UKAEA (as the case may be) in respect of the supply of such goods and/or services including any payment obligations, a specification of the goods and/or services to be supplied, the performance standard required of the supplier and the actions required of the person to whom the goods and/or services are supplied in order to facilitate their supply.

2.10.3 **Authority Obligations in relation to Inter-SLC Service Contracts**

If, pursuant to Clause 2.10 (*Inter-SLC Service Contracts*), the Contractor has proposed to the Authority changes to Inter-SLC Service Contracts in relation to the organisation of consignment and storage of low level waste and the Authority has agreed such proposed changes, the Authority will instruct the counterparty to such Inter-SLC Service Contracts to accept such changes, in accordance with its rights under Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) within a timeframe which the Authority, acting reasonably, considers appropriate and will provide to the Contractor confirmation of such counterparty's acceptance.

2.10.4 **Compliance**

The Contractor shall:

- (A) perform its responsibilities as set out in the Inter-SLC Service Contracts;
and
- (B) ensure that such Inter-SLC Service Contracts are up to date to enable the Contractor to perform its obligations under this Contract and comply with applicable Law and Regulatory Requirements.
- (C) co-operate with the counterparty to the Inter-SLC Service Contracts.

If the Contractor considers that it has not been able to perform any of its obligations under this Contract or has been impeded in the performance of any of its obligations under this Contract because of the acts or omissions of another Site Licence Company, the Contractor shall notify the Authority in writing of such inability to perform and the Authority shall, acting reasonably, consider whether the alleged acts or omissions of the other Site Licence Company should be taken into account when considering the Authority's remedies in respect of the Contractor's performance.

In so considering, the Authority shall take into account:

- (i) any written evidence of the acts or omissions of the other Site Licence Company;
- (ii) whether the Contractor has acted reasonably in its dealings with the other Site Licence Company;
- (iii) whether the Contractor has made adequate efforts to manage its relationship with the other Site Licence Company.

2.10.5 **Review of Inter-SLC Service Contracts**

- (A) If requested by the Authority, the Contractor shall supply for the Authority's review such Inter-SLC Service Contracts (regardless of the manner in which they are held, stored or collated) as the Authority requires.

- (B) **Confirmation by Authority**

Without prejudice to the Authority's rights under Clauses 2.10.5(A) (*Review of Inter-SLC Service Contracts*) and Part 2 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) to request the review of and to instruct changes to any Inter-SLC Service Contract, if, within thirty (30) Calendar Days of receipt of a Inter-SLC Service Contract submitted to the Authority by the Contractor for review in accordance with Clause 2.10.5(A) (*Review of Inter-SLC Service Contracts*) or in accordance with Part 2 (*Work Activity Management – Subcontracts and Procurement*) to Schedule 5 (*Subcontracting/Procurement Schedule*), the Authority has not responded, whether to request further changes or to confirm that no changes are required or to specify a further time period, the Authority shall be deemed to have confirmed its acceptance of the relevant

Inter-SLC Service Contract in the form submitted to it by the Contractor. The provisions of the existing Inter-SLC Service Contract (if any) shall prevail until such time as the Authority has responded or is deemed to have responded in accordance with this Clause 2.10.5(B) (*Confirmation by Authority*).

(C) **Failure to comply**

If the Contractor:

- (1) fails to supply a Inter-SLC Service Contract for review in accordance with Clause 2.10.5(A) (*Review of Inter-SLC Service Contracts*); and/or
- (2) fails to comply with an instruction given by the Authority to change an Inter-SLC Service Contract within the time specified in Part 2 (*Work Activity Management – Subcontracts and Procurement*) to Schedule 5 (*Subcontracting/Procurement Schedule*); and/or
- (3) fails persistently to comply with a Inter-SLC Service Contract to the extent that the Authority reasonably considers that such non-compliance materially hinders the Contractor's ability to perform its obligations in accordance with this Contract and/or the relevant SLC's or UKAEA's ability (as the case may be) to perform its obligations under its Site Management and Operations Contract with the Authority,

and, when requested by the Authority, does not to the satisfaction of the Authority substantiate the reason for this action or inaction, then the Authority shall be entitled to take this into account when assessing the Balanced Scorecard.

2.11 **Not Used**

2.12 **Construction Regulations**

- 2.12.1 In this Clause 2.12, the "**client**" and "**projects**" have the same meanings as in the Construction Regulations.
- 2.12.2 The Contractor hereby elects and the Authority consents to the Contractor being treated as the only client in relation to all projects to be carried out under this Contract for all the purposes of the Construction Regulations. The Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its election that it will be treated as, and its acceptance of its responsibilities as, the only client for all the purposes of the Regulations.
- 2.12.3 The Contractor shall observe, perform and discharge and shall procure the observance, performance and discharge of:
 - (A) all the obligations, requirements and duties arising under the Construction Regulations in connection with all projects to be carried out under this Contract;

- (B) any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the Construction Regulations.

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

2.13 Defective Performance

2.13.1 If the Contractor or any of its Subcontractors has not carried out a Task or Tasks to the standard required by Clause 2 (*Contractor's Obligations*) of this Contract and/or the relevant Performance Agreement Form ("**Defective Performance**"), the Contractor shall remedy (or shall procure that the relevant Subcontractor remedies) the Defective Performance in accordance with this Clause 2.13 (*Defective Performance*).

2.13.2 If the Authority becomes aware that the Contractor (or any of its Subcontractors) has not carried out a Task or Tasks to the standard required by Clause 2 (*Contractor's Obligations*) of this Contract or the Performance Agreement Form, the Authority shall be entitled to serve a written notice on the Contractor setting out:

- (A) sufficient details of the defective performance to enable the Contractor to identify and evaluate the breach;
- (B) the Authority's initial view on the remediation required to remedy such defective performance; and
- (C) the Authority's initial view of the timescales involved to remedy such defective performance,

(an "**Authority Defective Performance Notice**").

2.13.3 If the Contractor (or any of its Subcontractors) has not carried out a Task or Tasks to the standard required by Clause 2 (*Contractor's Obligations*) of this Contract and/or the relevant Performance Agreement Form, the Contractor shall serve a written notice on the Authority setting out:

- (A) details of the defective performance;
- (B) the Contractor's view on the remediation required to remedy such defective performance;
- (C) the Contractor's view of the timescales involved to remedy such defective performance; and
- (D) an estimate of the Costs required to remedy such defective performance,

(a "**Contractor Defective Performance Notice**").

2.13.4 Within fourteen (14) Working Days of receipt by the Contractor of an Authority Defective Performance Notice or receipt by the Authority of a Contractor Defective Performance Notice (as applicable), the Parties shall liaise to agree:

- (A) the appropriate remedial action;

- (B) the timescales for such remedial action;
- (C) the Costs of such remedial action;
- (D) any Change required pursuant to Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).

The Authority shall be entitled to claim against the Parent Body Organisation in respect of such defective performance in accordance with clause 7.2.2 (*Defective Performance*) of the Parent Body Agreement.

- 2.13.5 If the Parties fail to agree any matter in respect of the relevant defective performance, the matter shall be resolved in accordance with Part 13 (*Dispute Management*).
- 2.13.6 The Contractor shall use reasonable endeavours to include in its Subcontracts provisions which flow down, with the necessary modifications, the defective performance provisions set out in Clauses 2.13.1 to 2.13.5 (*Defective Performance*) above. If the Contractor is unable to agree such terms with any Subcontractor, it shall consult with the Authority prior to entering into the relevant Subcontract and shall not enter into such Subcontract if the Authority so requires.

2.14 **Transition Out**

- 2.14.1 The Contractor acknowledges that the Authority wishes, before the expiry of the term of this Contract, to invite persons to tender for the right to own the shares in the Contractor and to negotiate a replacement parent body agreement to be entered into by the Incoming Parent, the Contractor and the Authority upon the effective date of such replacement contract.
- 2.14.2 The Contractor acknowledges the importance to the Authority of:
 - (A) a fair and unbiased competitive process; and
 - (B) the perception by all interested parties that the competitive process is fair and unbiased.
- 2.14.3 The Contractor acknowledges the need for it to comply with the Transition In Plan of the Incoming Parent and undertakes that it will actively facilitate and will not attempt to frustrate the success of the Transition In Plan.
- 2.14.4 To facilitate compliance with the Transition In Plan, the Contractor shall:
 - (A) ensure that parties bidding to become the Incoming Parent are granted access to:
 - (1) the Site;
 - (2) the Employees and Nominated Staff; and
 - (3) subject to the provisions of the Data Protection Act, any relevant records including information falling within the scope of employee liability information as described in TUPE,

(in each case as and if permitted by, and in accordance with any conditions set by the Authority as part of the competition);

- (B) comply with the instructions of the board set up to oversee the implementation of transition, including in respect of information barrier provisions; and
 - (C) agree and execute the new parent body agreement with the Authority and the Incoming Parent.
- 2.14.5 If the Parent Body Organisation wishes to participate in the competitive process then, immediately on receipt of notice from the Authority that a competitive process for the Site is about to commence the Contractor shall:
- (A) provide equality of information;
 - (B) provide access to all potential bidders; and
 - (C) not treat the Parent Body Organisation in a preferential way.
- 2.14.6 The Contractor may from time to time update the list of Nominated Staff participating in the Parent Body Organisation's bid.
- 2.14.7 Subject to Clause 2.14.8 (*Transition Out*), the Contractor may not allow any Employees or Nominated Staff to participate in the competitive process on behalf of the Parent Body Organisation.
- 2.14.8 Those members of Nominated Staff that were included in the list of Nominated Staff participating in the Parent Body Organisation's bid provided to the Authority pursuant to Clause 2.14.5 (*Transition Out*) and updated in accordance with Clause 2.14.6 (*Transition Out*) shall be permitted to participate in the competitive process on behalf of the Parent Body Organisation provided they have entered into an Impartiality Undertaking.
- 2.14.9 Where the Contractor has terminated the Contract and/or the Parent Body Organisation has terminated the Parent Body Agreement for Authority Default, Long Term Force Majeure or for convenience pursuant to the Contract or the Parent Body Agreement (as applicable), the Authority shall provide reasonable assistance to the Contractor in its discussions with ONR regarding Licence Condition 36 with a view to enabling the Contractor to replace the Nominated Staff as soon as is reasonably practicable.
- 2.14.10 The Authority shall procure that any Site Management and Operations Contract between the Authority and the Contractor and any Parent Body Agreement between the Authority, the Contractor and the Incoming Parent shall contain a provision which obliges the Contractor to pay to the Parent Body Organisation an amount equal to the Year End Sum for the final Contract Year (or the relevant pro rated amount for part of that year in the event of mid-year termination) within sixty (60) Calendar Days of agreement or determination pursuant to the Dispute Resolution Procedure of such Year End Sum always subject to the Contractor's compliance with Law. If, in the event of early termination of the Contract, there is no Incoming Parent, the Contractor shall pay the Parent Body Organisation an amount equal to the Year End Sum for the final Contract Year (or the relevant pro rated amount for part of that year in the event of mid-year termination) within sixty (60) Calendar Days of agreement or determination pursuant to the Dispute

Resolution Procedure of such Year End Sum (always subject to the Contractor's compliance with Law).

- 2.14.11 The Authority shall be entitled to unilaterally vary any provision of this Clause 2.14 (*Transition Out*), provided that it gives the Contractor thirty (30) Calendar Days' written notice of such variation. The Authority will consult the Contractor prior to serving such written notice and will consider the Parent Body Organisation's Transition Out Plan before determining any unilateral variations.

2.15 **Transition In**

- 2.15.1 Notwithstanding the provisions of the Memorandum and Articles of Association of the Contractor, during the Transition Period, the Contractor will comply with the terms of the Transition Agreement.

2.16 **Programme Controls**

The Contractor shall comply with its obligations as set out in the procedures referred to in Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*), as such procedures may be amended by the Authority from time to time.

2.17 **Deleterious Materials**

The Contractor shall not use in the performance of any Task any Deleterious Materials.

3. **RIGHTS AND OBLIGATIONS OF AUTHORITY**

3.1 **Authority Directions**

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

- (A) bind the Authority as to the particular manner in which any statutory power is exercised in the future; and/or
- (B) otherwise act as a fetter on the future discretion of the Authority in exercising its rights or acting in accordance with its obligations.

- 3.1.2 Without prejudice to Clause 3.1 (*Authority Directions*) above, the Contractor shall be relieved from the duty to comply with any Authority Direction issued pursuant to section 18 of the Energy Act and shall have no liability resulting from any such Authority Direction save in either case in any one or more of the following circumstances:

- (A) a Contractor Default has occurred; and/or
- (B) an Authority Default has occurred or the Authority has otherwise given a termination notice in accordance with Clause 12.8 (*Termination for Convenience*); and/or
- (C) at any time the Authority believes, in its sole opinion, that in view of the national interest, the requirements of national security, the occurrence of a state of war or other emergency (whether or not involving hostilities), the occurrence or possible occurrence of a major accident, crisis or national disaster, it is necessary or desirable for the Authority to exercise its powers under section 18 of the Energy Act; and/or

- (D) at any time the Authority believes, in its sole opinion, that a grievous risk to life or limb of any person or a serious risk to property, the environment or the security of the Site exists.

3.1.3 For the avoidance of doubt, in the event of the occurrence of any one or more of the circumstances specified in Clauses 3.1.2(A) to 3.1.2(D) (*Authority Directions*) above, notwithstanding any other provision of this Contract, the Authority will notify the Contractor that such circumstances exist, and:

- (A) the Contractor shall comply with any relevant Authority Direction (and shall be subject to its statutory duty to do so under section 18 of the Energy Act);
- (B) the Contractor shall be relieved of its duty to perform its obligations under this Contract, to the extent that compliance with the terms of such Authority Direction is inconsistent with the performance of any of such obligations (but the Contractor shall continue to perform its remaining obligations under this Contract save as otherwise specified in the relevant Authority Direction and/or to the extent compliance with such obligations is inconsistent with such Authority Direction); and
- (C) the Authority shall, when giving any Authority Direction, act in accordance with its powers under the Energy Act.

3.2 **Compliance with Law and Regulatory Requirements**

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

3.3 **Not wilfully impede performance of the Tasks**

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

- (A) co-operate with the Contractor to facilitate the performance of its obligations under this Contract;
- (B) not wilfully impede the Contractor in performing its obligations under this Contract; and
- (C) not instruct the Contractor to breach any term of this Contract.

3.3.2 The Contractor shall not have any liability to the Authority under this Contract to the extent that the Authority has not complied with its obligations pursuant to Clause 3.3.1 (*Not wilfully impede performance of the Tasks*) above in any material respect.

3.4 **Authority Responses**

3.4.1 Unless otherwise expressly specified in this Contract or agreed between the Parties, where the Authority is required to respond in writing to the Contractor on any matter, the Authority shall use reasonable endeavours to do so within thirty (30) Calendar Days of receipt of such a request.

3.4.2 Where the Authority does not respond within the relevant period, and there is an impact on the cost or schedule of the Tasks as a result of such Authority delay, the Contractor shall be entitled to bring a Change Proposal in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) to address such impact.

3.5 **Failure of performance**

3.5.1 If at any time during the Term, either Party becomes aware of:

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

which in either case, in the reasonable opinion of that Party, has an adverse effect on the proper performance of this Contract, it shall immediately notify the other Party.

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

3.6 **Authority rights in respect of Customer Contracts**

3.6.1 **New Business and Amendments to Customer Contracts**

- (A) Subject to the Authority's rights under Clause 3.6.3 (*Authority's right to instruct*), the Contractor shall not enter into a new Customer Contract (a "**New Customer Contract**") nor amend any existing Customer Contract (or suggest to the counterparty any amendment other than on a without prejudice basis) unless the Authority has given its prior written consent pursuant to Part 2 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17.
- (B) In seeking the Authority's prior written consent to a New Customer Contract or an amendment (an "**Amendment**") to an existing Customer Contract, the Contractor shall consult with the Authority in accordance with Part 2 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17.

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

The Contractor shall consult the Authority in respect of the exercise of any discretion under the Customer Contracts including:

- (A) whether or not to exercise any rights under the relevant Customer Contract (including any rights to terminate);
- (B) whether or not to waive (or choose not to enforce) any obligations of the counterparty under the relevant Customer Contract in whole or in part or

to seek or accept a waiver from the counterparty of the Contractor's obligations under the relevant Customer Contract;

- (C) choosing between any options that arise concerning the manner in which the Contractor could perform the relevant Customer Contract;
- (D) when the Contractor is uncertain about what it is required to do under the relevant Customer Contract;
- (E) how to mitigate any problems that arise under or in connection with any Customer Contract,

and the procedure set out in Part 2 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and PCP-17 shall apply.

3.6.3 **Authority's right to instruct**

- (A) Notwithstanding the Permitted Activities under Clause 3.6.4 (*Permitted Activities*), the Authority shall be entitled to instruct the Contractor to exercise or not exercise its rights, or perform or not perform its obligations, or otherwise act, in a specified manner in relation to any of the Customer Contracts including requiring the Contractor to:
 - (1) seek to amend any Customer Contract either through the Customer Contract's variation mechanism or through the mutual agreement of the parties to the Customer Contract;
 - (2) resist an amendment proposed by a counterparty to the relevant Customer Contract;
 - (3) enter or not enter into a New Customer Contract in accordance with timescales, with counterparties and on terms specified by the Authority;
 - (4) enforce or not enforce the counterparty's obligations under a Customer Contract;
 - (5) terminate or not terminate a Customer Contract;
 - (6) waive or not waive any of the counterparty's obligations under a Customer Contract.
- (B) If the Authority wishes to issue instructions to the Contractor pursuant to Clause 3.6.3(A) (*Authority's right to instruct*) above, the Authority shall, where practicable, discuss the relevant issue with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any impact of which the Contractor is aware that the relevant issue may have upon the Authority, the Contractor, any Subcontract or Series of Subcontracts, the performance of or terms of this Contract (including the application of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*)) or the Customer Contracts.

- (C) If the Authority wishes to issue instructions to the Contractor pursuant to Clause 3.6.3(A) (*Authority's right to instruct*) above, the Authority shall serve a notice on the Contractor setting out the information listed Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) (the "**Instructions Notice**") and the Parties shall follow the procedure set out in Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*).

3.6.4 Permitted Activities

- (A) Subject to Clauses 3.6.1(A) (*Authority's right to instruct*) and 3.6.4(B) to 3.6.4(C) (*Permitted Activities*) (inclusive), the Contractor shall be entitled to take such action in relation to new or existing Customer Contracts as is permitted by the Permitted Activities without seeking the consent of or consulting with the Authority in accordance with clause 5.6.1A (New Business and Amendments to Customer Contracts).
- (B) In exercising its Permitted Activities, the Contractor shall take into consideration any current strategy for Customer Contracts of the Authority as notified to the Contractor by the Authority from time to time.
- (C) Notwithstanding the Permitted Activities, the implementation or the addition of any Work Activity to the LTP is novel and/or contentious and/or repercussive will be subject to the requirements of Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*).
- (D) The Authority shall be entitled in its sole discretion at any time to amend, add or withdraw any Permitted Activity by serving a notice in writing on the Contractor setting out the relevant amendment, addition or withdrawal.
- (E) Subject to Clause 3.6.4(F) (*Permitted Activities*) below, the amendment, addition or withdrawal of any Permitted Activity shall be effective seven (7) Calendar Days after the receipt of the Authority's written notice and the Contractor shall as soon as practicable amend the Permitted Activities to reflect the amendment, addition or withdrawal set out in the Authority's written notice.
- (F) If the Contractor reasonably considers, given the nature of the Permitted Activity and the circumstances in which it is used, that it is inappropriate for the relevant Permitted Activity to be amended, added or withdrawn, the Authority (acting reasonably) shall consider any representations made to it by the Contractor (including in respect of altering the time period in which the amendment, addition or withdrawal of the relevant Permitted Activity becomes effective).
- (G) The Contractor shall be entitled to request any new Permitted Activities, the amendment of any existing Permitted Activities or the update of Permitted Activities to reflect the current LTP by following the procedure set out in Part 2 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*).

- (H) If the Contractor is uncertain whether any of its activities in respect of the Customer Contracts (including any proposed exercise of a discretion under a Customer Contract, entry into a New Customer Contract or Amendment to an existing Customer Contract) falls within its Permitted Activities, it shall consult with the Authority to obtain confirmation of whether or not the proposed activity is a Permitted Activity or whether the Contractor is obliged to obtain the Authority's consent to carry out the activity.
- (I) For the avoidance of doubt, notwithstanding the Permitted Activities, the Contractor shall be obliged to comply with its obligations to seek Authority approval and/or consult with the Authority in accordance with any provision of this Contract other than this Clause 3.6 (*Authority Rights in Respect of Customer Contracts*).

3.7 **Customer Contract Log**

3.7.1 The Contractor shall keep a record (a "**Customer Contract Log**") which sets out the progress of:

- (A) any New Customer Contract;
- (B) any Amendment;
- (C) any exercise of the Contractor's discretion under a Customer Contract; and
- (D) any exercise of the Authority's right to instruct pursuant to Clause 3.6.3 (*Authority's right to instruct*),

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

3.7.2 The Contractor shall notify the Authority within seven (7) Working Days of any amendments being made to the Customer Contract Log and shall provide the Authority with a copy of the updated Customer Contract Log as a part of such notification.

3.8 **Authority Obligations in relation to Inter-SLC Service Contracts**

If, pursuant to Clause 2.10 (*Inter-SLC Service Contracts*), the Contractor has proposed to the Authority changes to Inter-SLC Service Contracts in relation to the organisation of, consignment and storage of low level waste and the Authority has agreed such proposed changes, the Authority will instruct the counterparty to such Inter-SLC Service Contracts to accept such changes within a timeframe which the Authority, acting reasonably, considers appropriate and will provide to the Contractor confirmation of such counterparty's acceptance.

4. PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS

4.1 Reporting and Reviewing

4.1.1 Reporting and Reviewing Programme

- (A) The Contractor shall implement systems and processes on the Site for a performance reporting and reviewing programme in accordance with Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*).
- (B) The Contractor shall comply with the provisions of Schedule 13 (*Reporting Schedule*).
- (C) In the event that the Reporting Matrix has not been agreed by the Parties prior to the commencement of Period 2:
 - (1) the Contractor and the Authority shall meet as soon as reasonably practicable after the commencement of Period 2 and use all reasonable endeavours to agree the Reporting Matrix within one (1) Month; and
 - (2) until such time as the Reporting Matrix has been agreed, the Contractor shall submit to the Authority such reports as the Authority may request (acting reasonably).

4.1.2 Required Reports

The Contractor shall submit to the Authority:

- (A) the reports required in accordance with Schedule 13 (*Reporting Schedule*) and PCP 13 (*Progress Reporting and Review*) as listed in Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*);
- (B) such other reports as may be agreed between the Authority and the Contractor;
- (C) such other reports as may reasonably be requested by the Authority in connection with its statutory functions and duties from time to time in writing; and
- (D) a letter notifying the Authority once seventy-five per cent (75%) of the Annual Site Funding Limit has been spent,

(together, the "**Reports**").

4.1.3 Objections to Reports

- (A) If the Authority considers that any Report either has not been compiled in accordance with the requirements of this Contract or has been based on erroneous information or data, it may serve a notice to that effect on the Contractor within thirty (30) Calendar Days of receipt of the Report, objecting to it and the Parties shall endeavour to agree any consequent amendments to the Report in the light of the Authority's objections.

- (B) If any such objection has not been resolved by agreement between the Authority and the Contractor within sixty (60) Calendar Days after service of such notice, the matter shall be resolved in accordance with Clause 13 (*Dispute Management*).
- (C) If, following the submission of any Report, but prior to any objection raised by the Authority pursuant to this Clause 4.1.3 (*Objections to Reports*), the Contractor considers that such Report contains a material error, the Contractor shall notify the Authority immediately of such error and shall reflect and clearly identify upon becoming aware the required correction(s) in the relevant subsequent Report where applicable (for example the next monthly report of the same type). If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall forthwith correct the relevant original Report and re-submit to the Authority.

4.1.4 **Revisions to Reports**

If:

- (A) the resolution (whether by agreement or determination in accordance with Clause 13 (*Dispute Management*) of any objection made pursuant to Clause 4.1.3 (*Objections to Reports*); or
- (B) the correction of any calculation pursuant to any provision of this Contract,

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

4.1.5 **Obligation to Report**

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

- (2) any impending event that will require the Authority's consent under Clause 3.6 (*Authority Rights in Respect of Customer Contracts*);
 - (3) any exercise of the Contractor's Permitted Activities;
 - (4) any material change in the financial position of a counterparty to a Customer Contract;
 - (5) any change or impending change in the business strategy of a counterparty to a Customer Contract;
 - (6) any Change in Control of a counterparty to a Customer Contract particularly where such change in Control will or is likely to adversely affect the counterparty's financial position or future performance under the Customer Contract(s) to which it is a party;
 - (7) any change to the key management personnel with whom the Contractor liaises which might adversely affect the future business relationship with the counterparty to the Customer Contract;
 - (8) any actual or threatened labour disputes affecting the counterparty to the Customer Contracts;
 - (9) any change in the policy of other public authorities including, in particular, public authorities outside the United Kingdom, which might adversely affect the performance of the Customer Contracts or the Contractor's relationships with counterparties to the Customer Contracts;
 - (10) any issue which affects or may affect the supply chain under any Subcontract or Series of Subcontracts which relate(s) to the Customer Contracts;
 - (11) any change to a previously submitted Report, or confirmation that there is no change from a previously submitted Report.
- (B) The Contractor shall also forthwith report to the Authority any exercise of its right:
- (1) to challenge any threatened or actual revocation of the Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Law; or
 - (2) to apply for, or resist, or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority.

4.1.6 The accuracy and completeness of all Reports submitted by the Contractor to the Authority pursuant to the Contract shall be verified by a duly authorised officer of the Contractor.

4.2 Records

4.2.1 Ownership of Records

- (A) Subject to the provisions of Part 8 (Intellectual Property) and to Clause 4.2.1(B) (*Ownership of Records*), all records generated or acquired by the Contractor in the performance of this Contract shall pass into the immediate ownership of the Authority (the "**Authority Records**").
- (B) Notwithstanding Clause 4.2.1(A) (*Ownership of Records*), ownership in all records generated or acquired by the Contractor in performing this Contract which the Contractor is required to own by Law or to meet Regulatory Requirements (including, for the avoidance of doubt, any insurance records that the Contractor is required to own by Law) shall be retained by the Contractor (the "**Contractor Records**").
- (C) If the Contractor is no longer required to own a Contractor Record to comply with Law or meet Regulatory Requirements, such Contractor Record shall immediately transfer into the ownership of the Authority and become an Authority Record.

4.2.1A Records Agreements

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

4.2.2 Use of Authority Records

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

4.2.2A Indemnity for Fraudulent Records

The Contractor shall indemnify the Authority for all expenses, liabilities, losses, demands, costs, damages and Legal Proceedings incurred or suffered by the Authority as a result of any of the Authority Records being completed, kept or maintained fraudulently by anyone engaged by the Contractor, provided that this indemnity does not apply in relation to any Authority Record made prior to the Commencement Date and provided further that this indemnity does not apply in relation to any such Authority Record being completed, kept or maintained fraudulently within a period of four (4) months after the Commencement Date unless:

- (A) the relevant fraud is on the part of any one or more of the Nominated Staff or Key Personnel provided Parent Body Organisation pursuant to clause 16 (*Provision of Staff to the SLC*) of the Parent Body Agreement; or
- (B) within that four (4) month period the Nominated Staff or Key Personnel provided by the Parent Body Organisation pursuant to clause 16 (*Provision of Staff to the SLC*) of the Parent Body Agreement have had a reasonable opportunity to identify, address and prevent such fraud.

4.2.3 **Custody of Records**

- (A) The Contractor shall retain physical control of all Authority Records until such time as physical control is transferred to the Authority or the Authority's nominee in accordance with the Authority's instructions.
- (B) The Authority shall be entitled to access the Authority Records at any time during business hours on a Working Day.
- (C) The Contractor shall manage all Authority and Contractor Records in accordance with
 - (1) the Guidelines on Managing Information;
 - (2) the ONR Security Policy Framework, subject to the ONR Security Policy Framework 2, July 2010 (along with its supporting documents, the Civil Nuclear Security Supplements) as amended from time to time;
 - (3) guidelines issued by any Regulator;
 - (4) the Public Records Act 1958, without prejudice to all applicable Law and with the Contractor's obligations under its Nuclear Site Licence;
 - (5) BS ISO 15489-1:2001 (or its equivalent);
 - (6) BS 10008;
 - (7) BS 10012; and
 - (8) BS 5454.
- (D) Unless otherwise agreed by the Authority in writing, all records will be treated as public records for the purposes of the Public Records Act.

4.2.4 **Contractor Records**

The Contractor shall make the Contractor Records available to the Authority in accordance with the Open Book System and in such condition, format and detail as is adequate for their intended purpose, and as is required by the Authority.

4.2.5 **Books of Account and Other Information**

(A) **Books of Account**

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

- (1) UK GAAP (for such time as the Authority accounts under UK GAAP and thereafter in accordance with the accounting principles adopted from time to time by the Authority and notified to the Contractor) as modified by the application of FReM; or

- (2) international generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry-specific authoritative guidance; and
- (3) the Companies Act 2006; and
- (4) Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*); and
- (5) an Open Book System.

(B) **Further Information**

Without prejudice to information provided by the Contractor to the Authority pursuant to this Contract the Contractor shall provide to the Authority such further information as the Authority may at any time reasonably request on reasonable notice including information required under TUPE relating to employee liability.

(C) **Financial Information**

Without prejudice to the generality of Clause 4.2.5(B) (*Further Information*), the Contractor shall furnish to the Authority as soon as they become publicly available and, in any event, not later than ninety (90) Calendar Days after the close of its statutory accounting period a copy of the audited financial statements of the Contractor, prepared in accordance with UK GAAP (or as otherwise agreed by the Authority in accordance with Clause 6.4.1(C) (*Other Financial Restrictions*)), including in each case a balance sheet prepared as at the end of such accounting period, a profit and loss account, cash flow statement in respect of such accounting period and a reconciliation of total Allowable Costs claimed within such accounting period.

(D) **Authority Accounts**

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

4.3 **Information Asset Registers**

- 4.3.1 The Contractor shall create an information asset register (the "**Contractor Information Asset Register**") in accordance with the Authority's strategy, as notified to the Contractor from time to time, within eighteen (18) Months of the Commencement Date.
- 4.3.2 The Contractor shall accurately maintain the Contractor Information Asset Register and shall promptly contribute all the metadata for all Authority Records

to the Contractor Information Asset Register. The Contractor shall ensure that such metadata conforms to the e-Government Metadata Standards (e-GMS).

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

4.4 **Transfer of Metadata**

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

4.5 **Inspection and Audit**

4.5.1 **Inspection and Audit**

Subject to compliance with applicable Law and Regulatory Requirements and the Contractor's Internal Procedures relating to safety and Site security, the Authority and any Authority Agents shall have the right, whether required by the National Audit Office or otherwise, to enter at all times onto all parts of the Site and its facilities, installations, structures and outbuildings and, in respect of the Commercial Operations Tasks, any other areas and locations which the Contractor uses in its performance of such Commercial Operation Tasks.

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

- (1) any audit, inspection, review, periodic monitoring and spot checks of any of the Contractor's activities in connection with this Contract and any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office or otherwise;
- (2) audits, inspections, reviews, periodic monitoring and spot checks of all information required to be kept by the Contractor;
- (3) audits of the Contractor's compliance with its Inter-SLC Service Contracts, Internal Procedures, quality management systems, procedures required by Regulatory Requirements, procedures to ascertain compliance with environmental requirements, and any operating procedures, policies or standards ancillary to, or used in connection or accordance with, the same;
- (4) inspections and tests to determine the quality of any of the Tasks performed or procured;
- (5) interviews with any employees, secondees or other personnel of the Contractor and, to the extent that the Contractor is able to procure it, with the counterparties to the Commercial Contracts

and any officers, employees or personnel of such counterparties;
and

- (6) the copying and collation of any information held in electronic or paper form.

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

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

For the purposes of Clause 4.5.1(A) (*Inspection and Audit*) above, the Contractor shall provide all reasonable co-operation including:

- (1) granting, or procuring the grant of timely access to any equipment (including all computer hardware and software and databases) used in the performance of this Contract, wherever situated. To the extent that such access is required to equipment which does not belong to the Contractor or access is not within the Contractor's control, the Contractor shall (and shall only be obliged to) use all reasonable efforts to procure such access;
- (2) granting timely access to any data dictionary and the fields and records within it to enable data to be downloaded from any computer systems operated by the Contractor; and
- (3) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration of information during the audit.

4.5.3 The Contractor agrees that the Comptroller and Auditor General shall, and for the purposes of Clause 4.5.1(A) (*Inspection and Audit*) above, the Authority and any Authority Agent shall have access to such of the Contractor's personnel as they reasonably consider necessary for the performance of their duties to the extent allowed under the DPA.

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

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

Authority in writing specifying the reasons for such objection and the Authority, acting reasonably, shall consider whether to use a different Authority Agent.

4.5.6 The Contractor shall:

- (A) fully co-operate in relation to the provisions of this Clause 4.5 (*Inspection and Audit*);
- (B) provide the Authority or any Authority Agent with all information reasonably required in connection with the exercise of the Authority's rights under this Clause 4.5 (*Inspection and Audit*); and
- (C) keep all records and other relevant documentation relating to the Contractor's quality management system and all information required to be held by the Contractor in good order and in such form as to be capable of audit (including by electronic means) by the Authority or by any Authority Agent and:
 - (1) make such records available for inspection by the Authority or any Authority Agent at all reasonable times; and
 - (2) at the Authority's or any Authority Agent's request, make available to the Authority or Authority Agent as applicable any software necessary to review such records; and
- (D) comply with the ADP02 Governance and Assurance Policy (*Interface with SLC Internal Audit Functions*).

4.5.7 The Authority shall:

- (A) implement and maintain procedures for notifying all Authority Agents of the Contractor's Internal Procedures relating to safety and Site security;
- (B) use reasonable endeavours to ensure that all Authority Agents comply with the relevant rules and requirements;
- (C) notify the Contractor that an Authority Agent acting on behalf of the Authority in accordance with this Clause 4.5 (*Inspection and Audit*) is duly authorised; and
- (D) procure that the Authority Agent has, in the Authority's reasonable opinion, insurance that is adequate and suitable to accord with the rights of access, audit and inspection that the Authority may grant to such Authority Agent under this Clause 4.5 (*Inspection and Audit*).

4.5.8 **Provision of Facilities**

- (A) Subject to compliance with Regulatory Requirements, during any inspection or audit of the Site (pursuant to this Clause 4.5 (*Inspection and Audit*), the Contractor shall (on request by the Authority or the Authority Agent) make available such suitable office accommodation on the Site (or, in respect of the Commercial Operations Tasks, at any other locations which the Contractor uses in its performance of such Commercial Operations Tasks) and such other facilities as the Authority or Authority Agent may reasonably require for the purposes of exercising the

Authority's rights of access, inspection and audit pursuant to this Clause 4.5 (*Inspection and Audit*).

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

4.5.9 **Co-operation with Regulators**

The Authority undertakes to the Contractor that it will co-operate with the Regulators in exercising its rights under this Contract and will use reasonable endeavours to synchronise the Authority's audits and inspections with those of the Regulators where reasonably practicable.

4.5.10 **Examination by National Audit Office**

For the purpose of:

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

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

4.5.11 **Audit Findings and Corrective Action**

- (A) The Contractor shall be entitled to receive a copy of the Authority's audit findings once completed in relation to any audit carried out in accordance with this Clause 4.5 (*Inspection and Audit*), subject to any redaction reasonably requested by an Authority Agent.
- (B) Within thirty (30) Calendar Days of the Contractor's receipt of the audit findings, the Parties shall hold an Audit Close-Out Meeting.
- (C) At the Audit Close-Out Meeting, and where applicable, the Contractor shall have the opportunity to demonstrate to the satisfaction of the Authority that some or all of the relevant audit findings are incorrect.
- (D) If, at the Audit Close-Out Meeting, the Authority considers that certain corrective action is required, the Contractor shall within thirty (30) Calendar Days of the Audit Close-Out Meeting (or such other date as agreed between the Parties) either:
 - (1) carry out the Corrective Action; or
 - (2) propose to the Authority, and obtain the Authority's approval for, a plan for carrying out the Corrective Action.

4.5.12 Where the Contractor proposes a plan for the Corrective Action in accordance with Clause 4.5.11(D)(2) (*Audit Findings and Corrective Action*) above, the Authority shall have thirty (30) Calendar Days to notify the Contractor whether it

accepts such proposed plan for the Corrective Action (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification within the above period shall constitute deemed acceptance by the Authority. Where the Authority accepts or is deemed to accept the Contractor's plan the Contractor shall upon such acceptance or deemed acceptance implement the plan for the Corrective Action. Where the Authority notifies the Contractor that it does not accept the plan for the Corrective Action, the Parties shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the plan for the Corrective Action. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 13 (*Dispute Management*).

4.5.13 **Books of Audit Findings**

The Contractor shall maintain books containing the findings of audits carried out pursuant to Clause 4.5 (*Inspection and Audit*) together with any relevant correction reports setting out the Corrective Action taken as a result of such audit findings in accordance with Clause 4.5.11 (*Audit Findings and Corrective Action*).

4.5.14 **Best Practice**

Without prejudice to Clause 8.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and Subcontractors*), the Authority reserves the right to use any best practice identified during any inspection or audit carried out pursuant to this Clause 4.5 (*Inspection and Audit*) and/or at any Audit Close-Out Meeting, including the right to promulgate such best practice across all nuclear sites designated under section 3 of the Energy Act.

4.5.15 **Records relating to Authority's Property**

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

4.5.16 **Contractor's Obligations Persist**

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

4.5.17 Confidentiality

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

5. EMPLOYEES

5.1 Nominated Staff

- 5.1.1 The Contractor shall enter, and shall procure that the Parent Body Organisation, any Relevant Affiliate and each person who is a named member of the Nominated Staff, enters into a Secondment Agreement in the form attached at Part 3 (*Pro Forma Secondment Agreement*) of Schedule 4 (*Employee Schedule*) with a minimum term of [REDACTED] (unless terminated earlier in accordance with the terms of the Secondment Agreement). Without prejudice to the Authority's rights under this Clause 5 (*Employees*), during the term of the Secondment Agreement, the Authority agrees not to do anything (whether by act or omission) which will cause the Contractor, the Parent Body Organisation and/or the Relevant Affiliate to breach any term of the Secondment Agreement. Without prejudice to the provisions of clause 4 (*Governance*) of the Parent Body Agreement, and provided that the Authority has given its prior written consent pursuant to those provisions, any Nominated Staff may sit on the Contractor's board of directors.
- 5.1.2 Subject to Clause 5.1.3 (*Nominated Staff*) below, the Contractor shall not permit any of the Nominated Staff to be withdrawn from full time secondment on the Site without first obtaining the prior written consent of the Authority (not to be unreasonably withheld) as to the suitability and adequacy of a replacement who must have a level of skills and experience broadly comparable to that of the Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position and who must also be an employee of the Parent Body Organisation or a Relevant Affiliate. The curriculum vitae of each proposed replacement individual must be submitted to the Authority for its review. The Authority will either approve the replacement within thirty (30) Calendar Days or will notify the Contractor in writing of reasons for the rejection of the proposed replacement. The Contractor may not withdraw the relevant individual member of Nominated Staff until the Authority has approved a replacement.
- 5.1.3 Where the withdrawal from full time secondment of Nominated Staff and/or appointment of a replacement for a member of Nominated Staff in accordance with this Clause 5.1 (*Nominated Staff*) requires the approval of the Regulators, then in addition to obtaining the Authority's consent to such withdrawal pursuant to Clause 5.1.2 (*Nominated Staff*) above, the Contractor shall procure all such approvals from the Regulators as are necessary before making the withdrawal and/or replacement as applicable. The Authority will provide such reasonable assistance as it is able in procuring such approvals from the Regulators.
- 5.1.4 In the event that individual persons designated as Nominated Staff are withdrawn and replaced in accordance with Clauses 5.1.1 to 5.1.3 (*Nominated Staff*) above, then the Contractor shall enter, and shall procure that the Parent Body Organisation, any Relevant Affiliate and each replacement shall enter into a Secondment Agreement in terms substantively in the form of the pro forma

Secondment Agreement attached at Part 3 (*Pro Forma Secondment Agreement*) of Schedule 4 (*Employee Schedule*) (and the list in Part 1 (*Nominated Staff*) of Schedule 4 (*Employee Schedule*) shall be updated accordingly) as approved by the Authority.

- 5.1.5 References in Clauses 5.1.2, 5.1.3 and 5.1.4 (*Nominated Staff*) above and Clause 5.2.3 (*Organisational Change*) below to "withdrawal" do not include the retirement, long term illness, death, the long term illness of a close family member (being a spouse, partner, children or other dependents) or voluntary resignation from the employment of the Parent Body Organisation or Relevant Affiliate of the relevant individual.

5.2 Key Personnel

- 5.2.1 The Authority shall be entitled to identify and name individuals, whether Employees or Nominated Staff, as Key Personnel in its absolute discretion. The individuals so named by the Authority are listed in Part 2 (*Key Personnel*) of Schedule 4 (*Employee Schedule*). Such list may be amended from time to time by the Authority whether to take account of the replacement of any individual as a member of Key Personnel or to add any person or to remove any person from such list. Without prejudice to the provisions of clause 4 (*Governance*) of the Parent Body Agreement, and provided that the Authority has given its prior written consent pursuant to those provisions, Key Personnel may sit on the Contractor's board of directors.

- 5.2.2 Subject to Clause 5.2.3(B) (*Organisational Change*) below, the Contractor, the Parent Body Organisation and/or any Relevant Affiliate shall not be entitled to:

- (A) dismiss (either summarily or on notice);
- (B) suspend for more than five (5) Calendar Days;
- (C) change the job description of;
- (D) subject to Clause 5.8.4 (*Terms and Conditions of Employment*), alter any material term or condition of the contract or terms of employment of;
- (E) redeploy or reallocate to other services,
- (F) do anything knowingly, where it ought reasonably have known, by act or omission which is, or may be, a breach of the contract or terms of employment of,

any of the Key Personnel who are not Nominated Staff without the prior written consent of the Authority (such consent not to be unreasonably withheld).

5.2.3 Organisational Change

- (A) Subject to Regulatory Requirements, the Contractor shall not make any change to the Organisational Structure of the Contractor without the prior written consent of the Authority.
- (B) Where the Contractor, the Parent Body Organisation and/or any Relevant Affiliate intends to withdraw from secondment or employment, as the case may be, any member of Key Personnel or Nominated Staff, it must:

- (1) obtain the prior written consent of the Authority (such consent not to be unreasonably withheld) as to the suitability and adequacy of a replacement who must have a level of skills and experience comparable to that of the member of Nominated Staff or Key Personnel being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position. The curriculum vitae of each proposed replacement individual must be submitted to the Authority for its review. The Authority will either approve the replacement within thirty (30) Calendar Days or will notify the Contractor, the Parent Body Organisation or the Relevant Affiliate in writing of reasons for the rejection of the proposed replacement. The Contractor, the Parent Body Organisation or the Relevant Affiliate may not withdraw the relevant individual member of Nominated Staff until the Authority has approved a replacement; and
- (2) where such withdrawal and/or appointment of a replacement member of Nominated Staff or Key Personnel in accordance with this Clause 5.2.3(B) (*Organisational Change*) requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable. The Authority will provide such reasonable assistance as it is able in procuring such approvals from Regulators.

5.2.4 **Dismissal or suspension**

Nothing in Clause 5.1 (*Nominated Staff*) or Clause 5.2 (*Key Personnel*) will prevent the Contractor, the Parent Body Organisation and/or any Relevant Affiliate from dismissing or immediately suspending from their duties any Key Personnel or member of the Nominated Staff where, in the reasonable opinion of the Contractor, the Parent Body Organisation and/or any Relevant Affiliate, such action is:

- (A) necessary to comply with any applicable Law or Regulatory Requirements; and/or
- (B) required to safeguard the health and wellbeing of any employee on the Site; and/or
- (C) justified on the grounds that any member of the Key Personnel or Nominated Staff has committed an act of negligence or gross misconduct; and/or
- (D) justified on the grounds that any member of the Key Personnel or Nominated Staff has failed of a drugs and/or alcohol test,

provided that the Authority and, if necessary, the Regulators are notified at least five (5) Working Days prior to such dismissal taking effect or immediately upon such suspension taking effect.

5.2.5 The Authority shall be entitled to instruct the Contractor to prepare and submit an action plan to the satisfaction of the Authority for managing any dismissal

proposed pursuant to Clause 5.2.4 (*Dismissal or suspension*) above, and such dismissal shall not become effective until the Authority has approved that action plan.

5.3 **Non-Contract Activities**

5.3.1 The Contractor shall ensure and procure that the Employees and the Nominated Staff are engaged solely in the performance of the Tasks and the Contractor's other obligations under this Contract and/or the performance of the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract, save as may otherwise be expressly agreed in writing in advance with the Authority pursuant to clause 16.1.6 (*Nominated Staff*) of the Parent Body Agreement or as permitted by the Contractor's HR Internal Procedures.

5.3.2 If any Employee and/or any Nominated Staff perform the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract, the Contractor shall ensure that such Employee's or Nominated Staff's time (as the case may be) is apportioned and charged to the relevant Site or site. For the avoidance of doubt, subject and without prejudice to Clause 10 (*Confidentiality, Security and Compliance with Law*) and clause 17.5 (*Transition Out*) of the Parent Body Agreement, this Clause 5.3.2 (*Non-Contract Activities*) shall not and is not intended to prevent the Nominated Staff from communicating with, and reporting performance under this Contract to, the Parent Body Organisation.

5.4 **Notice to Authority of Disputes**

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

- (A) the Contractor and any of the Employees or Nominated Staff; and/or
- (B) the Contractor and any of the Contractor's Subcontractors engaged in connection with this Contract and/or their employees; and/or
- (C) the Contractor and any trade union or other body representing any such person in Clause 5.4.1(A) or 5.4.1(B) (*Notice to Authority of Disputes*) above.

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

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

5.5 **Maintenance of Skills**

The Contractor acknowledges the responsibility of the Authority under section 9(2)(a) of the Energy Act in relation to the maintenance and development in the United Kingdom of a skilled workforce and shall comply with the provisions of Clause 2.8 (*Subcontracting/ Procurement*). In particular, the Contractor shall:

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

5.6 **Authority Approval of Redundancy**

- 5.6.1 Subject to Clause 5.1 (*Nominated Staff*) and 5.2 (*Key Personnel*), the Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) in advance of commencing and/or continuing any redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release scheme.
- 5.6.2 Nothing in this Clause 5.6 (*Authority Approval of Redundancy*) will prevent the Contractor from immediately dismissing or suspending from their duties or procuring such dismissal or suspension by the Parent Body Organisation any Employees or from procuring the immediate dismissal or suspension of Nominated Staff by the Parent Body Organisation or Relevant Affiliate where, in the reasonable opinion of the Contractor, such action is:
 - (A) necessary to comply with any applicable Law or Regulatory Requirements;
 - (B) required to safeguard the health and wellbeing of any employee on the Site;
 - (C) justified on the grounds that any Employee has committed an act of negligence or gross misconduct; and/or
 - (D) justified on the grounds that any Employee has failed an alcohol and/or drugs test.

5.7 **Non-Discrimination**

- 5.7.1 The Contractor shall, in respect of the Employees, comply with, and shall procure that the Parent Body Organisation, any Relevant Affiliate and those of their agents, Employees and Nominated Staff who carry out activities on the Site shall, in respect of Nominated Staff, comply with, the:
 - (A) Equality Act 2010;

- (B) Human Rights Act 1998;
- (C) Employment Rights Act 1996; and
- (D) any other legal or statutory requirement, modification or re-enactment relating to discrimination in employment,

and shall operate in respect of the Employees, and procure that the Parent Body Organisation, any Relevant Affiliate and those of their agents who carry on activities on the Site, operate in respect of the Nominated Staff an appropriate equal opportunities policy.

- 5.7.2 The Authority shall not procure any action on the part of the Contractor, the Parent Body Organisation and/or any Relevant Affiliate which might cause the Contractor, the Parent Body Organisation and/or any Relevant Affiliate to be in breach of the Laws referred to in Clause 5.7.1 (*Non-Discrimination*).

5.8 Terms and Conditions of Employment

- 5.8.1 The Contractor shall keep and maintain adequate HR Internal Procedures and records to enable it to manage its Employees. Such HR Internal Procedures and records shall contain, amongst other things, all Employees' up to date terms and conditions of employment and details of remuneration including bonus schemes.

- 5.8.2 The Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld) before making any change to its HR Internal Procedures and record keeping systems where such change will cause a significant increase in the costs of operating the Site and/or performing its obligations under this Contract.

- 5.8.3 Without prejudice to the generality of Clause 5.8.2 (*Terms Conditions of Employment*), the Contractor shall not (save where such changes are required by Law or under a binding Collective Agreement), without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any changes to the costs incurred by the Authority in relation to Employees including:

- (A) increasing or reclassifying wages, salary, other elements of pay, benefits or emoluments as pensionable or non-pensionable;
- (B) increasing wages, salary, other elements of pay, benefits or emoluments;
- (C) agreeing or approving any severance or redundancy augmentations to any wages, salary, other elements of pay, benefits or emoluments.

- 5.8.4 Subject to compliance with applicable employment Law and binding Collective Agreements, the Contractor shall make such additions to, omissions from, or other changes to the employment contracts of Employees from time to time required to be made by the Authority.

5.9 Trade Union Agreements

- 5.9.1 The Contractor shall comply with the terms of all agreements it has made with trade unions or other bodies representing any of the Employees where those agreements relate to any of the Employees.

5.9.2 The Contractor shall disclose to the Authority the terms of all agreements entered into with trade unions or other bodies representing any of the Employees and shall keep the Authority fully informed of any changes to any such agreement or of any new agreements entered into which relate to any of the Employees.

5.10 **Not Used**

5.11 **Removal of Contractor or Subcontractor Employees from Site**

5.11.1 If there is a Contractor Default (whether or not remedied to the satisfaction of the Authority in accordance with Clause 12.4 (*Termination or Remedy for Contractor Default*)) and the Authority:

- (A) has made all reasonable enquiries into the circumstances in which the Contractor Default occurred; and
- (B) believes, acting reasonably, that:
 - (1) the Contractor Default may fairly be attributable in whole or in substantive part to any particular Employee or member of Nominated Staff; and
 - (2) if the relevant Employee or member of Nominated Staff were to continue in the employment of or secondment to the Contractor, it would adversely affect the Contractor's ability to fulfil its obligations to the Authority; or
- (C) the Authority reasonably believes that the presence on the Site of an Employee or Subcontractor's employee or a member of Nominated Staff represents a threat to health, safety, security or the environment,

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

5.12 **Pensions**

5.12.1 **Energy Act Requirements**

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

5.12.2 **Participation in Combined Nuclear Pension Plan**

The Contractor shall, on the date of execution of this Contract, enter into the Deed of Participation in the form attached as Part 4 (*Deed of Participation*) of Schedule 4 (*Employee Schedule*). If for any reason the Deed of Participation is not executed as aforesaid the Contractor shall be deemed to have entered into the Deed of Participation and shall be bound by and shall comply with the same as if the terms thereof were fully set out herein.

5.12.3 **Participation in Other Applicable Schemes**

- (A) The Contractor shall participate in such of the other Applicable Schemes as the Authority may at any time direct in respect of those of the Employees who were Employees on the Commencement Date where this is necessary in recognition of the Authority's duties and obligations under Schedule 8 of the Energy Act and who are not in the class of Employees referred to in Clause 2.3 of the Deed of Participation and in respect of those who become Employees or Nominated Staff after that date and who are not otherwise in the class of Employees referred to in Clause 2.3 of the Deed of Participation or at any time hereafter cease to be within the class of Employees referred to in Clause 2.3 of the Deed of Participation. In each case, the Contractor's obligations shall be subject to such consents as may be required under the governing documentation of the Applicable Schemes, which consents the Contractor and the Authority will each use their reasonable endeavours to procure.
- (B) The Contractor shall not participate in any other pension scheme in respect of the Employees or Nominated Staff without the consent of the Authority.
- (C) The Contractor shall not take or fail to take any action which would cause it to cease to participate in any Applicable Scheme without the consent of the Authority.

5.12.4 **Authority Rights and Contractor Obligations in Respect of Applicable Schemes**

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

- (A) appoint the Authority as its nominee for the purposes of consultation on the investment strategy of the Applicable Schemes under section 35 of the Pensions Act 1995. The Contractor acknowledges that the Authority may take account of its own interests as well as those of the Contractor when discussing investment strategy with the trustees (or if there are no applicable trustees the administrator) or managers of the Applicable Schemes. In respect of any Applicable Scheme to which section 35 of the Pensions Act 1995 does not apply, any powers held by the Contractor under the Scheme to influence notional investment strategy shall be delegated to the Authority.
- (B) appoint the Authority as its nominee for the purposes of consultation on the member nominated trustee provisions of the Pensions Act 1995 and the Pensions Act 2004.
- (C) not exercise or consent to the exercise of any powers or discretions in relation to the Applicable Schemes without the consent of the Authority and shall exercise any such powers or discretions and shall give such consents in such a way as the Authority may direct.
- (D) without limiting the obligations in Clauses 5.12.1 (*Energy Act Requirements*) and 5.12.2 (*Participation in Combined Nuclear Pension*

Plan) and 5.12.3 (*Participation in Other Applicable Schemes*) above in any way:

- (1) agree to the substitution of the Authority as Principal Employer of the Applicable Scheme if the Authority so requests and if such substitution is permitted under the governing documentation of the Applicable Scheme;
 - (2) set or agree employer contribution rates as directed by the Authority;
 - (3) comply with the Scheme Documents and, in respect of Applicable Schemes other than the CNPP, comply with the trust deeds or such other governing documents and rules of the relevant Applicable Schemes relevant to it as employer;
 - (4) pay all sums due to the Scheme Trustee or the trustees (or if there are no applicable trustees the administrator) of other Applicable Schemes as and when they fall due;
 - (5) comply with administration systems and risk management procedures as reasonably required by the Authority or the relevant Applicable Scheme;
 - (6) comply with all obligations whenever arising to consult in respect of matters related to pensions and disclose all relevant information in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
- (E) where it has power, amend the Applicable Schemes as directed by the Authority and not amend the Applicable Schemes otherwise;
- (F) not agree to the funding of any deficit or the treatment of any surplus without the consent of the Authority;
- (G) not make any augmentations to benefits without consent of the Authority;
- (H) not admit any other employer to the Applicable Scheme without the consent of the Authority;
- (I) not terminate (or allow to terminate) the service of any Employees or Nominated Staff in circumstances where an enhanced benefit would be due under the Applicable Schemes without the consent of the Authority;
- (J) not wind up the scheme or any part or section of it without the consent of the Authority;
- (K) comply with its obligations as employer arising under the general Law relating to pensions; and
- (L) except where and to the extent required by Law, not make, without the consent of the Authority, any announcements or issue any material, information or issue any publicity or advertising in any media or form

whatsoever affecting or relating to pension arrangements such consent not to be unreasonably withheld or delayed.

6. FINANCE

6.1 Funding Limits

6.1.1 The Contractor must fulfil its obligation to perform the Tasks and its other obligations under this Contract within the Annual Site Funding Limit, Current Budget and Capital Budget (in each case as amended in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) if applicable) set by the Authority for the Site for each Contract Year as specified in Part 3 (*Funding Limit and Available Fee*) of Schedule 6 (*Finance Schedule*).

6.1.2 All monies paid and payable by the Authority to the Contractor in relation to each Contract Year, excluding Fee, shall attrite the Annual Site Funding Limit.

6.2 Determination of Funding Limits and Compliance with Funding Limits

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

6.2.2 Subject to Clause 6.2.3 (*Determination of Funding Limits and Compliance with Funding Limits*) below, if the Contractor breaches the Annual Site Funding Limit and/or Current Budget without the express written consent of the Authority obtained pursuant to Clause 2.6 (*Setting the LTP*), the sums of money expended in excess of such Annual Site Funding Limit and/or Current Budget, as applicable, shall be Disallowable Costs.

6.2.3 To the extent that the Contractor's breach of the Annual Site Funding Limit and/or Current Budget arises as a direct result of a change listed in paragraph 11 of Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) then the costs incurred in excess of such Annual Site Funding Limit and/or Current Budget shall not be Disallowable Costs.

6.3 Restrictions on Payments to Parent Body Organisation

Subject to Clause 6.12.6 (*Payments to Parent*), the Contractor shall not without the prior written consent of the Authority make any payment to the Parent Body Organisation. Where the Authority gives its consent to the Contractor making payments to the Parent Body Organisation, such payments may be made by dividend where the Contractor considers such dividends fit and proper or by any other means which the Contractor thinks fit and proper.

6.4 Other Financial Restrictions

6.4.1 The Contractor shall not without the prior written consent of the Authority:

- (A) dispose, let or otherwise part with the possession of the whole of or any part of the Site, business, undertaking or asset including any asset subject to a finance or operating lease;

- (B) make any change to its accounting reference date;
- (C) make any change to the Accounting Policies and Procedures save as required by applicable Law, UK GAAP or FRmM;
- (D) create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by this Contract save that nothing in this Clause 6.4.1(D) (*Other Financial Restrictions*) is intended to prevent the creation of any liens in the course of performance of this Contract;
- (E) save for borrowings under an Approved Working Capital Facility, borrow (including intra-group) or make any payment under any intra-group borrowings;
- (F) create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of cash in the Contractor's Fee Account, or the Contractor's Payment Account;
- (G) commence any litigation or arbitration other than:
 - (1) in accordance with Clause 7.6 (*Necessary Consents*), Clause 8 (*Intellectual Property*) or Clause 1.27 (*Claims Handling*);
 - (2) in accordance with the Dispute Resolution Procedure;
 - (3) in any attempt to commence judicial review proceedings against the Authority in connection with this Contract;
 - (4) to challenge any threatened or actual revocation of the Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Law; or
 - (5) to apply for or resist or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority;
- (H) incur any liability or financial indebtedness except pursuant to an Approved Working Capital Facility or as permitted by this Contract;
- (I) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a financial institution or Office of the Paymaster General as permitted by this Contract);
- (J) enter into any finance or operating leases;
- (K) notwithstanding the Permitted Activities, enter into any Customer Contract or Subcontract where a disproportionate element of liability, cost or benefit is likely to crystallise after the expiry of the then current unexpired Term of the Parent Body Agreement; and

- (L) make payment of any management or other charges to the Parent Body Organisation or to any of its Affiliates:
 - (1) in excess of those set out in Subcontracts specifically approved by the Authority pursuant to Clause 2.8 (*Subcontracting/ Procurement*);
 - (2) unless pursuant to Clauses 6.12.6 (*Payments to Parent*) and 6.13 (*Funding Limits*); or
 - (3) unless as agreed under an Advance Agreement;
- (M) undertake hedging activities;
- (N) intentionally take any action or omit to take any action that would increase the premiums on the Authority's Insurances or the insurances or which voids or vitiates such Authority Insurances or insurances.

6.4.2 For the purposes of Clause 6.4 (*Other Financial Restrictions*), other than where the Authority has expressly given or withheld its consent in writing, the Contractor shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 6.4.1(A) to 6.4.1(M) (*Other Financial Restrictions*) to the extent the relevant activity is expressly:

- (A) set out in the then Current Contract Term of the LTP;
- (B) set out in the agreed terms of the Extended ESC Task;
- (C) contained in a Subcontract or Customer Contract which is specifically approved by the Authority. For the avoidance of doubt and notwithstanding any other provision of this Contract, any Subcontract or Customer Contract which enables the Contractor to do any of the matters set out in Clause 6.4 (*Other Financial Restrictions*) requires the approval of the Authority notwithstanding the Permitted Activities;
- (D) contained in an Internal Procedure reviewed by the Authority and accepted or deemed to have been accepted by the Authority in accordance with Clause 2.10.5(B) (*Confirmation by Authority*);
- (E) save in the case of Clause 6.4.1(K) (*Other Financial Restrictions*), a Permitted Activity or otherwise approved by the Authority in accordance with Clause 3.6.2 (*Authority's right to be consulted in respect of Customer Contracts*); or
- (F) in the case of Clause 6.4.1(A) (*Other Financial Restrictions*) permitted by Clause 7.1.1(B) (*Right to use Authority Assets*).

6.5 **Historical Costs**

6.5.1 Without prejudice to Clause 6.5.4 (*Historical Costs*), the Contractor shall determine whether any cost, claim or liability which relates to the period prior to the Commencement Date falls within the definition of a BNF Historical Cost, or a Contractor Historical Cost, in accordance with the provisions of the Overarching Costs Management Agreement.

- 6.5.2 The Contractor shall mitigate, to the extent reasonably possible, all Contractor Historical Costs and, subject to Clause 6.7 (*Exceptional Costs*), meet such Contractor Historical Costs subject, where relevant, to the provisions of Clause 1.27 (*Claims Handling*).
- 6.5.3 Where the Contractor, in error, has paid a BNF Historical Cost, the Contractor shall reclaim such BNF Historical Costs from the relevant BNF Company in accordance with the terms of the Overarching Costs Management Agreement. The Contractor shall pay any amounts reclaimed pursuant to this Clause 6.5.3 (*Historical Costs*) to the Authority as Category I Revenue.
- 6.5.4 The treatment of pension deficit contributions in relation to the Applicable Schemes shall not be dealt with under this Clause 6.5 (*Historical Costs*). Such deficit contributions shall be made in accordance with the Schedule of Contributions for the relevant Applicable Scheme prepared under section 58 Pensions Act 1995 or section 227 Pensions Act 2004 together with any other obligations as to funding imposed by the documents governing the Applicable Schemes.
- 6.5.5 Where the Contractor has paid a Contractor Historical Cost using funds from the Annual Site Funding Limit, the Authority shall use reasonable endeavours to procure additional funds in order to restore the Annual Site Funding Limit to the position it would have been in had the Contractor Historical Cost not arisen.
- 6.5.6 Where the Authority successfully procures additional funds to restore the Annual Site Funding Limit in accordance with Clause 6.5.5 (*Historical Costs*) it shall be entitled to direct a Change pursuant to Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).

6.6 **Cashflow**

6.6.1 **Costs and Capital**

(A) **Working Capital**

- (1) The Contractor shall be responsible for ensuring that it has sufficient Working Capital to enable it to meet its obligations under the Contract.
- (2) The Contractor shall make payments (other than the payments referred to in Clause 6.7 (*Exceptional Costs*)) to creditors as they Fall Due and in accordance with any guidelines or other requirements issued by the Authority in writing from time to time).
- (3) Unless the Authority approves otherwise in writing, the Working Capital required under this Clause 6.6.1(A)(1) above shall be provided by the Contractor entering into one or more Approved Working Capital Facilities.
- (4) All drawings under an Approved Working Capital Facility shall be transferred only into the Contractor's Payment Account. The Contractor shall pay creditors out of the Contractor's Payments Account including, without limitation, Working Capital Costs.

6.6.2 **Cashflow Forecasting**

The Contractor shall submit to the Authority a cashflow forecast for all monies payable by the Contractor to Third Parties in respect of which the Contractor seeks reimbursement from the Authority and all costs in respect of the Extended ESC Task in a form and at a frequency to be determined by the Authority, acting reasonably, and notified to the Contractor from time to time.

6.7 **Exceptional Costs**

6.7.1 Subject to the Contractor complying with the provisions of Clauses 6.7.2 (*Information*) and 6.7.3 (*Exceptional Pension Costs*) below, the Authority acknowledges that it is responsible for providing the funds to the Contractor to enable it to pay creditors in so far as the relevant obligations to make payments to those creditors are in respect of Exceptional Costs. The provision of such funds is to be made in accordance with Clause 6.7.2 (*Information*) in respect of Exceptional Historical Costs and Clause 6.7.3 (*Exceptional Pension Costs*) in respect of Exceptional Pension Costs (but for the avoidance of doubt, failure to comply with Clause 6.7.2 (*Information*) and Clause 6.7.3 (*Exceptional Pension Costs*) below shall not in itself make Exceptional Costs Disallowable where paid to a third party by the Contractor).

6.7.2 **Information**

(A) If the Contractor becomes aware that it will incur an Exceptional Cost, it shall seek the Authority's prior written consent to the incurrence of such a Cost (an "**Exceptional Cost Agreement**"). The Contractor shall not incur any Exceptional Cost without obtaining the Authority's prior written consent under an Exceptional Cost Agreement. For the avoidance of doubt, the Authority will provide funds to the Contractor to enable it to pay creditors in relation to an Exceptional Cost only where the Authority's consent to the incurrence of the Exceptional Cost has been obtained pursuant to an Exceptional Cost Agreement. In relation to any Exceptional Cost for which it seeks funding, the Contractor shall provide to the Authority a VAT invoice with all relevant supporting documents and any other applicable information in such a form as the Authority may reasonably require from time to time (such information being "**Exceptional Costs Information**"). Following receipt of the Exceptional Costs Information, and subject to Clause 6.7.4 (*Information*) below, the Authority will, within one (1) Working Day before the due date for payment of the Exceptional Cost, make payment in respect of the relevant Exceptional Cost to the Contractor by electronic transfer of funds to the Contractor's Payments Account.

(B) In relation to any Exceptional Historical Cost for which it seeks funding, the Contractor shall provide to the Authority in such a form as the Authority may reasonably require from time to time, as soon as it becomes aware of the liability, a VAT invoice with all relevant supporting documents and any other applicable information including the due date for payment to the supplier of the Exceptional Historical Cost and the date on which the Authority will need to have transferred funds into the Contractor's Payment Account in order for the amount in respect of that Exceptional Historical Cost to be paid to the supplier (such information being "**Exceptional Historical Costs Information**").

Following receipt of the Exceptional Historical Costs Information, and subject to Clause 6.7.4 (*Information*) below, the Authority will, within one (1) Working Day before the due date for payment of the Exceptional Historical Cost, make payment in respect of the relevant Exceptional Historical Cost to the Contractor by electronic transfer of funds to the Contractor's Payments Account.

6.7.3 **Exceptional Pension Costs**

For the avoidance of doubt, in relation to any Exceptional Pension Costs for which it seeks funding, the Contractor will provide to the Authority either:

- (A) details of the amount which the Contractor (or any subsidiary of the Contractor) will be liable to pay under the schedule of contributions (prepared under section 227 of the Pensions Act 2004) or under the governing documents of the scheme; or
- (B) a demand for payment made in accordance with the Scheme Document of the CNPP or, in respect of Applicable Schemes other than the CNPP, the governing documents governing the Applicable Scheme,

as appropriate (and in such form as the Authority may reasonably require from time to time such information being "**Exceptional Pension Costs Information**"). As soon as the Contractor becomes aware of the Exceptional Pensions Cost Information, and in any event no later than eight (8) Working Days before the due date for payment, the Contractor will submit such Exceptional Pensions Cost Information to the Authority. Following receipt of the Exceptional Pension Costs Information, the Authority will, within one (1) Working Day before the due date for payment of the Exceptional Pension Costs, make payment in respect of the relevant Exceptional Pension Costs to the Contractor by electronic transfer of funds to the Contractor's Payments Account. The Contractor shall immediately on receipt of the funds referred to herein remit the same to the relevant pension fund.

6.7.4 **Information**

The Authority shall be entitled to withhold payment due under Clause 6.7.2 (*Information*) or Clause 6.7.3 (*Exceptional Pension Costs*) (as applicable) where the Authority has sought further information from the Contractor (in addition to Exceptional Costs Information or Exceptional Historical Costs Information or Exceptional Pension Costs Information) to enable the Authority to satisfy itself that the Cost in relation to which the Contractor is seeking funds has been properly incurred and/or is an Exceptional Cost, an Exceptional Historical Cost or an Exceptional Pension Cost (as applicable) provided that the Authority will make payment of the amount withheld no later than eight (8) Working Days after the Authority receives, to its satisfaction, the information sought under this Clause 6.7.4 (*Information*). Any dispute in relation to the repayment of amounts by the Authority pursuant to this Clause 6.7.4 (*Information*) will be resolved in accordance with Clause 13 (*Dispute Management*). For the avoidance of doubt, failure to comply with Clause 6.7.2 (*Information*) and Clause 6.7.3 (*Exceptional Pension Costs*) shall not, in itself, make Exceptional Costs Disallowable.

6.7.5 Following its receipt of funds into the Contractor's Payments Account from the Authority pursuant to Clause 6.7.4 (*Information*), the Contractor shall make

payments in respect of Exceptional Costs to creditors as soon as practicable and otherwise in accordance with the Government Payment Obligations (save as otherwise agreed by the Authority in writing).

6.7.6 The cost types and value thresholds that constitute Exceptional Costs shall be reviewed by the Parties annually, following the receipt by the Authority of a cashflow forecast pursuant to Clause 6.6.2 (*Cashflow Forecasting*). The Authority's decision in respect of whether or not these should be amendments to the definition of Exceptional Costs shall be final.

6.8 **Not used**

6.9 **Determination of Revenue Category**

6.9.1 Subject to Clause 6.9.4 (*Determination of Revenue Category*) below, in each Contract Year during the revising and updating of the LTP for the next Contract Year pursuant to Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*), the Authority shall be entitled, acting reasonably and in consultation with the Contractor, to:

(A) amend the definition of Category II Revenue so that revenue which would otherwise have fallen into the definition of Category I Revenue falls into the definition of Category II Revenue for all succeeding Contract Years; and/or

(B) amend categories of revenue within or delete categories of revenue from the definition of Category I Revenue and/or Category II Revenue for all succeeding Contract Years.

6.9.2 If the amount of Category II Revenue received by the Contractor to date in the current Contract Year exceeds the amount forecast by the Contractor in the LTP as receivable for that Contract Year as set out in Part 3 (*Funding Limit and Available Fee*) of Schedule 6 (*Finance Schedule*), the Authority shall be entitled at any time thereafter in the current Contract Year, acting reasonably, to treat the excess revenue falling within the definition of Category II Revenue as revenue falling into the definition of Category I Revenue.

6.9.3 Prior to setting the Funding Limits for the next Contract Year in accordance with Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Control*), the Authority shall (acting reasonably and in consultation with the Contractor) be entitled at any time to add new categories of revenue to the definition of Category I Revenue and/or Category II Revenue to the extent that such categories of revenue are not already accounted for as Category I Revenue or Category II Revenue in the current Contract Year's LTP.

6.9.4 The assumption is that monies received or receivable by the Contractor shall predominantly be treated as Category I Revenue. Any dispute as to whether monies received or receivable by the Contractor are to be treated as Category I Revenue or Category II Revenue shall be determined by the Authority acting reasonably.

6.10 **Receipts Accounts**

6.10.1 Unless specifically instructed in writing by the Authority, the Contractor shall pay all Category I Revenue and Category II Revenue into the Contractor's

Receipts Accounts on receipt of such Revenue and shall transfer the entire balance of the Contractor's Receipts Account on a daily basis to the OPG Receipts Account.

The Contractor will hold the entire balance standing to the credit of the Contractor's Receipts Account in trust for the Authority from the date of receipt of funds into the Contractor's Receipts Account until the day of receipt of the balance by the Authority.

- 6.10.2 If, within nine (9) Working Days of a transfer to the OPG Receipts Account under Clause 6.10.1 (*Receipts Accounts*), the Contractor becomes aware that an amount transferred was paid into the Contractor's Receipts Account in error and so should not have been so transferred, then the Contractor shall inform the Authority immediately of the amount, the date of transfer and the reason for the error together with all relevant supporting documents and information (and in such a form) as the Authority may reasonably require in order to satisfy itself that the payment into the Contractor's Receipts Account was made in error (an "**Overpayment Notice**").
- 6.10.3 As soon as reasonably practicable following receipt of an Overpayment Notice, the Authority will repay the amount specified in the Overpayment Notice to the Contractor's Receipts Account.
- 6.10.4 If the Parties cannot agree whether an amount was paid into the Contractor's Receipts Account in error or if there is any disagreement regarding the amount paid in error the matter shall be resolved in accordance with Clause 13 (*Dispute Management*).

6.11 Reimbursement

6.11.1 Basis of Reimbursement

Payment to the Contractor shall, except and to the extent otherwise set out in Schedule 6 (*Finance Schedule*) or otherwise agreed between the Parties, be on the basis of reimbursement of Allowable Costs incurred, costs payable by the Authority in respect of the Extended ESC Task pursuant to the terms of the Extended ESC Task and any other payments due to the Contractor as agreed with the Authority under any additional incentivisation mechanism such costs (being, together, "**Other Costs**") together with any Incentive Fee due.

6.11.2 Allowable and Disallowable Costs

- (A) The Authority acknowledges that it is responsible for reimbursing the Contractor for payments in respect of Allowable Costs the Contractor makes to creditors out of the Contractor's Payments Account or which are Transitional Balances (but not in respect of the Exceptional Costs) insofar as the relevant obligations to make such payments were incurred pursuant to the Contractor's performance of its obligations under this Contract. Such reimbursement is to be made on the basis provided in Clause 6.12 (*Invoicing and Payment*).
- (B) The Contractor acknowledges that it is not entitled to be reimbursed by the Authority under Clause 6.11.2(A) (*Allowable and Disallowable Costs*) above in respect of payments to creditors which are Disallowable Costs and that, to the extent that the Authority has paid or reimbursed

Disallowable Costs to the Contractor, the Authority is entitled to be reimbursed by the Contractor.

- (C) The Contractor must determine whether a payment in respect of a Cost is an Allowable Cost or a Disallowable Cost in accordance with Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*).
- (D) The Contractor shall be entitled to agree in advance with the Authority as to whether certain Costs it proposes to incur are Allowable Costs by entering into Advance Agreements with the Authority pursuant to the process set out in Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*).
- (E) Should the Contractor become aware that it has incorrectly determined an Allowable Cost as a Disallowable Cost and accordingly wishes to claim such Cost as an Allowable Cost, it shall be entitled to make such claim.
- (F) If the Parties cannot agree whether a particular Cost is an Allowable Cost or a Disallowable Cost according to this Clause 6.11 (*Reimbursement*) or Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*), the matter shall be resolved in accordance with Clause 13 (*Dispute Management*).

6.11.3 **Performance Based Incentive Arrangements**

- (A) The PBIs shall be prepared and determined, and the PBIs shall be calculated and paid, in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*).
- (B) The Contractor may propose, and the Authority may require the Contractor to bring forward, changes to PBIs at any time during the Contract Year in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*).

6.11.4 **Incentive Fee**

The Incentive Fee shall be calculated, in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*).

6.11.5 **Not Used**

6.11.6 **Not Used**

6.12 **Invoicing and Payment**

6.12.1 **Invoicing of Allowable Costs and Other Costs**

- (A) Not later than the seventh (7th) Working Day of the Month immediately following the relevant Month during which the Contractor incurs Allowable Costs and any Other Costs for which it seeks reimbursement in accordance with Clause 6.11.2(A) (*Allow and Disallowable Costs*) the Contractor will issue a VAT invoice (the "**Monthly Invoice**").
- (B) The Monthly Invoice shall be prepared in accordance with Clause 6.12.1(C) (*Invoicing of Allowable Costs and Other Costs*) and shall be accompanied by:

- (1) a description of the work and/or services to which it relates.
 - (2) a breakdown setting out in reasonable detail the Allowable Costs and any Other Costs incurred and an explanation of what they relate to and;
 - (3) adequate documentation supporting the sums claimed, and
 - (4) any other information or documentation that the Authority may from time to time require and notify to the Contractor.
- (C) The Monthly Invoice shall be prepared on an accruals accounting basis in accordance with UK GAAP (for such time as the Authority accounts under UK GAAP and thereafter in accordance with the accounting principles adopted from time to time by the Authority and notified to the Contractor) as modified by the application of FReM (and not a cash accounting basis) save in respect of purchase of stock as provided below.
- (1) Any Allowable Costs and any Other Costs will be shown exclusive of any UK or overseas VAT recoverable by the Contractor from a Taxation Authority and the Monthly Invoice shall calculate the VAT payable by the Authority to the Contractor in respect of such Allowable Costs.
 - (2) In respect of purchases of Stock by the Contractor, the Monthly Invoice shall be adjusted to reflect the value (excluding VAT) of actual purchases during the relevant Month (as compared with value of Stock consumed in that Month). Such Stock shall be the property of the Authority and the Monthly Invoice will treat its purchase by the Contractor on behalf of the Authority as a taxable supply.
- (D) The Authority shall reimburse or pay the Contractor in respect of Allowable Costs and any Other Costs as shown in each Monthly Invoice complying with Clauses 6.12.1(B) and 6.12.1(C) (*Invoicing of Allowable Costs and Other Costs*) as follows:
- (1) any Allowable Costs and the Tax thereon and Other Costs in respect of salaries of Employees and any Nominated Staff shall be paid by the Authority to the Contractor on the Working Day each Month which is nearest to the Calendar Day that such salaries are due to be paid by the Contractor each Month;
 - (2) any other Allowable Costs or Other Costs that do not fall within Clause 6.12.1(D)(1) above shall be paid by the Authority to the Contractor no later than thirty (30) Calendar Days after the end of the Month to which the Monthly Invoice relates; and
 - (3) any outstanding balance on the VAT inclusive amount of the Monthly Invoice shall be paid by the Authority on the day before the latest date on which the Contractor is required to pay the VAT element of the Contractor's Monthly Invoice to the Taxation Authority.

Payment shall be made by electronic transfer of funds into the Contractor's Payments Account. If the Allowable Costs or Other Costs paid by the Authority to the Contractor exceeds any Costs payable by the Contractor for the relevant Month such that the Contractor has a positive balance in the Contractor's Payment Account, the Contractor shall offset such positive balance against the subsequent Monthly Invoice and detail the positive balance on that subsequent Monthly Invoice.

- (E) Where payment is due under Clause 6.12.1(A) (*Invoicing of Allowable Costs and Other Costs*) in relation to an amount, and where that amount is shown as an Allowable Cost or Other Cost in the Monthly Invoice and the Authority has sought clarification from the Contractor as to whether the Cost is an Allowable Cost or an Other Cost (as applicable), the Authority shall be entitled to withhold payment of such amount provided that the Authority makes payment of the amount withheld no later than five (5) Working Days after the Authority receives, to its satisfaction, the information sought under this Clause 6.12.1(E). Any dispute in relation to the repayment of amounts by the Contractor pursuant to a Clarification Notice will be resolved in accordance with Clause 13 (*Dispute Management*).
- (F) Where the Contractor becomes aware that an amount in relation to which it is to seek reimbursement under Clause 6.12 (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.7 (*Exceptional Costs*) materially exceeds the relevant amount specified in the cashflow forecast submitted by the Contractor under Clause 6.6.2 (*Cashflow Forecasting*), the Contractor will take immediate steps to notify the Authority that the amount exceeds the relevant amount specified in the cashflow forecast. Upon receiving the notice, the Authority will review its cashflow position with a view to reimbursing the Contractor in accordance with Clause 6.12.1 (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.7 (*Exceptional Costs*). Where reimbursement under Clause 6.12.1 (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.7 (*Exceptional Costs*) is not possible as a result of the Authority's cashflow position, the Authority will not reimburse the Contractor in accordance with Clause 6.12.1 (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.7 (*Exceptional Costs*) in respect of the amount which exceeds the relevant amount specified in the cashflow forecast. In this event, the Contractor and the Authority will use their reasonable endeavours to enable the Authority to reimburse to the Contractor the amount which materially exceeds the relevant amount specified in the cashflow forecast (and, for the avoidance of doubt, the Authority shall not pay any Default Interest Rate thereon) as soon as practicable after any reimbursement would have been due under Clause 6.12.1 (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.7 (*Exceptional Costs*) but for that amount exceeding the relevant amount specified in the cashflow forecast.
- (G) The Authority shall not pay or reimburse the Contractor any monies unless the Contractor has invoiced the Authority.
- (H) If any Monthly Invoice is received by the Authority after the seventh (7th) Working Day of the Month immediately following the relevant Month during which the Contractor incurs Allowable Costs for which it seeks

reimbursement in accordance with Clause 6.12.1(A) (*Invoicing of Allowable and Disallowable Costs*) and Exceptional Costs for which it seeks payment, such Monthly Invoice shall be deemed to have been received by the Authority on the seventh (7th) Working Day of the Month following receipt of the same. The dates for payment of the Allowable Costs and Exceptional Costs stated in such Monthly Invoice shall be amended to reflect the dates for payment which would have been stated therein had the Allowable Costs and Exceptional Costs to which it relates been reimbursed and due to be paid in the relevant Month immediately prior to the date at which such Monthly Invoice is deemed to have been received by the Authority. Notwithstanding the foregoing, the Authority shall use all reasonable endeavours to make payment of all sums due consequent to such Monthly Invoice as soon as reasonably practicable.

6.12.2 **Transitional Balances**

- (A) The Contractor shall deliver to the Authority by no later than the seventh (7th) Working Day following the Share Transfer Date a statement of costs which specifies all Transitional Balances for which it seeks reimbursement in accordance with Clause 6.11.2(A) (*Allowable and Disallowable Costs*) and sets out a Transitional Balance Sheet (the "**Transitional Balance Statement**").
- (B) The Parties shall agree a schedule setting out the timetable for the payment of Transitional Balances which shall provide for the Transitional Balances to be paid at least one (1) Working Day before relevant creditors are due to be paid. The Transitional Balances will be reimbursed by the Authority in accordance with the schedule of payments to be agreed between the Parties. Payment shall be made by electronic transfer of funds into the Contractor's Payments Account.
- (C) The Authority shall retain the right to withhold payment due under Clause 6.12.2(A) (*Transitional Balances*) in relation to an amount, where that amount is shown as a Transitional Balance in the Transitional Balance Statement and the Authority has sought clarification from the Contractor as to whether the amount has been correctly identified as a Transitional Balance, provided that the Authority will make payment of the amount withheld (plus relevant VAT) after the Authority receives to its satisfaction the clarification sought under this Clause 6.12.2(C) (*Transitional Balances*) in accordance with the timescales set out in the schedule of payment agreed pursuant to Clause 6.12.2(B) (*Transitional Balances*) above.

6.12.3 **Termination Invoice**

The Contractor shall deliver to the Authority by no later than the twelfth (12th) Working Day following the last day of the final Contract Year a VAT invoice (the "**Termination Invoice**") which specifies all Allowable Costs for which it would have sought reimbursement in accordance with Clause 6.12.1(A) (*Invoicing of Allowable Costs and Other Costs*) but in respect of which it has not delivered to the Authority a Monthly Invoice. The provisions of Clauses 6.12.1(B) to 6.12.1(F) (*Invoicing of Allowable Costs and Other Costs*) will apply to the Termination Invoice as if references therein to "**Monthly Invoice**" were references to "**Termination Invoice**".

6.12.4 **Payment of Incentive Fee**

Where any amount of Incentive Fee is awarded pursuant to Paragraphs 4.3.5 (*General*), 6.4.7 (*General*) and/or 7.8 (*Payment of Incentive Fee*) of Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*), the Contractor will submit a VAT invoice to the Authority requesting payment of such amount into the Contractor's Fee Account and the Authority will pay the VAT exclusive value of the Incentive Fee to the Contractor within thirty (30) Calendar Days of receipt of such invoice. The Authority will pay the VAT element of the Incentive Fee to the Contractor one (1) Calendar Day prior to the latest date upon which the Contractor is required to pay such VAT to the Taxation Authority.

6.12.4A **Payment in respect of the Extended ESC Task**

Where the Contractor submits a VAT invoice to the Authority pursuant to Paragraph 6.5 (*Pricing and Payment*) of Schedule 21 (*Extended Environmental Safety Case*), the Authority will pay the VAT exclusive value of such amount to the Contractor within thirty (30) Calendar Days of receipt of such invoice. The Authority will pay the VAT element of the Incentive Fee to the Contractor one (1) Calendar Day prior to the latest date upon which the Contractor is required to pay such VAT to the Taxation Authority.

6.12.5 **Contractor's Fee Account**

Any interest accruing on amounts in the Contractor's Fee Account shall be for the account of the Contractor.

6.12.5A **Major Incidents**

If a Major Incident has occurred:

- (1) for reasons which were, in the Authority's reasonable opinion, reasonably within the Contractor's control; and/or
- (2) the Contractor has not complied with its own procedures, relevant regulation and/or legislation (without prejudice to any subsequent investigation),

the Authority shall claim from the Contractor, which shall immediately make a demand for such amount from the Parent Body Organisation, an amount equal to [REDACTED] of gross Earned Profit for that Contract Year (or such lesser amount as is, in the Authority's reasonable opinion, an appropriate reflection of the Contractor's performance).

6.12.5B

Subject to Clause 13.2 (*Reasonableness of the Authority*), in determining an amount which, considering the Major Incident in isolation, would constitute an appropriate reflection the Contractor's performance, the Authority may (but shall not be obliged to) consider the following factors:

- (i) the degree of control the Contractor had over the event or incident;

- (ii) the efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance;
- (iii) whether the Contractor had identified the event and whether its response mitigated impacts and minimised the possibility of recurrence;
- (iv) the Contractor's demonstration to the Authority's satisfaction that the principles of industrial nuclear operational safety and safety, health and environment standards are routinely practised in accordance with Good Industry Practice.

6.12.6 **Payments to Parent**

- (A) Within fourteen (14) Calendar Days of the Authority determination pursuant to Clause 6.14.4 (*Reports*), taking account of the Annual Reconciliation Report, the Authority will calculate the Year End Sum which shall be an amount equal to the Earned Profit minus:
 - (1) the Total Incentive Fee paid by the Authority to the Contractor;
 - (2) the total amount of profit paid to the Contractor by the Authority for the Extended ESC Task;
 - (3) any amount in respect of any Disallowable Costs not otherwise reimbursed to the Authority;
 - (4) [REDACTED] of any amount of a benefit arising out of a tax credit relating to research and development during the relevant Contract Year (where such amounts have not already been the subject of adjustment to the Monthly Invoice during the relevant Contract Year), including a right to a payment of an associated tax credit, anticipated or shown in the Contractor's estimate of its corporation tax liability or within its submitted returns;
 - (5) any amount owing to the Authority pursuant to Clause 6.12.5A (*Major Incidents*);
 - (6) any amount owing from the Parent Body Organisation to the Contractor or the Authority pursuant to this Contract or the Parent Body Agreement.
- (B) If the Year End Sum is a positive figure then the Authority shall pay an amount equal to the Year End Sum into the Contractor's Fee Account within thirty (30) Calendar Days of the Authority's calculation of the Year End Sum. If the Year End Sum is a negative figure then the Authority shall serve a Demand on the Parent Body Organisation requiring that the Parent Body Organisation pays an amount equal to the Year End Sum to the Authority within thirty (30) Calendar Days of receipt of such Demand.
- (C) If the Year End Sum is a positive figure then the Contractor shall issue a VAT invoice to the Authority for the sum as defined in Clause 6.12.6 (*Payment to Parent*) plus VAT (if appropriate). If the Year End Sum is a

negative figure then the Contractor shall issue a credit note to the Authority for the credited sum plus VAT (if appropriate).

- (D) Upon expiry or termination of this Contract, if the final form Annual Reconciliation Report has been referred to the Dispute Resolution procedure, the Authority shall calculate the Year End Sum and to the extent that the undisputed position of the Year End Sum is a positive figure then Clause 6.12.6(B) (*Payment to Parent*) shall apply in respect of that undisputed amount. Following agreement or determination of the disputed amounts under the Annual Reconciliation Report, Clauses 6.12.6(A) and 6.12.6(B) (*Payment to Parent*) shall apply as appropriate.
- (E) The Authority hereby gives its consent to the Contractor paying such amount of the Year End Sum (if the Year End Sum is a positive figure) plus any interest accrued under Clause 6.12.5 (*Contractor's Fee Account*) as a dividend to the Parent Body Organisation as the Contractor thinks fit and proper or, if for technical, accounting, financial, tax or legal reasons a dividend cannot be paid, by any other means as the Contractor thinks fit and proper.

6.12.7 **Payment**

- (A) Sums payable to the Contractor shall become due from the Authority to the Contractor on the date or dates specified in Clauses 6.12.1(A) (*Invoicing of Allowable Costs and Other Costs*), 6.12.2(A) (*Transitional Balances*), 6.12.3 (*Termination Invoice*) and 6.16.5 (*Reconciliation for Mid-Year Termination*) and on the dates of the invoices referred to in Clauses 6.12.4 (*Payment of Incentive Fee*) and 6.12.4A (*Payment in respect of the Extended ESC Task*) and shall (subject to Clause 6.12.6(D) (*Payments to Parent*)) be paid by the Authority to the Contractor by the date or dates specified or calculated in accordance with in Clauses 6.12.1(D) (*Invoicing of Allowable Costs and Other Costs*), and/or 6.12.2(B) (*Transitional Balances*), and the dates stated for payment in Clauses 6.12.4 (*Payment of Incentive Fee*) and 6.12.4A (*Payment in respect of the Extended ESC Task*) (the "**Final Date for Payment**").
- (B) Subject to Clause 6.12.7(C) (*Payment*), if at any time the Authority fails to make any payment of an amount that is properly due and payable by the Final Date for Payment then the Contractor shall so notify the Authority in writing and such sum as remains unpaid shall bear interest at the Default Interest Rate from the date of the Contractor's notice referred to herein until the date the same is paid by the Authority to the Contractor.
- (C) Without prejudice to the Authority's rights under Clause 6.12.1(E) (*Invoicing of Allowable Costs and Other Costs*) and Clause 6.12.2(C) (*Transitional Balances*), the Authority shall be entitled to withhold from or, set off against, any money otherwise due under this Contract, the amount of any claim for loss and/or expense which has actually been incurred by the Authority by reason of any breach of or failure to observe the provisions of this Contract by the Contractor and any other amount that is due from the Contractor to the Authority or which the Authority is entitled to withhold, provided always:

- (1) the amount of the withholding or set off has been quantified in detail and with reasonable accuracy by the Authority; and
 - (2) the Authority has given to the Contractor notice in writing (the "**Effective Notice**") specifying its intention to pay the Contractor less than the sum notified by the Contractor as due by virtue of the Authority withholding or setting off the amount quantified in accordance with Clause 6.12.7(C)(1) (*Payment*) and the basis on which any such sum to be withheld and/or set off has been calculated. The Effective Notice shall be given not less than seven (7) days before the Final Date for Payment of money from which the amount is to be withheld and/or set off provided that the Effective Notice shall not be binding insofar as the Authority may amend it in preparing its pleadings for any Legal Proceedings.
- (D) The rights of the Parties in respect of set off are fully set out herein and no other rights whatsoever shall be implied as terms of this Contract relating to set off.

6.13 Funding Limits

- 6.13.1 Expenditure and accruals shall attrite the Funding Limits in accordance with the provisions of Part 5 (*Cost Principles and Procedures*) of Schedule 6 (*Finance Schedule*).
- 6.13.2 Within fourteen (14) Calendar Days of the end of each Month, the Contractor shall provide the Authority with a report (in such a form and containing such information as the Authority may reasonably require from time to time) setting out each of the following in respect of the relevant previous Month:
- (A) the funds paid out by the Contractor from the Contractor's Payments Accounts;
 - (B) the amounts received by the Contractor of Category I Revenue, Category II Revenue or otherwise;
 - (C) the amounts expended by the Contractor in the proper performance of its obligations under this Contract in respect of Allowable Costs;
 - (D) a reconciliation between the Monthly Invoice sent to the Authority and cash payments made by the Contractor;
 - (E) the amounts expended by the Contractor in the proper performance of the Extended ESC Task;
 - (F) any payments made by the Authority pursuant to Clause 6.7.2 (*Exceptional Costs*) to meet Contractor's Historical Costs;
 - (G) any movements into and out of the Foreign Exchange Accounts; and
 - (H) an analysis of daily cash balances in the Month compared against the relevant Month's forecast having regard to the cashflow forecast agreed or determined pursuant to Part 7 (*Working Capital Arrangements*) of Schedule 6 (*Finance Schedule*),

with all relevant supporting documents and any other applicable information (and in such a form) as the Authority may reasonably require from time to time (each such reporting being a "**Monthly Reconciliation Report**"),

and within sixty (60) Calendar Days of the end of each Contract Year (or if, at the end of the Contract Year, the Authority exercises its Call Option and shares are transferred pursuant to the provisions of the Parent Body Agreement), the Contractor shall provide the Authority with a report in the same form as the Monthly Reconciliation Report or as otherwise reasonably required by the Authority in respect of that previous Contract Year (the "**Annual Reconciliation Report**").

6.14 **Reports**

- 6.14.1 The Contractor shall prepare and submit to the Authority periodic reports (including the Annual Reconciliation Report) showing the amounts of expenditure expended and/or accrued against each Funding Limit in accordance with Clause 4.1 (*Reporting and Reviewing*).
- 6.14.2 Following the end of each Contract Year and within ninety (90) Calendar Days of its receipt of the Contractor's Annual Reconciliation Report, the Authority shall notify the Contractor that it either agrees the Annual Reconciliation Report or that it requires the Contractor to amend and re-submit it (indicating those sections which it requires to be amended). Within thirty (30) Calendar Days of such notification from the Authority, the Contractor shall either submit a revised Annual Reconciliation Report incorporating all amendments required by the Authority (and the Authority shall notify the Contractor of its agreement to the revised Annual Reconciliation Report within a further thirty (30) Calendar Day period) or notify the Authority that it does not accept any one or more of the amendments requested by the Authority (identifying the relevant amendments). In the event that the Contractor does not accept any or all of the Authority's requested amendments, the Parties shall consult each other with a view to agreeing a revised Annual Reconciliation Report but if they cannot agree the final form Annual Reconciliation Report within fourteen (14) Calendar Days of first notification by the Contractor to the Authority that it does not accept all of the Authority's amendments, the matter shall be resolved, and the final form Annual Reconciliation Report determined, in accordance with Clause 13 (*Dispute Management*).
- 6.14.3 The amount of expenditure and accruals reported against each Funding Limit shall be reduced by the amount of Category II Revenue reported against the relevant Funding Limit. The Contractor shall report Category II Revenue.
- 6.14.4 Within fourteen (14) Calendar Days of the agreement or determination of the Agreed Reconciliation report pursuant to Clause 6.14.2 (*Reports*) above, the Authority shall determine whether or not the Contractor has complied with Clause 6.13.1 (*Funding Limits*) and, if the Contractor has not complied with Clause 6.13.1 (*Funding Limits*), the Authority will serve a Demand on the Contractor pursuant to Clause 11.8 (*Demands*).
- 6.14.5 The Contractor shall provide any information requested by the Authority that enables the Authority to comply with its State Aid reporting obligations to the Department of Business, Enterprise and Regulatory Reform.

6.15 Cost Transparency and Auditing

- 6.15.1 At any time, the Authority or the Authority's Agents may choose to exercise the rights set out in Clause 4.5 (*Inspection and Audit*) to audit the Contractor's determination of Costs as Allowable Costs or Disallowable Costs, the Contractor's claims for reimbursement of Allowable Costs, costs expended in the proper performance of the Extended ESC Task, or the reconciliation between payments made and accruals.
- 6.15.2 The Contractor shall adopt a system of cost transparency and open book accounting which provides for the cost components, cost levels and cost build up and calculation for each and every item of cost that is used on the formulation of the prices and sums under this Contract, including those relating to Subcontracts, which relate to the Contractor's performance of its obligations under this Contract to be calculated and made available to the Authority. The Contractor shall, at the request of the Authority, make such of its records available to the Authority as are necessary for the Authority to verify that a system of cost transparency has and is being adopted. The Contractor shall ensure that its Subcontractors also comply with such cost transparency and reporting provisions by including such provisions in its Subcontracts. The Authority shall have the right of access to the build up and calculations for each and every item of cost that is used in the formulation of the prices and sums under this Site M&O Contract. The Authority shall have the right to audit the Contractor's Subcontractors and Affiliates on the same basis.

6.16 Reconciliation for Mid-Year Termination

- 6.16.1 If the last day of the final Contract Year is any day other than 31 March (or if the Authority exercises its Call Option under the provisions of the Parent Body Agreement), the Authority shall require the Contractor to produce an Annual Reconciliation Report (subject to any modifications necessary to deal with mid-year termination, where relevant) showing the information listed in Clauses 6.13.2(A) to 6.13.2(G) (*Funding Limits*) above for the Contract Year up to the date of termination, within sixty (60) Calendar Days of such date of termination.
- 6.16.2 The Contractor shall propose an equitable apportionment of the Annual Site Funding Limit for the then current Contract Year based on progress as against the costs, scope and schedule in the then current Contract Year of the LTP in accordance with Paragraph 6 (*Accounting Basis*) of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*).
- 6.16.3 The Contractor and the Authority shall comply with the provisions of Clauses 6.14.2, 6.14.3 and 6.14.4 (*Reports*).
- 6.16.4 Within fourteen (14) Calendar Days of agreement or determination of the Annual Reconciliation Report the Authority shall, acting reasonably, determine:
- (A) the amount of Incentive Fee to which the Contractor is entitled;
 - (B) any amount in respect of the performance of the Extended ESC Task to which the Contractor is entitled;
 - (C) any other amount to which the Contractor is entitled pursuant to prior written agreement with the Authority;

in all cases taking account of the profile of the PBIs in the context of mid-year termination of the Contract and of the Annual Reconciliation Report agreed or determined pursuant to Clause 6.16.3 (*Reconciliation for Mid-Year Termination*).

6.16.5 Within fourteen (14) Calendar Days of the agreement of amounts payable to the Contractor as listed in Clause 6.16.4 (*Reconciliation for Mid-Year Termination*), the Authority shall calculate the Year End Sum in accordance with Clause 6.12.6 (*Payments to Parent*). If the Year End Sum is a positive figure then the Authority shall pay an amount equal to the Year End Sum into the Contractor's Fee Account within thirty (30) Calendar Days of the Authority's calculation of the Year End Sum. If the Year End Sum is a negative figure then the Authority shall serve a Demand on the Parent Body Organisation requiring that the Parent Body Organisation pays an amount equal to the Year End Sum to the Authority within thirty (30) Calendar Days of receipt of such Demand.

6.16.6 Notwithstanding the termination of this Contract or the Parent Body Agreement (as applicable), the Authority hereby gives its consent to the Contractor paying the Year End Sum (if a positive figure) to the Parent Body Organisation by any means which the Contractor thinks fit and proper.

6.17 **Taxation**

6.17.1 **Tax - general**

- (A) The Contractor agrees to take all reasonable actions to meet its Taxation compliance obligations, and in particular to assist in the reduction or elimination of any irrecoverable Taxation.
- (B) The Contractor agrees not to act in any way inconsistently with the Tax principles set out in this Contract

6.17.2 **Corporation Tax**

The Contractor:

- (A) agrees to prepare and submit to the HM Revenue and Customs corporation Tax computations on the basis of the principles agreed between the HM Revenue and Customs and the Authority in the COP 10.
- (B) undertakes not to seek agreement from the HM Revenue and Customs to a treatment of any item in the corporation Tax computations which is inconsistent with the COP 10, unless the Authority expressly consents in writing;
- (C) shall produce a Tax pack in respect of the accounting records maintained by the SLC on behalf of the Authority in the form and to the frequency and timescales required by the Authority and respond to any queries on a timely basis such that the Authority is able to meet its Taxation obligations.

6.17.3 **VAT**

- (A) The Contractor agrees to charge VAT, issue VAT invoices and comply with VAT compliance obligations on the basis of the VAT Agreement and in particular:

- (1) agrees to register and maintain registration for the purposes of the VATA;
 - (2) agrees properly to charge VAT and issue VAT invoices in respect of supplies made to Third Party customers;
 - (3) agrees properly to charge VAT and issue VAT invoices in respect of the reimbursement of Allowable Costs by the Authority;
 - (4) agrees properly to charge VAT and issue VAT invoices and credit notes as appropriate in respect of the Incentive Fee;
 - (5) agrees properly to prepare and submit VAT returns on a timely basis to the Taxation Authority and to seek recovery as far as possible of VAT incurred in respect of goods and services supplied to the Contractor on the VAT return form covering the period in which VAT invoices are issued to the Contractor by Third Parties regardless of when those VAT invoices are posted to the Contractor's accounting system; and
 - (6) agrees to apply to the Taxation Authority within thirty (30) Calendar Days of the end of the competition process for an import VAT and duty deferment guarantee under the Simplified Import VAT Accounting regime and to liaise with the Authority to ensure that the application is processed as quickly as possible.
- (B) The Authority shall charge VAT in respect of the fee for the licence of the Authority IP to the Contractor, and shall properly issue VAT invoices in respect thereof.
- (C) The Authority warrants that it has elected to waive exemption from VAT in accordance with the provisions of Paragraph 2 of Schedule 10 to VATA in respect of the Site.

6.17.4 **Withholding Taxes**

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

6.17.5 **Employee Taxes**

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

6.17.6 **Tax Returns**

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

6.17.7 **CISR**

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

6.17.8 **Research and Development Tax Reliefs**

- (A) The Contractor shall take all actions reasonably necessary to obtain and maximise any research and development tax relief (including, for the avoidance of doubt, any payment from HM Revenue and Customs) that is or becomes available to the Contractor, any Subcontractor or Sub-Subcontractor including ensuring that:
- (i) where research and development activity is undertaken by the Contractor which qualifies for research and development tax relief, the Contractor records in sufficient detail all costs and expenditure relevant to the relief so as to allow and maximise a valid claim to HM Revenue and Customs in relation to the full amount of the expenditure;
 - (ii) where research and development activity is carried out by a Subcontractor or by a Sub-Subcontractor, the pricing of the relevant Subcontract or Sub-Subcontract (as applicable) reflects any research and development tax reliefs available to the Subcontractor or the Sub-Subcontractor (as applicable);
 - (iii) the Contractor makes a claim for the relief at the same time as submitting its corporation tax return in respect of the period in which the relief may be claimed and submits such return within the requisite timescale to avoid any interest or penalty.
- (B) The Contractor shall inform the Authority of any benefit anticipated or received as a result of research and development tax reliefs and in the case of research and development activity undertaken by the Contractor which qualifies for research and development tax relief, the Contractor shall:

- (i) calculate the anticipated benefits when it prepares estimates and revised estimates of corporation tax liability for the relevant Contract Year in order to determine the level of the payments which it is to make to HM Revenue and Customs on account of corporation tax; and
 - (ii) notify the Authority of the level of such benefits each time that such estimates are made and also as and when the relevant return is submitted to HM Revenue and Customs.
- (C) Following the agreement by HM Revenue and Customs of the Contractor's research and development claim (including any right to a payment of an associated tax credit), the amount of the claim or right to payment shall be compared to the amount claimed in the relevant return. If the research and development tax relief (including any right to a payment of an associated tax credit) in the relevant return differs from that agreed by HM Revenue and Customs, then within 30 Calendar Days of the agreement with HM Revenue and Customs the Contractor on the Authority (as applicable) reimburse the other Party (as applicable) by including such debit or credit in the relevant Monthly Invoice to ensure that the Authority has received or will receive [REDACTED] of:
 - (i) the tax saved as a result of the use or set-off of the said relief (or which would have been saved but for any other claim made by or on behalf of the Contractor); or
 - (ii) the sum which will be received from HM Revenue and Customs in respect of a payment of an associated tax credit (or which would have been received on making a claim but for it being used or set-off).
- (D) For the purposes of this Clause 6.17.8 (*Research and Development Tax Reliefs*), Tax shall not be treated as having been "saved":
 - (i) (to the extent that the research and development tax relief is not a right to a payment of a tax credit), until the last date upon which the Contractor or any person to whom the Contractor may surrender tax losses would have been obliged to make an actual payment of Tax (which it would otherwise have had to pay but for this tax relief or any other claim made by it or on its behalf) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax; and
 - (ii) (to the extent that the research and development tax relief is a right to a payment of a tax credit), until the date on which the Contractor receives or would but for any other event have received cleared funds in respect of such repayment had a claim been made.
- (E) For the purposes of this Clause 6.17.8 (*Research and Development Tax Reliefs*), the Contractor shall be deemed to use any available research and development relief (and any loss created as a result of claiming any such relief) in advance of all other tax reliefs and/or losses available to it and, to the extent that the Contractor surrenders tax losses to any person, the losses surrendered shall be deemed to include any unutilised research and

development tax relief and shall be considered to be utilised at the time that the recipient is next obliged to make an actual payment of Tax (which it would otherwise have had to pay but for the surrender of the tax losses) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

- (F) This Clause 6.17.8 (*Research and Development Tax Reliefs*) shall continue to apply for up to a period of 10 years following the termination of this Contract but only to the extent that it relates to research and development tax relief which the Contractor claims or is entitled to claim in respect of expenditure incurred prior to the date of termination of this Contract.

6.18 Regularity, Propriety, Value for Money and Managing Public Money

The Contractor shall procure that the board of directors of the Contractor and Nominated Staff have within a period of twenty (20) Working Days from the Commencement Date read and confirmed their understanding in writing of the financial environment within which the Authority, as a Non Departmental Public Body, operates, as detailed in the documents referred to in Schedule 14 (*Regularity, Propriety, Value for Money and Managing Public Money*).

7. REAL ESTATE AND ASSET MANAGEMENT

7.1 Right to use Authority Assets

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

- (A) to use the Authority Assets; and
- (B) to sell Authority Assets in accordance with the terms of the Customer Contracts to enable the Contractor to:
 - (1) perform its obligations under this Contract; and
 - (2) discharge its obligations pursuant to the Nuclear Site Licence and all other relevant Regulatory Requirements; and
 - (3) use the Authority Assets for any other use that the Authority has consented to in writing.

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

7.1.3 Nothing contained in this Contract shall imply or warrant that the Site may (whether under statute or otherwise) be used for any purpose for which the Contractor uses or intends to use the Site.

7.2 Objects of Antiquity or Value

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

7.3 **Condition of Authority Assets**

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

7.4 **Use of Authority Assets**

7.4.1 The Contractor shall not, without the prior written consent of the Authority, use the Authority Assets other than in fulfilment of its obligations under this Contract, applicable Law and Regulatory Requirements.

7.4.2 The Authority shall be entitled to require that:

(A) any movable Authority Asset be redeployed for use on behalf of the Authority at any place outside the Site provided that such redeployment will not impede or prevent the Contractor from performing its obligations under this Contract; and/or

(B) the Contractor utilise any other movable asset deployed to the Site by the Authority in the Contractor's performance of its obligations under this Contract.

7.4.3 The care and maintenance of any Authority Asset redeployed pursuant to Clause 7.4.2(A) (*Use of Authority Assets*) above shall be the responsibility of the Authority until such time as the Authority Asset is returned to the Site. The care and maintenance of any other movable asset deployed to the relevant Site pursuant to Clause 7.4.2(B) (*Use of Authority Assets*) above shall be the responsibility of the Contractor until the Authority procures the removal of such movable asset from the Site.

7.5 **Maintenance of Site and Authority Assets**

7.5.1 The Contractor shall maintain the Site in accordance with the provisions of the LTP and shall maintain, service and repair the Authority Assets in accordance with the Contractor's Internal Procedure relating to asset management.

7.5.2 The Contractor shall maintain a current and accurate Site Maintenance Register and supply a copy of that register to the Authority upon request.

7.5.3 The Contractor shall maintain the Asset Register as current and accurate and shall allow the Authority to inspect the Asset Register at any time upon reasonable notice.

7.5.4 The Contractor will throughout the Term appoint and keep appointed a suitably qualified person who shall have been previously approved by the Authority (such approval not to be unreasonably withheld) to manage day to day property issues relating to the Site.

7.5.5 The Property Manager shall (inter alia):

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

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

7.6 Necessary Consents

- 7.6.1 The Contractor shall be required to maintain and procure a Nuclear Site Licence and Environment Agency licences, authorisations, permits or consents or any other licence or permit necessary to enable it to access, occupy and use the Site for the purpose of fulfilling its obligations under this Contract.
- 7.6.2 Save as provided in Clause 7.6.1 (*Necessary Consents*) above, the Contractor shall only be obliged to use reasonable endeavours to procure any Consent necessary for the purpose of fulfilling its obligations under this Contract.
- 7.6.3 The Authority will provide reasonable assistance to the Contractor in the procuring of any Consent.

7.7 Right to Acquire New Assets

- 7.7.1 New Assets acquired by the Contractor in performing the Contract shall be acquired in the name of the Authority and shall pass into the immediate ownership of the Authority and become Authority Assets.
- 7.7.2 Upon acquiring any New Assets, the Contractor shall promptly and accurately record such acquisition(s) on the Asset Register.
- 7.7.3 Any New Assets must be purchased in accordance with the requirements of Schedule 5 (*Subcontracting/Procurement Schedule*).

7.8 Customer Contracts

- 7.8.1 Without prejudice to Clause 3.6.3 (*Authority's right to instruct*) and Clause 7.1.3 (*Right to use Authority Assets*), if, at the Commencement Date, the terms of any Customer Contract provide to the Customer (and/or an agent of the Customer) rights of access to and use of the Authority Assets, if the Customer (and/or an agent of the Customer) wishes to exercise such rights, the Authority shall allow the Contractor to fulfil its obligations under such Customer Contract by, upon notice from the Contractor to the Authority, permitting the Customer (and/or an agent of the Customer) such access and such use required under the terms of the relevant Customer Contract subject always to the applicable Law and Regulatory Requirements.
- 7.8.2 If a Customer Contract provides for the transfer of title in Authority Assets to the Customer, the Contractor shall request the Authority's prior written consent to such transfer of title in accordance with the terms of the Customer Contracts.

7.9 Contractor's obligations relating to the Site

The Contractor shall observe and perform the obligations set out in Schedule 18 (*Contractor's Obligations in Relation to the Site*) and shall observe and perform the terms of the lease entered into between the Authority and the Contractor on or about the date of this Contract (the "**Lease**") and any subsequent grants of lease(s) pursuant to the Lease.

8. INTELLECTUAL PROPERTY

8.1 Licence of Authority IP to Contractor

8.1.1 The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty-free licence of the Authority IP to use during the Term for the purpose of fulfilling its obligations under this Contract in consideration of a fee of [REDACTED] per annum. The Contractor shall have the right to sub-license the Authority IP to Subcontractors approved by the Authority for use in performance of their Subcontracts, but shall have no other rights to sub-license without the prior written approval of the Authority (such approval not to be unreasonably withheld).

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

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

8.2 Payment of Licence Fee

8.2.1 The fee payable in Clause 8.1 (*Licence of Authority IP to Contractor*) above is a VAT exclusive amount and is payable in advance by way of one payment on 1 April in each Contract Year (the first payment being due on the Commencement Date).

8.3 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

8.3.1 Any IP made available to the Contractor by the Parent Body Organisation for the purpose of fulfilling its obligations under this Contract whether such IP is owned by the Parent Body Organisation or licensed to the Parent Body Organisation with appropriate sublicense rights, ("**Parent IP**") shall also be, and is hereby, licensed in perpetuity to the Authority on a non-exclusive basis in its current application as of the date of commencement of this Contract for utilisation in the Authority Field of Use without payment of royalty fees (except to the extent otherwise agreed) and then sub-licensed in perpetuity by the Authority to the Contractor without payment of royalty fees. Subject to the Parent Body Organisation's consent (such consent not to be unreasonably withheld or delayed), the Authority shall have the right to sub-license the Parent IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use on any Designated Sites without payment of royalty fees who shall be entitled to grant Sub-licences to their Subcontractors for use in relation to their activities falling within the Authority Field of Use, without payment of royalty fees. The Authority's right to use and sub-license the Parent IP shall remain in force both during the term of this Contract and after this Contract has expired or has been terminated until the Authority reasonably

determines that the Parent IP is no longer needed in relation to any Authority sites for which the Authority has obtained the rights to use the IP.

- 8.3.2 Any Parent IP that is directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP shall also be licensed in perpetuity to the Authority on a non-exclusive basis for utilisation in the Authority Field of Use without payment of royalty fees (except to the extent otherwise agreed). The Authority shall have the right to sub-license such Parent IP to the Contractor without payment of royalty fees. The Authority shall have the right to sub-license such Parent IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use without payment of royalty fees who shall be entitled to grant Sub-licences to their Subcontractors for use in relation to their activities falling within the Authority Field of Use, without payment of royalty fees. The Authority's right to use and sub-license the Parent IP shall remain in force both during the term of this Contract and after this Contract has expired or has been terminated until the Authority reasonably determines that the Parent IP is no longer needed to enable the use of any Developed IP.

Licence of new or additional Parent IP

- 8.3.3 If during the Term of this Contract, the Parent Body Organisation wishes to make available to the Contractor, for the Contractor's use at the Site to fulfil its activities falling within the Authority's Field of Use, new or additional Parent IP beyond such Parent IP made available to the Contractor as at the Commencement Date, such new or additional Parent IP shall be licensed in accordance with this Clause 8.3 (*IP Contributed by Parent Body Organisation*).

Licensing of Parent IP contained in Developed IP

- 8.3.4 For the avoidance of doubt, Parent IP that is contained in or forms the basis or background of any IP developed by or on behalf of the Contractor (including by Subcontractors) or is otherwise required for the use of such Developed IP, either during the term of this Contract or after this Contract has expired or terminated shall, with respect to such Parent IP, be treated for licensing purposes in a manner consistent with this Clause 8.3 (*IP Contributed by Parent Body Organisation*).

Sublicensing of Parent IP

- 8.3.5 The Contractor shall have the further right to sublicense Parent IP licensed to it under this Clause 8.3 (*IP Contributed by Parent Body Organisation*) to Subcontractors approved by the Authority for use in the performance of their Subcontracts. Such sublicense of Parent IP to the Contractor's Subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the Parent Body Organisation and the Contractor's follow-on licence from the Authority and for the avoidance of doubt shall be without payment of royalty fees.

Infringement of Parent IP by Third Parties

- 8.3.6 In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 8.3 (*IP Contributed by Parent Body Organisation*), the Contractor, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall take

such reasonable direction as the Parent Body Organisation may provide for purposes of the Parent Body Organisation's response to such infringement or suspected infringement.

Use of unlicensed Parent IP

8.3.7 If the Contractor uses IP for the purposes of fulfilling its obligations in relation to the Site under this Contract where that IP is owned by or is licensed to the Parent Body Organisation (with appropriate sub-licence rights) but has not been licensed to the Authority for the Authority Field of Use, a retrospective licence for such use will be deemed to be granted to the Authority to the extent permitted under the sub-licence rights granted by the Parent Body Organisation under this Clause 8.3 (*IP Contributed by Parent Body Organisation*). The Authority will have the same rights as it has in relation to Parent IP under this Clause 8.3 (*IP Contributed by Parent Body Organisation*).

8.3.8 Without prejudice to Clause 8.3.1 (*Licence to Authority and Contractor*) above, the Contractor shall implement such procedures and systems as are reasonably required and agreed with the Authority to identify and track any Parent IP that is made available (whether at the Commencement Date or at any time during the term of this Contract) by the Parent Body Organisation to which there are limitations on the Authority's ability to exploit, use or licence such IP. Where such IP has not been identified, and tracked (and/or the Authority has not been notified of such limitations) then the Authority may use, exploit and license such IP without further restrictions and the Contractor shall indemnify the Authority in full in respect of any Third Party claim or action that the Authority's (or its licensees' claim or action that the Authority's (or its licensees') use, exploitation and/or licensing of such IP infringes that Third Party's rights.

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

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

Ownership by Authority of Developed IP created by the Contractor

8.4.1 Without prejudice to Clause 8.4.1A (*Ownership by Authority of Developed IP created by the Contractor*), the Authority shall own any Developed IP subject to any pre-existing rights of Third Parties and of the Parent Body Organisation. The Contractor hereby assigns to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the date hereof.

8.4.1A Developed IP which the Contractor is required to own in accordance with Law shall be owned by the Contractor.

Ownership of Developed IP by the Authority

8.4.2 Without prejudice to Clause 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*) the Authority shall own any Developed IP which the Authority, having regard to any views of ONR, reasonably, determines:

(A) raises or which may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site); and/or

(B) is of Strategic Interest to the Authority.

8.4.3 Subject to Clause 8.4.1.A (*Ownership by Authority of Developed IP created by the Contractor*), as between the Authority and the Contractor the Authority shall own any and all output including information, results, test data, safety cases and other reports obtained by and arising from the application and use of any IP including Developed IP.

Ownership of Developed IP created by or on behalf of Subcontractors

8.4.4 Save as may be otherwise agreed by the Authority in accordance with Clause 8.4.5 (*Authority Consent to alternative IP terms in Subcontracts*), Developed IP shall be owned by the Authority and the Contractor shall procure that the Subcontractor assigns to the Authority all right, title and interest in such Developed IP created by the Subcontractor on or at any time after the date of this Contract.

Authority consent to alternative IP terms in Subcontracts

8.4.5 The Authority acknowledges that it may be appropriate, in certain circumstances detailed in IP Commercial Guidance, for the Contractor to consider in respect of such Developed IP that falls outside the provisions of Clauses 8.4.2 (*Ownership of Developed IP by the Authority*) and 8.4.3 (*Ownership of Developed IP by the Authority*) whether a proposed Subcontract should contain alternative terms with regard to the ownership of and rights to IP. The Contractor may give written notice to the Authority (in a form approved by the Authority) to request the Authority to approve its alternative recommendation for the ownership of and rights to IP in respect of a proposed Subcontract on the basis that it is preferable (from the Contractor's perspective) to adopt an alternative IP solution for the proposed Subcontract to that required by this Clause 8.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*). Following receipt of such notice, the Authority, in consultation with the Contractor, shall, at its reasonable discretion, approve or reject the Contractor's recommendation, as soon as reasonably practicable. The Authority and the Contractor shall comply with the provisions of the IP Commercial Guidance when implementing the provisions of Clause 8 (*Intellectual Property*).

Access to and use of information by the Authority

8.4.5A Subject to the provisions of Clause 10 (*Confidentiality, Security and Compliance with Law*) and without prejudice to the provisions of Clause 4.2

(*Records*) and Clause 4.5 (*Inspection and Audit*) the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by the Contractor, save to the extent prohibited by applicable law or any obligation of confidence imposed on the Contractor by an agreement entered into by the Contractor in accordance with this Contract. For the avoidance of doubt, information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any Nominated Staff unless such information is used by the Nominated Staff or such personnel in relation to the Site or this Contract.

- 8.4.5.B Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 4.2 (*Records*) and Clause 4.5 (*Inspection and Audit*), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by any Subcontractor during the course of carrying out obligations under the relevant Subcontract, that is part of the Developed IP created by the Subcontractor, or is reasonably necessary for the purpose of using, exploiting or licensing the Developed IP. For the avoidance of doubt, information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any Nominated Staff unless such information is used by the Nominated Staff or such personnel in relation to the Site or this Contract.

Further Assurance

- 8.4.6 In respect of any Developed IP owned by the Authority pursuant to Clauses 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 8.4.2 (*Ownership of Developed IP by the Authority*), 8.4.3 (*Ownership of Developed IP by the Authority*) and 8.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*), the Contractor shall (and shall procure that any Subcontractor shall) execute such further documents and do such further acts as the Authority reasonably requires to give full effect to the terms of this Clause 8 (*Intellectual Property*) and perfect the Authority's title to any such Developed IP.

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

- 8.4.7 Without prejudice to Clause 8.4.5 (*Authority consent to alternative IP terms in Subcontracts*) the Contractor shall procure that any Subcontractor identifies and declares to the Contractor prior to concluding a Subcontract any Background IP. In respect of any such Background IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use and exploit the Background IP within the Authority Field of Use together with the right to license such IP to any Third Party including any other SLC without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor all for the purpose of using, exploiting or licensing Developed IP within the Authority Field of Use.

Licence to the Authority of IP licensed to the Subcontractor

- 8.4.8 Without prejudice to Clause 8.4.5 (*Authority consent to alternative IP terms in Subcontracts*) the Contractor shall procure that any Subcontractor identifies and

declares to the Contractor prior to concluding a Subcontract any IP that is licensed to the Subcontractor which relates to deliverables under that Subcontract, is to be used in the performance of the Subcontract and which could be reasonably judged necessary for the Authority, the Contractor or any licensee of the Authority or the Contractor to use or exploit the Developed IP. In respect of any such IP the Contractor shall procure that the Subcontractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use and exploit the Developed IP within the Authority Field of Use together with the right to sub-license that IP to any Third Party including any other SLC for the same purpose without the consent of the licensor or Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the licensor. Where such rights cannot be procured, the Contractor shall inform the Authority and the Authority shall determine whether the Subcontract should be entered into and, if so, on what terms.

Licence of Developed IP from Subcontractor to Authority

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

8.4.10 Not used.

Contractor's Notification of Developed IP

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

Use of Developed IP by the Subcontractor

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

Licence to Parent Body Organisation

8.4.13 Subject to the reasonable terms of the Authority (which may include payment of reasonable royalties or fees), the Authority may grant to the Parent Body Organisation a world-wide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority's Field of Use

any Developed IP which vests in the Authority pursuant to Clauses 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 8.4.2 (*Ownership of Developed IP by the Authority*), 8.4.3 (*Ownership of Developed IP by the Authority*) or 8.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) but not, for the avoidance of doubt, Developed IP which is of Strategic Interest to the Authority, provided that where the basis or background of the Developed IP can be demonstrated to be Parent IP, such licence to the Parent Body Organisation shall be on an exclusive basis. The Authority shall execute such further documents and do such further acts as the Parent Body Organisation reasonably requires (at the Parent Body Organisation's expense) to give full effect to the terms of this Clause 8.4.13 (*Licence to Parent Body Organisation*).

Exclusion of Parent IP from Developed IP

8.4.14 For the avoidance of doubt Developed IP created by or on behalf of the Contractor (including Subcontractors) and which vests in the Authority pursuant to Clause 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), Clauses 8.4.2 (*Ownership of Developed IP by the Authority*) and 8.4.3 (*Ownership of Developed IP by the Authority*) or Clause 8.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) above shall exclude any Parent IP under Clause 8.3 (*IP Contributed by Parent Body Organisation*) or any Third Party IP under Clause 8.7 (*Third Party IP*) that may form the basis or background of such Developed IP.

Protection of Developed IP

8.4.15 Without prejudice to Clause 8.4.5 (*Authority consent to alternative IP terms in Subcontracts*), where any Developed IP vests in the Authority pursuant to Clauses 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 8.4.2 (*Ownership of Developed IP by the Authority*) or 8.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*), the Contractor shall seek (and shall use its reasonable endeavours to procure that any relevant Subcontractor seeks) reasonable and necessary protection in respect of such Developed IP by way of patent applications or otherwise as the Authority may reasonably direct, at the Authority's cost. The Contractor shall keep the Authority advised as to all developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

8.4.16 The Contractor warrants (and shall use its reasonable endeavours to procure that any Subcontractor warrants) that the use and licensing of any Developed IP for its intended purpose (and in accordance with the terms of any relevant licence granted pursuant to this Contract) shall not infringe the IP rights of any Third Party. The Contractor warrants that it shall take all reasonable, steps that are necessary to ensure that it does not infringe the IP rights of any Third Party.

Register of IP

8.4.17 The Contractor shall (and shall use its reasonable endeavours to procure that any Subcontractor shall) maintain an up to date register of the details of all Developed IP including details of the owner of such Developed IP, and the terms on which any Developed IP is licensed by the Contractor (or Subcontractor, as the case may be) to any Third Party.

8.4.18 The Contractor must not (unless it has the Authority's express prior written consent) allow any IP to be introduced to the Site in any manner whatsoever, unless the Contractor owns or has been granted a licence to use and exploit that IP at the Site in accordance with the provisions of this Contract and the IP Commercial Guidance.

8.5 **Infringement of IP owned by the Authority**

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

- (A) actual, suspected or threatened infringement of any of the IP owned by the Authority (including Developed IP which vests in the Authority pursuant to Clause 8.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*) above) ("**Authority Owned IP**"); or
- (B) allegation, complaint, claims, actions or proceedings made, raised or threatened by any Third Party that Authority Owned IP infringes the rights of any Third Party.

8.5.2 In the case of any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP:

- (A) the Contractor shall, in consultation with the Authority, decide what action, if any, to take including the bringing of proceedings in the name of the Authority;
- (B) the Contractor shall, subject to the Authority's approval (not to be unreasonably withheld or delayed), have control over and conduct of any such claims and proceedings;
- (C) the Contractor shall keep the Authority informed as to all developments and steps taken by it or by any Third Party in relation to any infringement or suspected infringement;
- (D) the Contractor shall not make any admission other than to the Authority and the Authority will provide the Contractor with all assistance as it may reasonably require and request in connection with the Contractor conduct of any claims, actions or proceedings. Such assistance may include the Authority at its cost, agreeing to be joined as a party in any such claims, actions or proceedings brought by the Contractor pursuant to Clause 8.5.1(B) (*Infringement of IP owned by the Authority*); and
- (E) any award of costs or damages or other compensation payment recovered in connection with any of the matters in Clause 8.5 (*Infringement of IP owned by the Authority*) shall be for the account of the Authority as Category I Revenue.

8.6 **Not used.**

8.7 **Third Party IP**

8.7.1 In the event that the Contractor wishes to use third party IP for the purpose of fulfilling its obligations in relation to the Site under this Contract ("**Third Party**

IP") it shall discuss with the Authority whether the Authority wishes to have a licence of the Third Party IP. In the event that the Authority indicates a desire to have such a licence the Contractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enable the Authority to use and to sub-license to the Contractor the Third Party IP and, if the Authority indicates a further desire, the Contractor shall use all reasonable endeavours also to procure for the Authority, the right to sub-license the Third Party IP to other site licensee companies for use in relation to activities falling within the Authority Field of Use on any other Designated Sites. The Contractor also shall use all reasonable endeavours to procure that any licence from the Third Party to the Authority shall remain in force until the Authority reasonably determines that the Third Party IP is no longer needed in relation to the carrying out of its functions in relation to the Site and, where applicable, any other Designated Site. For the avoidance of doubt this Clause 8.7.1 (*Third Party IP*) shall not apply to IP that is licensed by a third party to any Subcontractor to which the provisions of Clause 8.4.9 (*Licence of Developed IP from Subcontractor to Authority*) apply.

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

8.8 Contractor's obligation to protect IP

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

8.9 Use and Sharing of Information and Know-how

Subject to Clause 10 (*Confidentiality, Security and Compliance with Law*), the Contractor shall save to the extent prohibited by applicable Law share information and know-how relating to activities falling within the Authority's Field of Use with the Authority and with Third Parties as directed by the Authority.

8.10 Back-up and Storage

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

8.11 Documents and Other Materials

8.11.1 At the Authority's request the Contractor shall provide to the Authority any documents and other materials in any form and any other articles (including copies) in its possession or control bearing or embodying any of the Authority IP created on or after the Commencement Date subject to any pre-existing rights of third parties and the Parent Body Organisation.

8.11.2 In the event of expiry or termination of this Contract, the Contractor shall preserve and shall deliver-up to the Authority all documents and other materials in any form and all other articles (including copies) in its possession or control bearing or embodying any of the Authority IP subject to any pre-existing rights of Third Parties and the Parent Body Organisation.

9. INFORMATION GOVERNANCE

9.1 NISR and Other Statutory Obligations

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

- (A) the provisions of the NISR and any direction or approval given by the ONR pursuant thereto; and
- (B) any other applicable Law or regulations relevant to information security.

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

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

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

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

9.2 Access to Authority IT Systems and the Site IT Systems

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

9.3 Inspections

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

9.4 Maintenance and Support and Business Continuity

- 9.4.1 Without prejudice to the Contractor's obligations under the LTP, the Contractor shall at all times ensure that the Critical Site IT Systems are maintained and supported in accordance with Good Industry Practice, and in particular, subject to the provisions in Schedule 9 (*Information Technology*), the Contractor shall at all times ensure that all material components of Critical Site IT Systems are of a version which is supported by the manufacturer or supplier thereof.
- 9.4.2 The Contractor shall at all times maintain and put into effect business continuity and disaster recovery plans in respect of the Critical Site IT Systems consistent with ISO/IEC 17799 and Good Industry Practice.

9.5 Changes to Site IT Systems

- 9.5.1 Without prejudice to the Contractor's obligation to comply with the Regulatory Requirements of the ONR in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Critical Site IT Systems, including without limitation:
- (A) the introduction of any new data or voice circuits to or from the Site or new or altered interfaces to external IT Systems;
 - (B) the introduction of any new or altered Software which requires the reconfiguration of any application external to the Site and not maintained by the Contractor, or which alters the interfaces referred to in Clause 9.8 (*Data Interfaces*); and
 - (C) any alteration which has or may have a material impact on safety at the Site and/or the security of a Critical Site IT System.
- 9.5.2 Without prejudice to the Contractor's obligation to comply with the Regulatory Requirements of the ONR in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent (not to be unreasonably withheld or delayed) make any material alteration to any of the Site IT Systems which would adversely affect the separability of the Site IT Systems from any IT Systems owned or operated by the Contractor's Affiliates or any IT Systems external to the Site.
- 9.5.3 Any change to the hardware or Software comprised in a Site IT System shall be reflected in the Asset Register maintained pursuant to Clause 7.5 (*Maintenance of Site and Authority Assets*).
- 9.5.4 Without prejudice to the provisions of Clause 9.5.1 to 9.5.4 (*Changes to Site IT Systems*) above, the Contractor shall actively facilitate the provision of shared services by or on behalf of the Authority pursuant to the Shared Services Project and take part in any Cross SLC Initiatives of the Authority, and shall not materially alter or incorporate into any of the Site IT Systems any hardware or Software which could preclude or prevent the provision of shared services by or

on behalf of the Authority pursuant to the Shared Services Project any Cross SLC Initiatives.

9.6 **Deposit of Source Code**

- 9.6.1 Subject to the provisions of Clause 9.6.4 (*Deposit of Source Code*) below, the Contractor shall adhere to Good Industry Practice in relation to the deposit in escrow of the Source Code of Software packages comprised in the Site IT Systems, having regard to the materiality and criticality of the Software concerned and the ease with which the same could be replaced and, without prejudice to the generality of the foregoing, the Contractor shall, if so requested in writing by the Authority, in respect of one or more such Software packages ensure that the Source Code thereof is deposited in escrow with the Escrow Agent for the benefit of the Contractor and the Authority on the Escrow Terms.
- 9.6.2 The Contractor shall deposit in escrow with the Escrow Agent all bespoke Software customised for the Contractor.
- 9.6.3 The Contractor shall maintain a register of the Software packages deposited in escrow.
- 9.6.4 The Contractor shall ensure that any deposit made in accordance with Clauses 9.6.1 and 9.6.2 (*Deposit of Source Code*) is at all times complete and up to date such that it accurately reflects the relevant Software as the same is installed and used by the Contractor from time to time.

9.7 **Release of Source Code**

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

9.8 **Data Interfaces**

The Contractor shall at all times maintain, and shall produce to the Authority upon request complete descriptions in such format as the Authority reasonably requires of all interfaces through which data relating to the Site is transmitted or received as between the Contractor and any Third Party and/or as between the Site IT Systems located on the Site and any other IT Systems, and of the nature of the data so transmitted, such descriptions to include full definition of the relevant interfaces and the format in which such data is transmitted. During the first six (6) months following the Commencement Date, the Contractor's obligation under this Clause 9.8 (*Data Interfaces*) shall be an obligation to use reasonable endeavours to produce and maintain such descriptions.

9.9 **Transferability of Contracts**

- 9.9.1 The Contractor shall at all times ensure that, save to the extent otherwise agreed in writing by the Authority, each IT Contract entered into on or after the Commencement Date shall provide that the rights and obligations (if any) of the Contractor thereunder which relate to the performance of the Contractor's obligations under this Contract are capable of being separately transferred to the Authority or its nominee without the consent of any counterparty to such IT Contract or other Third Party and without incurring any payment obligation or other additional liability under such IT Contract.

9.9.2 Where, having used all reasonable endeavours to do so, the Contractor is unable to procure the transferability of any IT Contract referred to in Clause 9.9.1 (*Transferability of Contracts*), the Contractor shall consult with the Authority and give the Authority such information in relation thereto as the Authority reasonably requests. The Authority will not unreasonably withhold consent to the Contractor entering into such IT Contract where the Contractor is able to demonstrate to the Authority's reasonable satisfaction that the proposed counterparty thereto will not agree to such transferability on commercially reasonable terms, and there is no acceptable alternative to such counterparty.

10. CONFIDENTIALITY, SECURITY AND COMPLIANCE WITH LAW

10.1 Confidential Information

10.1.1 Subject to Clauses 10.3 (*Disclosure by the Authority*) to 10.9 (*National Audit Office*) below, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other parties (including all documents and information supplied in the course of proceedings under Clause 13 (*Dispute Management*) or the rules of any other dispute resolution procedure to which a dispute is referred in accordance with this Contract) and all documents, materials and other information of any nature relating to a Third Party which it may acquire or have access to directly or indirectly and shall not, except with the written authority of the other Party, publish or otherwise disclose the same otherwise than as expressly provided for in this Contract unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Contract, whereupon to the extent that it is in the public domain this obligation shall cease.

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

10.2 Contractor Right to Request Confidentiality

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

10.3 Disclosure by the Authority

10.3.1 The Authority, having considered any request made by the Contractor under Clause 10.2 (*Contractor Right to Request Confidentiality*) may, save for information which relates solely to the business and operations of the Parent Body Organisation or information which is judged by ONR to be security sensitive (unless the recipient of information pursuant to this Clause 10.3 (*Disclosure by the Authority*) holds all relevant security clearances), disclose any

and all information acquired by it under or pursuant to this Contract (the "**Information**"):

- (A) to the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the Government of the United Kingdom, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales or any department, officer, agent, representative, employee, consultant or adviser of any of them;
 - (B) to the Regulators;
 - (C) to the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
 - (D) to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1 (*Confidential Information*);
 - (E) to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1 (*Confidential Information*);
 - (F) to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1 (*Confidential Information*);
 - (G) for the purpose of:
 - (a) the examination and certification of the Authority's or the Contractor's accounts; or
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (H) to consultees under the Energy Act;
 - (I) to the Authority's legal advisors; and/or
 - (J) to the National Audit Office.
- 10.3.2 So far as is practicable, the Authority shall give the Contractor reasonable notice of any proposed disclosure pursuant to Clause 10.3 (*Disclosure by the Authority*).
- 10.3.3 Notwithstanding the provisions of Clause 10.1 (*Confidential Information*), the Authority may, with the consent of the Contractor (not to be unreasonably withheld), further disclose the Information to persons not referred to in Clause 10.3 (*Disclosure by the Authority*).
- 10.3.4 Any determination as to whether it is reasonable for the Contractor to withhold its consent to disclosure under Clause 10.3.3 (*Disclosure by the Authority*) above shall have regard to:
- (A) compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;

- (B) relevant Government policy;
- (C) the requirement to maintain security;
- (D) the public interest; and
- (E) the requirement to maintain openness and transparency.

10.4 **Publication**

10.4.1 The Authority having considered any request made by the Contractor pursuant to Clause 10.2 (*Contractor Right to Request Confidentiality*) may publish, in such form and at such times as it sees fit, the following:

- (A) amounts of payments to the Contractor and any deductions made from the Contractor under this Contract;
- (B) performance statistics;
- (C) monitoring reports; and
- (D) such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 10.3.4 (*Disclosure by the Authority*) above, including information it includes in its annual report.

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

10.5 **Disclosure by the Contractor**

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

- 10.5.1 the Regulators;
- 10.5.2 the extent required by any Parliamentary obligation, applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 10.5.3 the extent required by insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (*Confidential Information*);
- 10.5.4 the extent required by professional advisers including lenders' financial advisors and auditors upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (*Confidential Information*);
- 10.5.5 the extent required by any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 10.5.1 to 10.5.4 (*Disclosure by the Contractor*) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality

equivalent to that contained in Clause 10.1.1 (*Confidential Information*), to obtaining such an undertaking of confidentiality; and

10.5.6 Subcontractors, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (*Confidential Information*).

10.6 **Delivery Up**

On termination of this Contract or the Parent Body Agreement, the Contractor shall ensure or procure that the Nominated Staff return, within a period of ten (10) Working Days from termination, to the Contractor or the Authority (as applicable) all documents, materials or any information belonging to the Contractor or the Authority (as the case may be).

10.7 **Damages Not the Only Remedy**

Without prejudice to any other rights or remedies that the Authority may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the Contractor of this Clause 10.1 (*Confidentiality*) and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 10.1 (*Confidentiality*) by the Contractor would be more appropriate remedies.

10.8 **Freedom of Information Act**

10.8.1 This Clause 10 (*Confidentiality, Security and Compliance with Law*) is subject to FOIA and EIR together with any guidance and/or codes of practice issued by the Ministry of Justice or the Information Commissioner.

10.8.2 The Contractor shall facilitate the Authority's compliance with its information disclosure obligations under the FOIA and the EIR in the manner provided for in Clauses 10.8.2 to 10.8.6 (*Freedom of Information Act*) and shall also comply with the protocol to be agreed between the Parties from time to time detailing the practical arrangements and procedures to be adopted. If the Authority is required to provide information as a result of a request made to it under the FOIA or EIR and such information is in the possession of either of the Contractor or any of its Subcontractors, the Contractor shall provide such information to the Authority as soon as reasonably practicable. The Contractor shall provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR (or the equivalent provisions of any amended versions or replacements thereof).

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

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

10.8.5 The Contractor acknowledges that the Authority may, acting in accordance with the FOIA or EIR disclose information without consulting the Contractor or the

Authority may, at its sole discretion, elect to consult the Contractor and take its view into account.

- 10.8.6 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 10.8 (*Freedom of Information Act*).
- 10.8.7 In no event shall the Contractor respond to a Request for Information in relation to information that the Contractor is holding on the Authority's behalf unless expressly authorised to do so by the Authority.
- 10.8.8 Where the Contractor receives, and/or any of its Subcontractors receive, a Request for Information held by or on behalf of the Authority, the Contractor shall, and/or procure that the relevant Subcontractor shall, transfer to the Authority any such Request for Information as soon as reasonably practicable.

10.9 National Audit Office

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

10.10 Data Protection Act

- 10.10.1 Each Party to this Contract shall ensure that it complies at all times with the DPA or such other equivalent data protection legislation as may be relevant to its performance of this Contract in respect of all personal data processed by it.
- 10.10.2 In relation to all data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid up-to-date registration or notification under the DPA covering the data processing to be performed in connection with its obligations under this Contract.
- 10.10.3 The Contractor shall, and shall procure that any Subcontractor shall, only undertake processing of personal data reasonably required in connection with the Contractor's obligations under this Contract and shall not transfer any personal data to any country or territory outside the European Economic Area.
- 10.10.4 The Contractor shall not disclose personal data to any Third Parties other than to:
- (A) Employees, Nominated Staff and Subcontractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out its obligations under this Contract; or
 - (B) to the extent required under a court order or applicable Law,
- provided that disclosure under Clause 10.10.4(A) (*Data Protection Act*) above is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 10.10 (*Data Protection Act*) and that the Contractor shall give notice in writing to the Authority of any disclosure of personal data it or a Subcontractor is required to make under Clause 10.10.4(B) (*Data Protection Act*) above immediately it is aware of such a requirement.

- 10.10.5 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data including but not limited to taking reasonable steps to ensure the reliability of Employees and Nominated Staff having access to the personal data and putting into practice and maintaining relevant and appropriate systems and procedures.
- 10.10.6 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and referred to in Clause 10.10.5 (*Data Protection Act*) above. Within thirty (30) Calendar Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the personal data, it is compliant with the DPA.
- 10.10.7 For the purposes of this Clause 10.10 (*Date Protection Act*) the words "**personal data**", "**data controller**" and "**processing**" shall have the meaning given to them in the DPA.

10.11 **Publicity**

10.11.1 **Adverse Publicity**

A Party shall notify the other Party as soon as reasonably practicable of any fact or occurrence of which the notifying Party is aware relating to the Authority, Contractor or the Parent Body Organisation which could in the reasonable opinion of the notifying Party be expected to cause adverse publicity to the Contractor or the Parent Body Organisation in relation to this Contract or to the Authority generally.

10.11.2 **Announcements**

- (A) Subject to the remaining provisions of this Clause, no Party shall release any announcement or despatch any announcement or circular, relating to this Contract unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party.
- (B) Nothing in this Clause 10.11.2 (*Announcements*) shall prohibit any Party from making any announcement or despatching any circular as required by Law or the rules of the UK Listing Authority or of the London Stock Exchange or any other regulatory body in which case, to the extent not inconsistent with legal obligations or the rules of the UK Listing Authority or of the London Stock Exchange, the announcement shall only be released or the circular despatched after consultation with the other Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement or circular.

11. **INDEMNITY, LIABILITY AND INSURANCE**

11.1 **Insurances taken out by the Authority**

- 11.1.1 The Authority shall take out and maintain, on behalf of the Contractor, those insurances which the Contractor is required to take out and maintain by Law, and may in its sole discretion, take out and maintain other insurances which name the Contractor as an insured. The Authority shall also take out and maintain

insurance against liability of the Contractor to any Nominated Staff in respect of death and personal injury.

11.1.2 The Authority shall take out and maintain on behalf of the Contractor, insurances against damage to on-site property of the Subcontractor, provided that the Contractor shall procure that the Subcontractor provides all relevant details (including type, value and quantity) of all on-site property to be insured by the Authority and the Contractor provides such details to the Authority at least thirty (30) Working Days prior to such insurances being required.

11.1.3 To enable the Contractor to comply with its obligations under Clause 11.4 (*Complying with Insurance Policies*) and Clause 11.5 (*Contractor's obligations in respect of Insurance*) below, the Authority shall provide to the Contractor copies of the Authority Insurance policies and of any other relevant policies procured by the Authority or on behalf of the Authority.

11.2 If:

11.2.1 the insurances referred to in Clause 11.1 (*Insurances taken out by the Authority*) become unavailable;

11.2.2 the Authority decides in its sole discretion, to seek, provide and maintain alternative funding for the risks which would have been covered by those insurances referred to in Clause 11.1 (*Insurances taken out by the Authority*); or

11.2.3 for any other reason, the protection or cover available to the Contractor under those insurances referred to in Clause 11.1 (*Insurances taken out by the Authority*) materially diminishes in scope or amount;

then the Authority shall ensure that the Contractor has no greater financial exposure to any liability than as at the Commencement Date.

11.3 If there is any extension and/or increase of the liability and/or obligation or the Contractor to any person pursuant to any amendments made to the provisions of the Nuclear Installations Act 1965, the Authority shall ensure that adequate mechanisms are made available to the Contractor to ensure that there is in place such provision (either by insurance or by some other means) for sufficient funds to be available as required by, and that, so far as possible by funding means, the Contractor is able to meet any such liabilities or obligations pursuant to the Nuclear Installations Act 1965.

11.4 **Complying with Insurance Policies**

11.4.1 The Contractor agrees that it will inform the Authority of any act, occurrence or failure which has occurred and of which it is aware which may:

(A) lead to any claim being made under the Authority Insurances; or

(B) render any of the Authority Insurances void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

11.4.2 The Contractor shall not and shall procure that its Subcontractors shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (in either

case including failure to disclose any fact) as a result of which any of the Authority Insurances may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

- 11.4.3 The Contractor shall not impose upon any Subcontractor any insurance excess or any part of any insurance excess otherwise than as determined in accordance with the insurance excesses notified to the Contractor by the Authority from time to time.

11.5 **Contractor's Obligations in respect of Insurance**

- 11.5.1 The Contractor shall fully cooperate in the procurement by the Authority of insurance including the Authority Insurances as directed by the Authority including, without prejudice to the generality of this Clause 11.5.1 (*Contractor's obligations in respect of Insurance*), carrying out the activities set out in Clauses 11.5.2 to 11.5.4 (*Contractor's Obligations in respect of Insurance*) below.

- 11.5.2 The Authority shall notify the Contractor of the identity of the Authority's nominated insurance broker (the "**Authority's Broker**") (and, if the Authority replaces the Authority's Broker (which it shall be entitled to do in its sole discretion), the Authority shall notify the Contractor of the identity of such replacement). The Contractor shall, at the time specified by the Authority, issue an appointment letter to the Authority's Broker in the form attached at Schedule 10 (*Form of Broker's Appointment Letter*) as such form of letter may be amended by the Authority from time to time and shall copy such letter to the Authority.

- 11.5.3 The Authority shall inform the Contractor of the insurances including the Authority Insurances. The Contractor shall provide the Authority and the Authority's Broker with all facts material to the procurement of the insurances including the Authority Insurances.

- 11.5.4 The Contractor shall notify the Authority and the Authority's Broker immediately on becoming aware of any claim or potential claim on the Authority Insurances or on any insurance taken out by the Authority in relation to the Site, facilities or installations and/or the activities of the Contractor or sub-contractors and shall follow promptly all directions given to it by the Authority and the Authority's Broker in relation to such claim or potential claim including in particular full disclosure of all relevant facts pertaining to the claim or potential claim and assisting the Authority and the Authority's Broker with any review of claims or potential claims history.

11.6 **NOT USED**

11.7 **Disallowable Costs**

- 11.7.1 The Contractor hereby indemnifies the Authority against all Disallowable Costs incurred in any Contract Year.

- 11.7.2 The indemnity given under Clause 11.7.1 (*Disallowable Costs*) is not limited.

11.8 **Demands**

The Contractor hereby agrees that within ten (10) Calendar Days of receipt of a Demand from the Authority setting out the amount claimed by the Authority and the basis of such

claim pursuant to Clause 11.7 (*Disallowable Costs*) or, if later, within ten (10) Calendar Days of resolution of a dispute directly relating to such Demand pursuant to the Dispute Resolution Procedure, (if the determination arising from the Dispute Resolution Procedure is that such amount or, as applicable, any other amount, is payable), the Contractor will pay an amount equal to such Demand (or other amount determined in accordance with the Dispute Resolution Procedure, if relevant) to the Authority.

11.9 No Double Counting

The Authority hereby agrees to reduce the amount of any Demand made pursuant to Clause 11.8 (*Demands*) above by the amount of any Incentive Fee specifically withheld or not awarded, not awarded or reclaimed by the Authority, all in accordance with Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*) in respect of the same action, inaction or wilful default which gave rise both to such non award or reclaim of Incentive Fee and to such Demand.

12. TERMINATION

12.1 Termination Events

This Contract shall terminate as a result of:

- 12.1.1 early termination caused by Contractor Default in accordance with Clause 12.2 (*Contractor Default*);
- 12.1.2 early termination caused by Authority Default in accordance with Clause 12.6 (*Authority Default*);
- 12.1.3 Termination for Convenience by the Authority in accordance with Clause 12.8 (*Termination for Convenience*); or
- 12.1.4 Termination for Long Term Force Majeure in accordance with Clause 1.9 (*Force Majeure*).

12.2 Contractor Default

12.2.1 The following events shall, save where the Contractor is acting in accordance with a direction or instruction from the Authority, give rise to an Authority right to terminate for Contractor Default:

(A) Breach of Contractor Obligations

- (1) a breach by the Contractor of any of its obligations under this Contract;
- (2) a failure by the Contractor to comply with applicable Law or Regulatory Requirements;
- (3) an adverse finding is made against the Contractor by any one or more of the Regulators in relation to the Contractor's performance of its obligations under this Contract;
- (4) a breach by the Contractor of its supply obligations to Customers under the Customer Contracts;

- (5) a failure by the Contractor to comply with the provisions of Clause 5.12 (*Pensions*);
- (6) a failure by the Contractor to comply with the provisions of Clause 10 (*Confidentiality, Security and Compliance with Law*);
- (7) failure to notify the Authority in accordance with Clause 3.5 (*Failure of Performance*),

which, in each case, materially and adversely affects the performance of this Contract; or

- (B) a breach by the Contractor of Security Requirements; or
- (C) the Parent Body Organisation undergoes a Change in Control without having obtained the prior written consent of the Authority to such change; or
- (D) a failure by the Contractor to report to the Authority a breach of the subcontracting requirements set out in Part 2 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) except where the event in question was caused by the Authority failing to reimburse the Contractor for undisputed Allowable Costs pursuant to Clause 6.11 (*Reimbursement*).

(E) **Insolvency**

The occurrence of an Insolvency Event in respect of the Contractor or the Parent Body Organisation except where, in the case of the Contractor, such Insolvency Event was:

- (1) caused by the Authority failing to reimburse the Contractor for Allowable Costs because of the Authority's belief that funds were to be used for a purpose which was fraudulent, otherwise illegal or contrary to public policy, which belief was not proved correct; or
- (2) caused by any failure of the Authority to meet its obligations under this Contract, including its failure to reimburse the Contractor for Allowable Costs pursuant to Clause 6.11 (*Reimbursement*) above.

(F) **Revocation of Licence**

- (1) Any revocation of the Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other material licence or permit held by the Contractor the possession of which is necessary to enable the Contractor to operate the Site; or
- (2) upon receipt of notice by the Contractor of the ONR's (or other relevant body's) intention to revoke such licence or permit where the Contractor has no ability to appeal, challenge or discharge any such intention to revoke;

in either case where such revocation or threatened revocation is not for the sole purpose of issuing a replacement licence to the Contractor.

(G) **Parent Body Agreement**

- (1) The occurrence of a PBO Default, as defined in the Parent Body Agreement; or
- (2) upon the Parent Body Agreement ceasing to be valid and binding on the Parent Body Organisation.

(H) **Assignment**

A failure by the Contractor to comply with the provisions of Clause 1.18 (*Assignment*).

12.3 **Termination for Breach of the Same Type**

12.3.1 Except where the occurrence is caused by the Authority failing to reimburse the Contractor for undisputed Allowable Costs pursuant to Clause 6.11 (*Reimbursement*), if any of:

- (A) a Breach of the Same Type; or
- (B) a failure to pay creditors pursuant to its obligations under Clause 6.11.1 (*Basis of Reimbursement*); or
- (C) a Failure to Protect the Supply Chain; or
- (D) a failure by the Contractor to meet those standards of performance set out in the Balanced Scorecard,

of the same or similar nature has occurred more than twice in any three (3) month period or the Authority (acting reasonably) believes that the Contractor is demonstrating a pattern of behaviour which is reasonably likely to lead to a Contractor Default, and the Contractor fails to rectify the relevant breach or pattern of behaviour within a reasonable period of time then the Authority may serve a notice on the Contractor specifying that it is a formal warning notice ("**Performance Warning Notice**") giving reasonable details of the breach specifying the Authority's concerns and stating that such breach is a breach which, if it or a breach of a similar nature recurs frequently or continues, may result in a termination of this Contract, or requiring the Contractor to take steps to address those concerns by a specified date.

12.3.2 If, following service of such a Performance Warning Notice, the breach specified has continued beyond the specified date or a breach of the same or similar nature has recurred one or more times within the six (6) month period after the date of service, then the Authority may serve another notice on the Contractor ("**Final Performance Warning Notice**"):

- (A) specifying that it is the final warning notice;
- (B) stating that the breach specified has been the subject of a Performance Warning Notice served within the six (6) month period prior to the date of service of the Final Performance Warning Notice; and

- (C) stating that if such failure continues or recurs one or more times within the three (3) month period after the date of service of the Final Performance Warning notice, the same may constitute a Contractor Default with the result that the Contract may be terminated.

12.4 Termination or Remedy for Contractor Default

- 12.4.1 If a Contractor Default has occurred and the Authority wishes to terminate this Contract, the Authority shall serve a termination notice (the "**Authority's Termination Notice**") on the Contractor.
- 12.4.2 The Authority's Termination Notice shall specify the type and nature of Contractor Default that has occurred, giving reasonable details.
- 12.4.3 Any Contractor Default of the type specified in Clauses 12.2.1(E), 12.2.1(F), 12.2.1(G)(2) and 12.2.1(H) (*Breach of Contractor Obligations*) shall be deemed to be incapable of remedy. In the case of any Contractor Default save that of the type specified in Clauses 12.2.1(E), 12.2.1(F), 12.2.1(G)(2) and 12.2.1(H) (*Breach of Contractor Obligations*), the Authority (acting reasonably) may decide whether or not the Contractor Default is incapable or capable of appropriate remedy. The Authority shall specify whether a Contractor Default is incapable of appropriate remedy in the Authority's Termination Notice and, if the Authority has decided that Contractor Default is incapable of remedy or if the Contractor Default is of the type specified in Clauses 12.2.1(E), 12.2.1(F), 12.2.1(G)(2) or 12.2.1(H) (*Breach of Contractor Obligations*), this Contract shall terminate on the date falling thirty (30) Calendar Days after the date of receipt by the Contractor of the Authority's Termination Notice.
- 12.4.4 In the case of any Contractor Default which the Authority (acting reasonably) considers is capable of appropriate remedy, the Authority's Termination Notice shall require the Contractor at the Contractor's option either:
 - (A) to remedy the Contractor Default within thirty (30) Calendar Days of the date of the Authority's Termination Notice (or such longer period as may be agreed by the Authority in its absolute discretion);
 - (B) to propose within thirty (30) Calendar Days of the date of the Authority's Termination Notice and obtain the Authority's approval to a programme to remedy the Contractor Default (the "**Remediation Programme**").
- 12.4.5 If the Contractor Default is not remedied in accordance with Clause 12.4.4(A) or Clause 12.4.4(B) (as applicable) (*Termination or Remedy for Contractor Default*), the Authority shall be entitled to terminate this Contract either with immediate effect or on such period of notice not exceeding twelve (12) months as it reasonably determines to be appropriate. If the Authority terminates on notice, it will use all reasonable endeavours, including liaison with the Regulators, to ensure that the period of notice is as short as possible.

12.5 Remediation Programme

- 12.5.1 The Remediation Programme shall specify in detail how the Contractor Default is proposed to be remedied, the steps required to remedy the Contractor Default and the latest date by which the Contractor anticipates that the Contractor Default will be remedied and any other information reasonably requested by the Authority.

- 12.5.2 Where the Contractor proposes a Remediation Programme in accordance with Clause 12.4.4(B) (*Termination or Remedy for Contractor Default*), the Authority shall have thirty (30) Calendar Days from the date of receipt of the proposed Remediation Programme within which to notify the Contractor whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification shall constitute deemed acceptance by the Authority.
- 12.5.3 Where the Authority notifies the Contractor that it does not accept the Remediation Programme, the Parties shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 13 (*Dispute Management*).
- 12.5.4 Where the Contractor has put forward a Remediation Programme that has been accepted by the Authority or determined by the Authority to be reasonable and the Contractor fails to achieve any element of the Remediation Programme or fails to remedy the Contractor Default within the date specified in the Remediation Programme (as the event may be), or the Remediation Programme is rejected by the Authority as not being reasonable and the Dispute Resolution Procedure does not find against that rejection, then the Authority may terminate this Contract either with immediate effect or on such period of notice as it reasonably determines to be appropriate. If the Authority terminates on notice, it will use all reasonable endeavours, including liaison with the Regulators, to ensure that the period of notice is as short as possible.
- 12.5.5 Where the Authority has issued an Authority Termination Notice in the event of Contractor Default pursuant to Clause 12.4 (*Termination or Remedy for Contractor Default*) which the Authority accepts (acting reasonably) has occurred through no fault of the Contractor, the Authority shall provide reasonable assistance to the Contractor in its discussions with ONR and/or Environment Agency or SEPA as applicable to procure the remedy of such Contractor Default.

12.6 **Authority Default**

- 12.6.1 The following events shall be an Authority Default:

the Authority:

- (A) not funding or reimbursing Allowable Costs (except to the extent that such Costs are treated as Disallowable Costs in accordance with this Contract); or
- (B) failing to make any undisputed payment of Incentive Fee to the Contractor in accordance with Clause 6.11.3 (*Performance Based Incentive Arrangements*),

in each case within thirty (30) Calendar Days of such sum(s) being due and payable; and

- (C) a material breach by the Authority of its obligations under this Contract, including of its obligations set out in Clause 3.3 (*Not wilfully impede*

performance of the Tasks), which materially prevents the performance of the Contractor's obligations under this Contract; and

- (D) termination for Authority Default pursuant to clause 7.4 (*Amendment to NIA 1965*) of the Parent Body Agreement.

12.7 **Termination or Remedy for Authority Default**

- 12.7.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor shall be entitled to serve a termination notice (the "**Contractor's Termination Notice**") on the Authority within twenty-eight (28) Calendar Days of becoming aware of the Authority Default.
- 12.7.2 The Contractor's Termination Notice shall specify the type of Authority Default that has occurred entitling the Contractor to terminate.
- 12.7.3 This Contract will terminate on the day falling thirty (30) Calendar Days after the date on which the Authority received the Contractor's Termination Notice, unless the Authority rectifies the Authority Default within twenty-one (21) Calendar Days of receipt of the Contractor's Termination Notice.
- 12.7.4 Where the Contractor has terminated this Contract for Authority Default, the Authority shall provide reasonable assistance to the Contractor in its discussions with ONR regarding Licence Condition 36 and its discussions with the Environment Agency regarding any applicable authorisation required pursuant to the Environmental Permitting (England and Wales) Regulations (SI 2010/675) with a view to enabling the Contractor to replace the Nominated Staff as soon as is reasonably practicable.

12.8 **Termination for Convenience**

The Authority shall be entitled to terminate this Contract at any time on giving reasonable notice to the Contractor such notice not being a period less than twelve (12) Months ("**Termination for Convenience**").

12.9 **Reasonable Costs on Termination**

In the event of:

- 12.9.1 termination for Authority Default in accordance with Clause 12.7 (*Termination or Remedy for Authority Default*);
- 12.9.2 Termination for Convenience pursuant to Clause 12.8 (*Termination for Convenience*);
- 12.9.3 Termination for Long Term Force Majeure pursuant to Clause 1.9.8 (*Force Majeure*); or
- 12.9.4 termination for an Insolvency Event of the Contractor where such Insolvency Event was caused by any of the events listed in Clause 12.2.1(E) (*Insolvency*); or
- 12.9.5 termination for Authority Default as a result of failure by the Authority to comply with clause 7.4 (*Amendment to NIA 1965*) of the Parent Body Agreement,

the Authority shall pay the Contractor's reasonable costs (proposed by the Contractor and agreed by the Authority) arising directly from such termination of this Contract provided always that the Authority shall not make any payment in respect of:

- (A) the Contractor's loss of profits;
- (B) the Contractor's loss of opportunity; or
- (C) the consequential losses of Affiliates, and

the Contractor complies with its obligations to co-operate with the Authority upon termination of the Contract.

12.10 Accrued Liabilities

Termination of this Contract pursuant to this Clause 12 (*Termination*) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination.

12.11 Return of Working Capital

The Authority shall procure that the Contractor will repay to the Parent Body Organisation any Working Capital plus any interest accruing thereon at the Agreed Interest Rate agreed to be owed to the Parent Body Organisation pursuant to clause 12.11 (*Return of Working Capital*) of the Parent Body Agreement.

13. DISPUTE MANAGEMENT

13.1 Requirement to Refer Disputes

13.1.1 Save as otherwise expressly provided in this Contract including in Clause 13.2 (*Reasonableness of the Authority*), any Dispute arising out of or in connection with this Contract, shall be attempted to be resolved between the Contractor and the Authority. If any such Dispute cannot be so resolved, it shall be resolved in accordance with the Dispute Resolution Procedure attached at Schedule 12 (*Dispute Management Schedule*).

13.1.2 Neither Party shall commence any claim, legal action or proceedings other than in accordance with the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in the English courts.

13.2 Reasonableness of the Authority

13.2.1 In relation to the Clauses and Schedules listed in Clause 13.2.2 (*Reasonableness of the Authority*) below, pursuant to which the Authority shall reasonably determine certain matters, the Contractor may only dispute whether a determination made by the Authority is reasonable. Such Dispute shall be attempted to be resolved between the Contractor and the Authority and if it cannot be so resolved, only the issue of the reasonableness of the Authority's decision may be referred to the Dispute Resolution Procedure. The Authority's determination pursuant to the relevant Clause shall prevail unless and until it is agreed or found to be unreasonable. In the event that the Authority is found to have acted reasonably, the Contractor's costs relating to the reference of the Dispute to the Dispute Resolution Procedure shall be Disallowable and the Authority shall claim its relevant costs from the Parent Body Organisation

pursuant to the Parent Body Agreement. In the event that the Authority is found to have acted unreasonably, the Authority shall bear such costs.

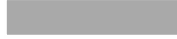
13.2.2 The Clauses and Schedules referred to in Clause 13.2.1 above are:

- (A) Clause 1.1 (*Definitions*) definition of "Escrow Terms" in relation to the escrow terms that the Authority shall specify;
- (B) Clause 2.3 (*No activities outside current Contract Year of LTP*), the Authority's determination as to whether an activity is outside of the LTP;
- (C) Clause 2.10.3 (*Authority Obligations in relation to Inter-SLC Service Contracts*) in relation to the timeframe within which the Authority will instruct the counterparties to Inter-SLC Service Contracts to accept changes to such contracts;
- (D) Clause 2.10.4 (*Compliance*) in relation to the Authority's consideration of impediments to the Contractor's performance of Inter-SLC Service Contracts;
- (E) Clause 3.6.4(F) (*Permitted Activities*) in relation to the Authority considering representations made to it by the Contractor for a Permitted Activity not to be amended, added or withdrawn;
- (F) Clause 3.8 (*Authority Obligations in relation to Inter-SLC Service Contracts*) in relation to the timeframe within which the Authority shall instruct the counterparties to relevant Inter-SLC Service Contracts to accept changes to such contracts;
- (G) Clause 4.4 (*Transfer of Metadata*) in relation to the intervals at which the Contractor shall be required to contribute metadata to the Authority;
- (H) Clause 4.5.1(A) (*Inspection and Audit*) in relation to the Authority and any Authority Agent being entitled to carry out inspection and audits;
- (I) Clause 4.5.2(A) (*Inspection and Audit*) in relation to the Authority and any Authority Agent carrying out inspection and audit activities;
- (J) Clause 4.5.5 (*Inspection and Audit*) in relation to the Authority considering whether to use a different Authority Agent at the Contractor's request;
- (K) Clause 4.5.12 (*Audit Findings and Corrective Action*) in relation to the Authority's reasonable withholding of acceptance to the Contractor's plan for Corrective Action;
- (L) Clause 5.1.2 (*Nominated Staff*) in relation to the Authority withholding consent in relation to withdrawal of Nominated Staff from full time secondment on the Site;
- (M) Clause 5.2.2 (*Key Personnel*) in relation to the Authority withholding consent to organisational changes to Key Personnel who are not Nominated Staff;

- (N) Clause 5.2.3(B)(1) (*Organisational Change*) in relation to the Authority withholding consent as to the suitability and adequacy of replacement Key Personnel or Nominated Staff;
- (O) Clause 5.6.1 (*Authority Approval of Redundancy*) in relation to the Authority withholding consent to any redundancy programme or any other programme involving the reduction of Employee numbers;
- (P) Clause 5.8.2 (*Terms and Conditions of Employment*) in relation to the Authority withholding consent to making changes to HR Internal Procedures;
- (Q) Clause 5.8.3 (*Terms and Conditions of Employment*) in relation to the Authority withholding consent to making changes to the costs incurred by the Authority in relation to Employees;
- (R) Clause 5.11 (*Removal of Contractor or Subcontractor Employees from Site*) in relation to the Authority believing that it is entitled to have Contractor or Subcontractor employees removed from Site;
- (S) Clause 5.12.4(L) (*Authority Rights and Contractor Obligations in Respect of Applicable Schemes*) in relation to the Authority's reasonable withholding of consent to the Contractor making any announcements relating to pensions arrangements;
- (T) Clause 6.6.2 (*Cashflow Forecasting*) in relation to the frequency of cashflow forecasts required to be submitted by the Contractor;
- (U) Clause 6.9 (*Determination of Revenue Category*) in relation to the determination of Revenue categorisation;
- (V) Clause 6.16.4 (*Reconciliation for Mid-Year Termination*) in relation to the determination of amounts to which the Contractor is entitled;
- (W) Clause 7.5.4 (*Maintenance of Site and Authority Assets*) in relation to the Authority withholding consent to the appointment of a person to manage day to day property issues relating to the Site;
- (X) Clause 8.1.1 (*Licence of Authority IP to Contractor*) in relation to the Authority withholding consent to the sub-licensing of Authority IP;
- (Y) Clause 8.5.2(B) (*Infringement of IP owned by the Authority*) in relation to the Authority withholding consent to the Contractor's control and conduct of claims relating to infringement of Authority Owned IP;
- (Z) Not used;
- (AA) Clause 9.5.2 (*Changes to Site IT Systems*) in relation to the Authority withholding consent to the Contractor making any material alteration that would adversely affect any of the Site IT Systems;
- (BB) Clause 9.9.2 (*Transferability of Contracts*) in relation to the Authority withholding consent to the Contractor entering into relevant IT Contracts;

- (CC) Clause 12.3.1 (*Termination for Breach of the Same Type*) in relation to a determination that the Contractor is demonstrating a pattern of behaviour which is likely to lead to a Contractor Default;
- (DD) Clause 12.4 (*Termination or Remedy for Contractor Default*) in relation to whether the Authority has acted reasonably in determining that the Contractor Default is incapable of remedy (Clause 12.4.3), and in relation to whether the Authority has acted reasonably in determining that the Contractor Default is capable of remedy (Clause 12.4.4);
- (EE) Clause 12.5 (*Remediation Programme*) in relation to the Authority's reasonable withholding of acceptance to the Contractor's Remedial Programme (Clause 12.5.2 (*Remediation Programme*)), and in relation to accepting that the Contractor Default has occurred through no fault of the Contractor (Clause 12.5.5 (*Remediation Programme*));
- (FF) Paragraph 5 (*Authority Reviews*) of Part 1 (*Programme Controls*) of Schedule 2 (*Programme Management and Change Procedure*) in relation to the Authority being entitled to carry out reviews;
- (GG) Paragraph 4 (*Process for Sanction and Validation of Work Activities*) of Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) in relation to an Authority determination that a Work Activity or New Work Activity is novel and/or contentious and/or repercussive;
- (HH) Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) other than Paragraph 10 (*Change Directed by the Authority*) and Paragraph 12 (*Changes that the Authority Cannot Refuse*);
- (II) Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) in relation to information required by the Authority regarding proposed Subcontracts or Series of Subcontracts;
- (JJ) Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) in relation to the Authority withholding consent to the Contractor entering into or amending a Subcontract or Series of Subcontracts;
- (KK) Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) in relation to the Authority withholding consent to the exclusion of a flowdown provision identified by the Contractor;
- (LL) Part 2 (*Non-PBI Profit*) of Schedule 6 (*Finance Schedule*);
- (MM) Part 5 (*Costs Principles and Procedure*) of Schedule 6 (*Finance Schedule*);
- (NN) Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*);

SCHEDULE 1
REQUIREMENT/ OUTPUT SPECIFICATION



SCHEDULE 2

Programme Management and Change Procedure

Part 1: Programme Controls

Part 2: Work Activity Management – Financial Sanction & Validation

Part 3: Change Control

Part 1: Programme Controls

1. Overview

This Schedule defines the Authority Policies and Procedures with which the Contractor is obliged to comply. These Authority Policies and Procedures (including the Programme Controls Procedures and Engineering Procedures) set the framework within which the Contractor shall work, requiring the Contractor to produce and maintain Internal Procedures that implement the Authority's requirements and achieve the required outputs.

2. Authority Programme Control Procedures (PCPs)

2.1. The current version of the PCP-M and PCP-M Contractor Annexe are available on the Authority's website at www.nda.gov.uk. The Authority shall promptly notify the Contractor of any changes to such documents.

2.2. The Contractor shall produce and implement Internal Procedures that ensure the requirements of the PCPs are met. Before updating any such Internal Procedures, the Contractor shall inform the Authority of the cost and other material implications of doing so, as well as the cost and other material implications of implementing such updated processes.

2.3. NDA PCPs are listed below.

PCP-01:	Work Breakdown Structures
PCP-01-01:	Work Breakdown Structure Dictionary & Guidelines
PCP-02:	Electronic Data Submissions
PCP-04:	Charging Practice
PCP-05:	Change Control
PCP-07:	Baseline Management
PCP-09:	Cost Estimating
PCP-10:	Risk Management
PCP-11:	Scheduling
PCP-13:	Progress Reporting & Reviews
PCP-17:	Sanction

PCP-M Contractor Annexe

2.4. The Authority may at any time amend the PCPs. If the Authority does amend the PCPs, the Authority shall notify the Contractor of any such changes made under Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).

3. Not used

4. Contractor's Internal Procedures

4.1. Within ninety (90) Calendar Days of the Commencement Date, the Contractor shall ensure that it has in place all such Internal Procedures to satisfy the requirements of the PCPs listed at paragraph 2.2 above. The Contractor shall ensure that the Internal Procedures shall reflect Good Industry Practice.

4.2. Upon the Authority's amendment of any PCP, the Contractor shall amend and reissue any affected Internal Procedures with thirty (30) Calendar Days of the procedure being reissued.

5. Authority Reviews

- 5.1. At any time the Authority shall be entitled to, acting reasonably, carry out reviews in order to test the Contractor's compliance with the PCPs. Such reviews will be carried out in PCP Work Instruction No. 14 (PCPWI-14) (as amended from time to time).

Part 2: Work Activity Management –

Financial Sanction & Validation

1 PURPOSE

The purpose of this Part 2 (*Work Activity Management - Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*) is to set out the Parties' obligations and responsibilities in respect of financial sanction and validation ("**SaV**") by the Authority of Work Activities identified in the Lifetime Plan. Further details of the SaV procedure are specified in PCP-17 together with guidance on application of the procedure.

2 DEFINITIONS

Terms used in this Part 2 (*Work Activity Management - Financial Sanction and Validation*) shall have the same meaning given to them in Clause 1.1 (*Definitions*) of the Contract.

3 CONTRACTOR GATING PROCESS

3.1 The Contractor is required to operate a “gated” validation and approvals process (the “**Process**”). The Process shall constitute a Contractor Internal Procedure and must be approved by the Authority.

3.2 The Contractor shall keep and maintain sufficient records of its Process which can be made available to the Authority for review as reasonably requested. The Contractor shall submit any proposed revisions to its Process to the Authority for approval.

3.3 For the avoidance of doubt, where the Authority participates in the Process, any approval or guidance given by the Authority as part of that Process shall not constitute, or replace the obligation to obtain the Authority’s approval under this Part 2 (*Work Activity Management - Financial Sanction and Validation*).

3.4 Once the Contractor has identified a Work Activity to which this Part 2 (*Work Activity Management - Financial Sanction and Validation*) applies, it shall apply its Process to that Work Activity.

4 PROCESS FOR SANCTION AND VALIDATION OF WORK ACTIVITIES

4.1 Subject to the Schedule of Delegated Authority, the Contractor shall ensure that its Process, and its submissions to the Authority required under the SaV procedure are fully compliant with PCP-17. Performance metrics specified in PCP-17 shall be monitored and reported by the Contractor to the Authority each period in accordance with the reporting process specified in PCP-13. For the avoidance of doubt, the performance metrics shall be applied by the Authority in accordance with the relevant agreement in place at the time between the Parties (as may be amended by agreement from time to time) and may be used (but not exclusively) to assess the payment of Fee in accordance with Schedule 6 (*Finance Schedule*).

4.2 Where a Work Activity requires SaV, the Contractor will follow the steps summarised below:

4.2.1 identify whether the Work Activity is subject to the SaV procedure (see Paragraph 5 (*Application*) below);

- 4.2.2 develop and agree an Integrated Assurance and Approvals Plan (“**IAAP**”) in accordance with Paragraph 13 below (*Integrated Assurance and Approval Plan*);
- 4.2.3 complete a post investment appraisal (“**Post Investment Appraisal**”) in accordance with the terms of the IAAP (see Paragraph 11 below (*Work Activity Completion and Post Investment Appraisal*)).
- 4.2.4 subject to the Schedule of Delegated Authority:
 - (A) apply to the Authority for an approval in principle (“**AiP**”) of the Work Activity (see Paragraph 7 below (*Approval in Principle (AiP)*)); and
 - (B) apply to the Authority for sanction and validation (“**Sanction**”) in accordance with the terms of the IAAP (see Paragraph 9 below (*Sanction*)).

5 APPLICATION

- 5.1 This Part 2 (*Work Activity Management - Financial Sanction and Validation*) shall apply when the Contractor proposes to:
 - 5.1.1 commence a Work Activity identified in the Lifetime Plan;
 - 5.1.2 materially change the scope of a Work Activity identified in the Lifetime Plan;
 - 5.1.3 add a new Work Activity to the Lifetime Plan.
- 5.2 For the avoidance of doubt this Part 2 (*Work Activity Management - Financial Sanction and Validation*) shall not apply to those Work Activities with a financial value below the threshold specified in the Schedule of Delegated Authority and which are neither novel, contentious nor repercussive.
- 5.3 Once the Contractor has identified a Work Activity to which this Part 2 (*Work Activity Management - Financial Sanction and Validation*) applies it shall designate the Work Activity as one of the following types of Work Activity:
 - 5.3.1 Programme;
 - 5.3.2 Project (inclusive of any Subcontract);
 - 5.3.3 IT Programme, Project or Subcontract;
 - 5.3.4 Standalone Procurement;
 - 5.3.5 Customer Contract;
 - 5.3.6 Asset Disposal;
 - 5.3.7 Inter SLC Service Contracts;
 - 5.3.8 Investment Opportunity;
 - 5.3.9 Dispute or Claim Negotiation.

Once the Contractor has identified which type of activity the Work Activity constitutes it shall, where this Part 2 (*Work Activity Management - Financial Sanction and Validation*) applies, refer to PCP-17 to identify the mandatory SaV procedural steps to be followed.

6 **NOT USED**

7 **APPROVAL IN PRINCIPLE (AiP)**

7.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority,

7.1.1 the Contractor shall seek approval in principle for the Work Activity by submitting the documents specified in PCP-17 (“**AiP Submission**”) to the Authority.

7.1.2 the Authority shall assess the AiP Submission and inform the Contractor within twenty eight (28) Calendar Days if the Work Activity and the proposed IAAP is approved in principle (or not).

7.1.3 following confirmation of AiP from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with its Process. The Contractor shall do its utmost to undertake assurance and seek Sanction in accordance with the agreed IAAP, or as required by the Authority.

8 **NOT USED**

9 **SANCTION**

9.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority,

9.1.1 the Contractor shall submit the Work Activity to the Authority for Sanction in accordance with the IAAP. The Contractor shall seek Sanction for the Work Activity by submitting the documents specified in PCP-17 (“**Sanction Submission**”) to the Authority.

9.1.2 the purpose of Sanction is to formally approve the expenditure to be incurred at the main execution phase of the Work Activity.

9.1.3 the Authority will use reasonable endeavours to assess the Sanction Submission and inform the Contractor within twenty eight (28) Calendar Days whether or not Sanction is granted. However, where a higher level of approval than the Board of the Authority and/or the equivalent level of approval at the Department of Energy and Climate Change is required, as much as ninety (90) Calendar Days may be required to grant Sanction, as referenced in PCP-17. The Authority shall inform the Contractor if any further SaV procedural steps are required and the Contractor shall update the IAAP accordingly. The information provided by the Authority will include advice on any extension to the twenty eight (28) Calendar Day response time if the Sanction Submission requires to be submitted to a higher sanction authority.

9.1.4 following confirmation of Sanction from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with its Processes. The Contractor shall seek further Sanction in accordance with the agreed IAAP, or as required by the Authority.

10 **RE-SANCTION**

10.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority,

10.1.1 the Contractor is required to obtain further Sanction (“**Re-Sanction**”) from the Authority in the following circumstances:

- (A) where there is a reasonable expectation that the forecast EAC (P50) for all activities within the phase will be exceeded;
- (B) where there is a reasonable expectation that the forecast end milestone (P50) for the sanctioned phase of the Work Activity will not be met;
- (C) where there is a proposed change to the Work Activity scope, different output or outcome or delivery strategy;
- (D) where the Contractor proposes to change an Authority approved Acquisition and/or Subcontract Strategy; and
- (E) where there is a new interdependency between Projects within a Programme which impacts upon both individual Projects and the Programme itself.

10.1.2 as soon as the Contractor is aware that Re-Sanction may be required, it must consult the Authority and, if applicable, a Sanction Submission shall be submitted to the Authority. The Contractor shall seek a Re-Sanction for the Work Activity by submitting the documents specified in PCP-17 (“**Re-Sanction Submission**”) to the Authority.

10.1.3 the Authority shall assess the Re-Sanction Submission and inform the Contractor within twenty eight (28) Calendar Days whether or not the Re-Sanction is granted; if future SaV procedural steps are required these will be agreed on the IAAP. The additional procedural steps will include advice on any extension to the twenty eight (28) Calendar Day response time if the Re-Sanction Submission requires to be submitted to a higher sanction authority.

10.1.4 following confirmation of Re-Sanction from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with its Process. The Contractor shall seek Sanction in accordance with the agreed IAAP or as required by the Authority.

11 **WORK ACTIVITY COMPLETION AND POST INVESTMENT APPRAISAL**

11.1 In accordance with the IAAP, upon completion of key phases of the work activity or completion of the Work Activity itself the Contractor may be required to provide to the Authority a final update to the Business Case setting out the results, reports and recommendations provided to the Contractor under its Process. The Contractor shall also set out the lessons learned from the activity and an action plan of how these lessons learned will be incorporated into future Work Activities.

11.2 The Contractor will be required to demonstrate that continuous learning from each of the Contractor’s internal gate reviews is being captured and deployed.

12 **SCHEDULE OF WORK ACTIVITY SANCTIONS**

12.1 The Contractor shall produce and maintain a rolling twelve (12) month Work Activity Sanction Schedule (the “**RSS**”) in relation to the Work Activities that do not fall within the scope of the Schedule of Delegated Authority which shall be submitted to the Authority in accordance with the requirements of PCP-17.

12.2 For information purposes, the Contractor shall in addition to the RSS provided pursuant to Paragraph 12.1 above, produce and maintain a rolling twelve (12) month Work Activity sanction schedule in relation to the Work Activities that do fall within the scope of the

Schedule of Delegated Authority at the same time as the RSS is submitted to the Authority. The Contractor shall provide any information reasonably requested by the Authority in relation to such Work Activities as soon as reasonably practicable after receiving such request.

13 INTEGRATED ASSURANCE AND APPROVAL PLAN

13.1 The Contractor shall ensure that each Work Activity to which this Part 2 (*Work Activity Management - Financial Sanction and Validation*) applies falls within an Integrated Assurance and Approvals Plan developed in accordance with guidance contained in PCP-17. For the avoidance of doubt, to the extent consistent with PCP-17, the Contractor may prepare a single IAAP covering one or more Work Activities.

13.2 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority, the Contractor is required to submit its IAAP as part of its AiP Submission. The Authority shall review any such IAAP during the AiP process and agree such IAAP.

13.3 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority:

13.3.1 the IAAP agreed at AiP shall be revised and revalidated at each Authority intervention point; and

13.3.2 the Contractor shall be required to notify the Authority of any changes to the Governance aspects of an IAAP by including such changes in the RSS.

13.4 In relation to a Work Activity or Work Activities falling within the scope of the Schedule of Delegated Authority, the Contractor shall also have delegated authority to approve any IAAP required in connection with such Work Activity or Work Activities.

14 BUSINESS CASE

The Contractor shall produce, maintain and update a Business Case for each Work Activity at each gate review stage in its Process. The Business Case shall be prepared in accordance with Good Industry Practice. The Business Case shall be available for Authority review as reasonably requested. In the case of a Work Activity not falling within the Schedule of Delegated Authority, the Business Case shall be submitted to the Authority at each intervention point identified in the IAAP.

15 PROJECT LEVEL ACQUISITION STRATEGY

Save in relation to any Work Activity within the scope of Schedule of Delegated Authority, the Contractor shall be required to submit a Project Level Acquisition Strategy to the Authority for approval. The full details relating to the Project Level Acquisition Strategy are specified in PCP-17.

16 SUBCONTRACT STRATEGY

16.1 In the case of a Work Activity not falling within the Schedule of Delegated Authority:

16.1.1 if the Work Activity includes the placement of Subcontracts the Contractor shall, in accordance with the IAAP, submit detailed Subcontract Strategies to the Authority prior to issue of an OJEU notice;

16.1.2 in circumstances where the value of a Subcontract is less than [REDACTED] and is not deemed to be novel, contentious or repercussive, the Authority's approval of the Subcontract Strategy will be

sufficient for the Contractor to proceed to Subcontract placement provided that the Subcontract aligns with the Subcontract Strategy.

16.1.3 subject to Paragraph 16.1.2 (*Subcontract Strategy*) above, the Contractor is required to submit a notification to the Authority seven (7) Calendar Days prior to placing the Subcontract. The notification shall be submitted using the Compliance Notification Form, the proforma for which is contained in Appendix C of PCP-17.

16.1.4 if there is any variance from the Authority approved Subcontract Strategy the Contractor shall immediately advise the Authority in accordance with Paragraph 10 (*Re-Sanction*) above.

17 **TERMS OF AUTHORITY SANCTION AND APPROVAL**

Any sanction or validation provided by the Authority in respect of a Work Activity:

17.1 shall be without prejudice to any of the Authority's rights under this Contract;

17.2 shall not, unless expressly agreed, relieve or excuse the Contractor from any liability, responsibility or obligation under this Contract;

17.3 shall not in respect of any Cost arising in relation to the Work Activity, unless expressly agreed, alter whether such Cost is treated by the Authority as an Allowable Cost or a Disallowable Cost;

17.4 shall not constitute acceptability of any Subcontract terms and conditions which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to the notification and disclosure requirements of Paragraphs 16.1 to 16.3 (*Subcontract Strategy*) above;

17.5 shall not constitute Authority agreement to relieve the Contractor of a responsibility for performing the works or delivering/receiving the supplies which form the subject matter of the Subcontract or Series of Subcontracts; and

17.6 shall not constitute acceptance by the Authority of any terms and conditions of any Customer Contract which are outside the terms of the Negotiation Mandate.

18 **AUTHORITY REJECTION OF WORK ACTIVITY**

18.1 The Authority shall be entitled, at any time and in its sole discretion, but subject to Schedule 2 (*Programme Management and Change Procedure*) Part 3 (*Change Control*), to reject a Work Activity AiP, Sanction or Re-Sanction, save that, for the avoidance of doubt, the Authority shall not be entitled to refuse the Contractor's implementation of a new Work Activity that arises out of a Change under Paragraph 11 (*Changes that the Authority Cannot Refuse*) of Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) although the Authority shall be entitled to comment on, require amendment to and approve such a Work Activity in accordance with the provisions of this Part 2 (*Work Activity Management - Financial Sanction and Validation*) in order to ensure that the Change is addressed in the manner that the Authority desires).

18.2 Where an AiP, Sanction or Re-Sanction Submission is rejected by the Authority, the Authority is obliged to inform the Contractor of the reasons for its decision within twenty eight (28) Calendar Days.

18.3 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority:

- 18.3.1 the Authority may request from the Contractor such additional information as the Authority reasonably requires for the purposes of considering the AiP, Sanction and/or Re-Sanction Submissions and shall make any such request to the Contractor as soon as reasonably practicable following receipt of the Contractor's submission; and
- 18.3.2 the Contractor shall provide any information requested by the Authority pursuant to submission approval as soon as reasonably practicable after receiving such request.

PART 3 – CHANGE CONTROL

1 OVERVIEW

1.1 Introduction

1.1.1 This Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*):

- (A) sets out, under Paragraph 3 (*Amendments to the Contract*) below, the process for the Parties to exercise their rights to vary the Contract pursuant to Clause 1.17 (*Variation*) of this Contract;
- (B) sets out, under Paragraph 4 (*Performance Based Incentive Change Control*) below, the process for the Contractor to make a PBI Change Proposal;
- (C) sets out the process for obtaining the Authority's consent (where required) to Changes to the LTP Performance Plan, Current Budget and/or Capital Budget and/or Annual Site Funding Limit;
- (D) sets out the process for obtaining the Authority's consent to Changes to the Contract Baseline; and
- (E) obliges the Contractor to identify and monitor trends pursuant to Paragraph 17 (*Trend and Change Logs*) below,

all which shall be undertaken in accordance with the provisions of PCP-05 (*Change Control*) and PCP-07 (*Baseline Management*).

1.1.2 This Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) is based on the principles set out in Paragraphs 1.1.3 and 1.1.4 below (*Introduction*) provided that, in the event of any conflict or inconsistency between such principles and any other provisions of this Contract, the relevant provisions of this Contract shall prevail.

1.1.3 The LTP Performance Plan shall be an evolving document over which the Contractor shall (subject to the provisions of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) and any other relevant express provision of this Contract) retain content control, and which shall:

- (A) contain a contemporaneous plan which supports and underpins delivery of the Requirement/Output Specification;
- (B) identify:
 - (1) the detailed work to be performed;
 - (2) when such work is to be performed; and
 - (3) how much it is anticipated to cost to discharge the full lifetime liabilities up to the closure of the Site,

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

- (C) provide the Authority with the information it reasonably needs to comply with its statutory reporting obligations; and
- (D) contain sufficient detail to enable verification of actual cost and inform funding requirements

1.1.4 The purpose of the Contract Baseline is to:

- (A) demonstrate delivery of the Requirement/Output Specification of which a Category 0 Change will be required to effect any amendment to their content or achievement date;
- (B) identify milestones for achievement of PBIs by defined dates, in respect of which a Category 0 Change will be required to effect any amendment to their content or achievement date;
- (C) set out agreed estimates of the Budgeted Cost of Work Scheduled comprising the Contract Baseline and
- (D) assist the Authority in monitoring the Contractor's performance in accordance with this Contract.

1.2 **Overarching validation procedure**

Before seeking the Authority's Approval under any provisions in this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*), the Contractor shall consult the provisions set out in Part 2 (*Work Activity Management - Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*). In complying with this Part 3 (*Change Control*), the Parties shall work together to endeavour to ensure that the process set out in this Part 3 (*Change Control*) is, so far as possible, run simultaneously with consultation under and oversight of the processes set out in Part 2 (*Work Activity Management - Financial Sanction and Validation*) of Schedule 2 (*Programme Management and Change Procedure*), Part 1 (*Work Activity Management - Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) and/or Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) as applicable such that each Party is aware of what is happening and what decisions are being taken and the reasons for them under each approval process and there is minimal requirement for the duplication of the same information to obtain different approvals.

1.3 **Not Used**

1.4 **Inconsistency with Contract**

A Change pursuant to this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) cannot be used to effect a variation to any aspect of this Contract other than the Site Current Budget and/or Current Budget and/or Site Capital Budget and/or Capital Budget and/or Annual Site Funding Limit and/or the LTP Performance Plan and/or the Contract Baseline. If a Change Proposal, once implemented, would be inconsistent with any other provision of the Contract, such Change Proposal shall not be implemented unless this Contract has first been varied in accordance with Clause 1.17 (*Variation*) to resolve the inconsistency.

2 **BASELINE MANAGEMENT AND THE PORTFOLIO MANAGEMENT PROCESS**

- 2.1 Any Baseline Change shall be carried out in accordance with PCP-05 (*Change Control*), PCP-07 (*Baseline Management*) and PCP-13 (*Progress Reporting and Reviews*).
- 2.2 In accordance with the PCPs outlined in Paragraph 2.1 above, the Authority and the Contractor will put and maintain in place a Portfolio Management Process.
- 2.3 The Portfolio Management Process will include forecasting, trending and reporting of potential Changes and deviations to the agreed LTP Performance Plan and/or the Contract

Baseline in accordance with PCPs outlined in Paragraph 2.1 above. This will include any positive or negative deviations associated with scope, schedule and/or Cost variances.

3 **AMENDMENTS TO THE CONTRACT**

Amendments under Clause 1.17.1 (Variation)

- 3.1 If, pursuant to Clause 1.17.1 (*Variation*), the Authority wishes to exercise its rights to vary unilaterally this Contract, the Authority shall provide the Contractor with a Notice in the form specified and containing the information stipulated in PCP-05 (*Change Control*).
- 3.2 Upon receipt of the form specified in PCP-05 (*Change Control*), the Contractor shall acknowledge receipt of such form and shall be entitled to bring a Change in accordance with the relevant provisions of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).
- 3.3 If either Party wishes to amend the Contract pursuant to Clause 1.17.2 (*Variation*), the relevant Party shall provide to the other Party a Notice in the form specified and containing the information stipulated in PCP-05 (*Change Control*).
- 3.4 Upon receipt by the other Party of the form specified in PCP-05 (*Change Control*), the Parties shall meet to discuss the amendment and, if the amendment is agreed, it shall be entered into in accordance with Clause 1.17.2 (*Variation*).

4 **PERFORMANCE BASED INCENTIVE CHANGE CONTROL**

4.1 **Changes to PBIs during the then current Contract Year**

4.1.1 The Contractor may propose, and the Authority may require the Contractor to bring forward, changes to PBIs at any time during the then current Contract Year by bringing a PBI Change Proposal. PBI Change Proposals may be brought forward as a consequence of:

- (A) a Baseline Change;
- (B) a Funding Change; and/or
- (C) a Change the Authority cannot refuse under Paragraph 12 of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).

4.1.2 If a PBI Change Proposal is brought forward by the Contractor, the Contractor shall propose such a Change by categorising it as a proposal to make a Category 0 Change and completing and submitting the PCP Change Control Form to the Authority in accordance with Clause 1.13 (*Notices and Communications*) in original, signed, hard copy form.

5 **BASELINE CHANGE REQUIREMENT THRESHOLDS**

- 5.1 If the Contractor wishes to bring a Baseline Change of a value less than or equal to the threshold set out in the PCP-M Contractor Annexe (the "**Relevant Threshold**"), the Contractor is not required to seek the Approval of the Authority but shall follow the process set out for approval of such Baseline Changes in the Contractor's Internal Procedures.
- 5.2 If a Baseline Change is required by the Contractor as a result of the exercise of its Permitted Activities, then if the Baseline Change is of a value less than or equal to the Relevant Threshold, the provisions of Paragraph 5.1 apply. If the Baseline Change is of value in excess of the Relevant Threshold, the Contractor requires the Approval of such a

Baseline Change in accordance with this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*), notwithstanding the Contractor's Permitted Activities under Clause 3.6.4 (*Permitted Activities*).

- 5.3 If the Contractor wishes to move scope or funding between PSWBS levels, it shall be entitled to do so without the consent of the Authority and the Contractor shall record the movement of funds between PSWBS Category levels in the Change Control Log in accordance with Paragraph 17 (*Trend and Change Control Logs*) of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).

6 **BASELINE CHANGE CONTROL**

6.1 **Implementation**

6.1.1 No Baseline Change Proposal can be implemented until the Contractor has obtained Approval in respect of that Change Proposal.

6.1.2 The Contractor shall Re-baseline if directed to do so by the Authority.

6.1.3 Subject to Paragraph 11 (*Changes Authority Cannot Refuse*) of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*), the type of events in respect of which the Contractor shall not be entitled to ask for a Baseline Change are:

- (A) re-sequencing of work in the Current Contract Term where the overall Current Contract Term scope remains unchanged;
- (B) where scope, cost and/or schedule have not been specified in the LTP which the Contractor, acting in accordance with its standards of performance under Clause 2.2 (*Standard of Performance*), should have reasonably foreseen at the time of setting the LTP;
- (C) where there are cost over runs or cost under runs;
- (D) scope that arises out of the remedy of defective performance where the Authority has not been notified of such defective performance in accordance with Clause 2.13 (*Definitive Performance*); and
- (E) a means to remedy poor cost management or poor schedule performance.

6.2 **Baseline Change – Re-prioritisation**

6.2.1 If a Baseline Change would impact the then current Contract Year such that without a Funding Change any of the Current Budget, Capital Budget or Annual Site Funding Limit for the then current Contract Year would be breached, the Contractor must identify a means of accommodating the Baseline Change within the existing Current Budget, Capital Budget and/or Annual Site Funding Limit for the then current Contract Year from identified cost under-runs or by deferring other Tasks, at all times acting in accordance with the Contractor's Prioritisation Procedure.

6.2.2 Notwithstanding the Contractor's Prioritisation Procedure and without prejudice to Paragraph 12 (*Changes Authority Cannot Refuse*) of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*), the Contractor is not entitled in any circumstances not to fulfil any or all of its absolute obligations set out in Clause 2.1 (*Nature of Contractor's Obligations*) unless it has obtained the Authority's prior written consent, which the Authority may withhold in its absolute discretion. Only if the Contractor cannot identify adequate cost

under-runs or cannot defer any other Tasks while still meeting Regulatory Requirements may the Contractor make a Funding Change Proposal related to a Baseline Change Proposal.

6.3 Incorporation into LTP Performance Plan

6.3.1 Changes resulting from Baseline Change Proposals which are Approved are to be incorporated into the LTP Performance Plan and Contract Baseline as soon as possible and in any event within thirty (30) Calendar Days of the Contractor's receipt of the relevant Approval.

6.4 Format of Baseline Change Proposal

6.4.1 The Contractor shall prepare Baseline Change Proposals in the form specified and containing the information stipulated in PCP-05 (*Change Control*) and PCP-M Contractor Annexe.

6.4.2 Save for those Baseline Changes in paragraph 5.1 (*Baseline Change Requirement Thresholds*), the Contractor must submit the Baseline Change Proposal to the Authority seeking Approval for the Baseline Change.

6.5 At the same time as evaluating the Baseline Change Proposal, the Authority shall consider any related approvals in accordance with the procedures set out in Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) and Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) (as applicable).

7 FUNDING CHANGE CONTROL

7.1 Funding Change – Re-prioritisation

7.1.1 During its performance of the then current Contract Year of the LTP Performance Plan, the Contractor shall endeavour to balance cost overruns with cost under-runs to deal with any variation between estimated costs and actual costs. Where this balancing is insufficient and actual costs are projected to exceed the Current Budget and/or Capital Budget and/or Annual Site Funding Limit for the then current Contract Year, the Contractor shall evaluate the funding requirements of other Tasks within the LTP Performance Plan for the then current Contract Year in a manner consistent with the Contractor's Prioritisation Procedure. For the avoidance of doubt, such re-prioritisation shall not entitle the Contractor to a Baseline Change.

7.1.2 Notwithstanding the Contractor's Prioritisation Procedure and without prejudice to Paragraph 12 (*Changes the Authority Cannot Refuse*) of this Part 3 (*Change*) of Schedule 2 (*Programme Management and Change Procedure*), the Contractor is not entitled in any circumstances not to fulfil any or all of its absolute obligations set out in Clause 2.1 (*Nature of Contractor's Obligations*) unless it has obtained the Authority's prior written consent, which the Authority may withhold in its absolute discretion.

7.1.3 If, following an evaluation carried out by the Contractor pursuant to Paragraph 7.1.1 above (*Funding Change – Re-prioritisation*), actual costs are still projected to exceed the Current Budget and/or Capital Budget and/or Annual Site Funding Limit for the then current Contract Year, the Contractor shall bring a Funding Change Proposal to move funding from the Current Budget to the Capital Budget or to increase the Annual Site Funding Limit for the then current Contract Year as

applicable, all in accordance with the Contractor's Prioritisation Procedure. The Contractor shall be entitled to move funding between PSWBS category levels without requiring a Change.

- 7.1.4 If, following a Funding Change Proposal brought pursuant to Paragraph 7.1.3 above (*Funding Change – Re-prioritisation*), actual costs are still projected to exceed the Current Budget and/or Capital Budget and/or Annual Site Funding Limit for the then current Contract Year, the Authority and the Contractor shall promptly meet to discuss such excess and shall agree such changes to the LTP Performance Plan and Contract Baseline as are necessary to reduce the projected actual costs to an amount which is less than the Current Budget and/or Capital Budget and/or Annual Site Funding Limit for the then current Contract Year.

7.2 **Format of Funding Change Proposals**

- 7.2.1 The Contractor shall prepare Funding Change Proposals in the form specified and containing the information stipulated in PCP-05 (Change Control).
- 7.2.2 At the same time as evaluating the Funding Change Proposal, the Authority shall consider any related approvals in accordance with the procedures set out in Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/ Procurement*) and Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) (as applicable).

7.3 **Rejected Funding Change Proposals**

- 7.3.1 Subject to Paragraph 11 (*Changes that the Authority Cannot Refuse*) below, the Authority will not give Approval to a Funding Change Proposal if it considers, acting reasonably, that the Contractor can accommodate the event giving rise to a Funding Change Proposal within the existing Current Budget, Capital Budget and/or Annual Site Funding Limit for the then current Contract Year.
- 7.3.2 If the Authority rejects a Funding Change Proposal, the Contractor must reconsider:
- (A) process improvements;
 - (B) using funding from other Tasks;
 - (C) terminating Subcontracts; and/or
 - (D) reducing the scope of Tasks to be completed in the then current Contract Year,

in all cases in compliance with the Contractor's Prioritisation Procedure.

- 7.3.3 Where an Authority Funding Change would, in the reasonable opinion of the Contractor, render the Contractor unable to comply with any of its absolute obligations set out in Clause 2.1 (*Nature of Contractor's Obligations*) within the existing Current Budget and/or Annual Site Funding Limit for the then current Contract Year and none of the circumstances in Paragraph 12 (*Changes which the Authority Cannot Refuse*) below is applicable, the Authority will decide in its absolute discretion whether or not to give Approval to a Funding Change Proposal which would enable the Contractor to comply with its absolute obligations within the Current Budget and/or Annual Site Funding Limit for the then current Contract Year as increased pursuant to such Funding Change Proposal. If the Authority does not give Approval to such Funding Change Proposal (except in the circumstances set out in paragraph 7.4 (*Authority failure to respond*)) then the

Contractor shall continue to comply with its absolute obligations and the costs of so doing shall be Disallowable to the extent that Paragraph 7.5 below (*Disallowable Costs*) applies.

7.3.4 Notwithstanding the Contractor's Prioritisation Procedure, the Contractor is not entitled in any circumstances not to fulfil any or all of its absolute obligations set out in Clause 2.1 (*Nature of Contractor's Obligations*) unless it has obtained the Authority's prior written consent, which the Authority may withhold in its absolute discretion.

7.3.5 The Contractor shall not be entitled to respond to the Authority's rejection of a Funding Change Proposal by issuing a Baseline Change Proposal to move any part of a Task from the then current Contract Year due to the Contractor's poor performance.

7.3.6 Nothing in this Paragraph 7.3 (*Rejected Funding Change Proposals*) shall affect or remove the Contractor's obligation to meet its duties and obligations under the Regulatory Requirements.

7.4 **Authority failure to respond**

If the Authority fails to respond within thirty (30) Working Days of acknowledgement of receipt of a correctly drafted Funding Change Proposal by the Contractor or, if applicable, acknowledgement of receipt of further information provided in respect of a correctly drafted Funding Change Proposal to move funding from the Current Budget to the Capital Budget up to threshold of [REDACTED] the Contractor may proceed with the Funding Change Proposal without Approval.

7.5 **Disallowable Costs**

For the avoidance of doubt, if the Contractor exceeds the Annual Site Funding Limit and/or the Current Budget for the then current Contract Year without the express written consent of the Authority then the excess costs will be Disallowable.

7.6 **Not used**

7.7 **Variations of Part 3 (*Project Limits and Project Fee Pool*) to Schedule 6 (*Finance*)**

If a Funding Change Proposal which varies the Current Budget, Capital Budget and/or Annual Site Funding Limit for the then current Contract Year is approved by the Authority Part 3 (*Funding Limits and Project Fee Pool*) of Schedule 6 (*Finance*) will be varied accordingly and issued to the Contractor in its varied form.

7.8 **Unilateral Authority Variations of Part 3 (*Funding Limits and Project Fee Pool*) to Schedule 6 (*Finance*)**

The Authority, during the course of the then current Contract Year, may increase or decrease the Annual Site Funding Limit and/or the Current Budget and/or the Capital Budget for the then current Contract Year at any time and the Authority shall give the Contractor Notice of such increases or decreases as soon as possible. The Notice will direct the Contractor to prepare a Change Proposal to address the relevant Funding Change.

8 **NOT USED**

9 **CHANGE CONTROL APPROVALS AND IMPLEMENTATION**

9.1 Without prejudice to the Contractor's rights under Paragraph 11 (*Emergency Action*) of this Part 3 (*Change Control*), save as provided under Paragraph 5.1 (*Baseline Change*)

Requirement Thresholds) and Paragraph 7.4 (*Authority failure to respond*) of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*), Change Proposals must be Approved. The Contractor shall not be entitled to implement any Change Proposal until such Change Proposal is approved by the appropriate person.

- 9.2 Upon receipt of a Change Proposal, the Authority shall acknowledge in writing to the Contractor receipt of such Change Proposal and shall evaluate that Change Proposal. The Authority may, (subject and without prejudice to Paragraph 11 (*Changes that the Authority Cannot Refuse*)), in its absolute discretion, approve a Change Proposal in whole or in part and/or request the Contractor to prepare an amended Change Proposal (in whole or in part) specifying an alternative reprioritisation of Tasks or method of re-allocation of Funding, or a lower increase in Funding or an altered PBI Change Proposal.
- 9.3 The Authority may, acting reasonably, reject any Contractor's Change Proposal (in whole or in part), giving reasons for any such rejection, except where the circumstances set out in Paragraph 11 (*Changes that the Authority Cannot Refuse*) apply.
- 9.4 In evaluating a proposed PBI Change Proposal, the Authority will determine if a defensible basis to change or to eliminate Contractor performance requirements exists including giving consideration as to whether any change or refusal of a change will alter the Contractor's risk profile in respect of the relevant Current Contract Term and will evaluate each individual component of an incentive to determine the condition before the proposed change and the likely condition after the change. To complete this evaluation, an analysis of Contractor Cost, schedule and technical performance before the Change is required and the Authority will take into account the wider context of any additional incentivisation agreed.
- 9.5 If, in respect of the PBI Change Proposal, the analysis shows that one or more components are experiencing Cost, schedule and/or technical performance problems that are within Contractor control, then the proposed Change to the incentive should not inappropriately relax Contractor performance requirements and provide a second opportunity to earn incentive fee that otherwise should be forfeited.
- 9.6 If the Authority Approves the PBI Change Proposal, the Contractor will incorporate or attach the agreed Changes into or to the Performance Agreement Form as applicable and notify the Authority.
- 9.7 If the PBI Change is Approved by the Authority, the Authority shall document the rationale and conditions for the change and provide a revised basis and justification for each changed incentive and any reallocation of Incentive Fee.
- 9.8 If the Authority rejects the PBI Change Proposal, the PBI Change Proposal Form will be returned to the Contractor with appropriate justification for disapproval.
- 9.9 Subject and without prejudice to Paragraph 9.10 below, the Authority shall respond to Approve, amend or reject (in whole or in part) a Change Proposal that is submitted in accordance with and fulfils the requirements of this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) no later than thirty (30) Calendar Days from the acknowledgement of receipt of such Change Proposal. Should the Authority require the Contractor to re-submit an amended PBI Change Proposal, Baseline or Funding Change Proposal, the Authority shall have a further thirty (30) Calendar Day period in which to evaluate the amended Change Proposal.
- 9.10 If the Authority requires any further information in respect of a Change Proposal, the Authority shall notify the Contractor within fourteen (14) Calendar Days of acknowledgement of receipt of the Change Proposal. The Authority shall acknowledge in

writing to the Contractor receipt of such further information. From the date of the acknowledgement of receipt of any further information, the Authority will have a further thirty (30) Calendar Days to assess the Change Proposal.

- 9.11 If the Parties cannot agree a Baseline or Funding Change Proposal in whole or in part within thirty (30) Calendar Days of acknowledgement of receipt of such Change Proposal (or amended Change Proposal as applicable) by the Authority (or any longer period as the parties may agree), and the Party which originally proposed or directed the Change has not withdrawn or requested its cancellation, the matter shall be referred to the Dispute Resolution Procedure.
- 9.12 Where appropriate, as regards the Contractor's relationships with Customers, suppliers and Subcontractors and any other relevant circumstances, the Authority will set a shorter timetable for evaluation and process of the Change Proposal.
- 9.13 The Contractor may dispute that the Authority has acted reasonably in rejecting any Change Proposal in whole or in part, and any such Dispute shall be resolved in accordance with the provisions of Clause 13 (*Dispute Resolution*).

10 **CHANGE DIRECTED BY THE AUTHORITY**

- 10.1 The Authority shall be entitled in its discretion to direct that a Baseline Change or a Funding Change Proposal must be implemented in accordance with this Paragraph 10 (*Change Directed by the Authority*) at any time, or, in the case of the Authority issuing an instruction under Clause 3.6.3 (*Authority's Right to Instruct*) in respect of any Customer Contract or under Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) in respect of any Subcontract or Series of Subcontracts, the Authority shall be deemed to have directed that a Baseline Change or a Funding Change must be implemented in accordance with this Paragraph 10 (*Change Directed by the Authority*).
- 10.2 If the Authority wishes to direct that a Baseline Change or a Funding Change Proposal be implemented, it shall notify the Contractor using the form specified and containing the information stipulated in PCP-05 (*Change Control*) to enable the Contractor to submit the appropriate Change Proposal(s) to the Authority.
- 10.3 Paragraph 10.2 shall apply except where there is an instruction under Clause 3.6.3 (*Authority's Right to Instruct*) in respect of any Customer Contract or under Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) in respect of any Subcontract or Series of Subcontracts, where the Authority's Instruction Notice or Subcontracting Instructions Notice shall be deemed to fulfil this requirement.
- 10.4 The Contractor shall then prepare such Change Proposal(s) as provided in Paragraphs 6 (*Baseline Change Control*) and 7 (*Funding Change Control*) above.
- 10.5 Subject to the provision below on Authority instructions under Clause 3.6.3 (*Authority's Right to Instruct*) and/or Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*), at any time before implementation of a Baseline Change or a Funding Change directed by the Authority, the Contractor shall be entitled to raise objections if such Baseline Change or a Funding Change would, if implemented:
 - 10.5.1 be inconsistent with Clause 2.2 (*Standard of Performance*);
 - 10.5.2 be inconsistent with Clause 2.2.4;

10.5.3 cause a breach by the Contractor of its obligations under the Contract (which breach is not waived by the Authority);

10.5.4 materially alter the basic nature of the Services to be provided.

Where the Authority gives an instruction under Clause 3.6.3 (*Authority's Right to Instruct*) in respect of any Customer Contract or under Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) in respect of any Subcontract or Series of Subcontracts, the ground for objection shall be as set out in Paragraph 3 (*Authority's Instructions*) of Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) in respect of a Customer Contract (and the relevant provisions of Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*) shall apply as applicable to such objection) or, in the case of a Subcontract or Series of Subcontracts, as set out in Paragraph 18 (*Authority's Right to Instruct*) of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) (and the relevant provisions of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) shall apply as applicable to such objection).

10.6 Where an Authority Change may result in:

10.6.1 a risk of breach of the Annual Site Funding Limit for the then current Contract Year; or

10.6.2 a risk of breach of the Current Budget and/or Capital Budget for the then current Contract Year,

and the Contractor submits a Funding Change Proposal to re-allocate funding to higher priority work and/or to re-distribute funding in accordance with the Contractor's Prioritisation Procedure, the Authority shall either approve such Funding Change Proposal or request the Contractor to prepare an amended Funding Change Proposal specifying an alternative method of re-allocation of funding. If no re-allocation of funding is possible without breaching Law and/or Regulatory Requirements, the Authority shall either increase the Annual Site Funding Limit for the then current Contract Year or it shall withdraw Authority direction and accordingly the Contractor shall withdraw the Change Proposal. The Parties shall attempt to establish the validity of any objections raised by the Contractor. If the Parties cannot agree after a period of thirty (30) Calendar Days (or any longer period as the Parties may agree) from the date of Authority notification, the matter shall be referred to the Dispute Resolution Procedure.

11 **EMERGENCY ACTION**

11.1 **Emergency Identification**

Where the Contractor has reasonable cause to believe that:

11.1.1 Emergency Action is required; and

11.1.2 there is insufficient time to process the relevant Change Proposal in accordance with this Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) prior to taking such Emergency Action,

the Contractor shall be entitled to proceed with the Emergency Action without submitting a Change Proposal provided that it notifies the Authority of the Emergency Action pursuant to Paragraph 10.2 and effects the necessary Change in accordance with Paragraph 10.3 as soon as reasonably practicable thereafter.

11.2 **Emergency Notification**

Immediately following any Emergency Action taken pursuant to Paragraph 11.1 (*Emergency Identification*), the Contractor must send written notification to the Authority on the form specified and containing the information stipulated in PCP-05 (Change Control).

11.3 **Emergency Change Proposals**

Within fourteen (14) Calendar Days of submitting the PCP Change Control Form in respect of the Emergency Action, the Contractor shall prepare the appropriate Change Proposal(s) to effect the Changes required as a result of having taken the Emergency Action and shall submit such Change Proposals for review/approval as provided elsewhere in this Part 3 (*Change*) of Schedule 2 (*Programme Management and Change Procedure*).

12 **CHANGES THAT THE AUTHORITY CANNOT REFUSE**

12.1 If, as a direct result of any of the events listed in Paragraph 12.2 below, the Contractor submits:

12.1.1 a Baseline Change Proposal; and/or

12.1.2 a Funding Change Proposal because there is a significant potential for the Annual Site Funding Limit and/or the Capital Budget and/or Current Budget for the then current Contract Year to be breached; and/or

12.1.3 a PBI Change Proposal,

and it is not possible to defer other Tasks or otherwise reduce expenditure in either case while still meeting Law and Regulatory Requirements and (to the extent that the Authority is not obliged to and does not approve Baseline Change Proposals or otherwise instruct a Baseline Change removing such obligations) its obligations in accordance with the Contract and in a manner consistent with the Contractor's Prioritisation Procedure, then, subject to paragraph 11.3 below, the Authority shall approve such Baseline Change Proposal and/or Funding Change Proposal and (if relevant) the Authority shall issue a variation of Part 3 (*Funding Limits and Project Fee Pool*) to Schedule 6 (*Finance*) to increase the Annual Site Funding Limit and/or the Capital Budget and/or Current Budget for the then Contract Year and/or amend the relevant PBI.

12.2 The events referred to in Paragraph 12.1 are:

12.2.1 a Regulatory Requirement; or

12.2.2 a Customer changing its requirements inside the scope of its rights under any Customer Contract; or

12.2.3 the Authority issuing an instruction under Clause 3.6.3 (*Authority's Right to Instruct*) in respect of any Customer Contract or under Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement*) in respect of any Subcontract or Series of Subcontracts (which, for the avoidance of doubt, includes Inter SLC Services Contracts) which has not been withdrawn;

12.2.4 a change in Law; or

12.2.5 the Authority wilfully impeding the Contractor's performance; or

- 12.2.6 the occurrence of a Force Majeure event affecting the Contractor for more than thirty (30) Calendar Days; or
- 12.2.7 the Contractor discovers circumstances on the Site which necessitate a Change in order to enable the Contractor to comply with the Law; or
- 12.2.8 the Contractor has submitted a Change Proposal following the receipt of the form as required by PCP-05 (Change Control) in respect of an Emergency Action; or
- 12.2.9 the Contractor has followed an Authority instruction in respect of the exercise of a discretion pursuant to Part 2 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule*); or
- 12.2.10 the Contractor has suffered a Historical Cost or a Transfer Schemes Loss not covered by the Parent Company Indemnity; or
- 12.2.11 the Authority has directed the Change, unless the Authority has withdrawn its direction; or
- 12.2.12 an uninsured loss arising as a result of any liability incurred by the Contractor under the Nuclear Installations Act 1965; or
- 12.2.13 for the period from Share Transfer to the date three (3) months following submissions to the Authority of the 2008 LTP, any one off cost in excess of [REDACTED] arising from the occurrence of a single incident which crystallises following Share Transfer and which relates to a single incident which occurred prior to Share Transfer of which the Parent Body Organisation and/or Nominated Staff could not reasonably have been aware prior to Share Transfer; or
- 12.2.14 the Authority has issued an Authority Direction pursuant to any or all of Clauses 4.1.2(A) to 4.1.2(D) (*Authority Directions*) of this Contract or
- 12.2.15 insufficient funds remain available within the ASFL, Current Budget or Capital Budget (as the case may be) to meet the Costs (excluding any Costs that are Disallowable Costs in accordance with Paragraph 5 (*Disallowable Costs*) of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*)) incurred or to be incurred by the Contractor in fulfilling its absolute obligations contained in Clause 2.1.1 to 2.1.7 (*Contractor's Obligations*) of the Contract in the relevant Contract Year; or
- 12.2.16 insufficient funds remain available within the ASFL, Current Budget or Capital Budget (as the case may be) to meet the Costs (excluding any Costs that are Disallowable Costs pursuant to Paragraph 5 (*Disallowable Costs*) of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance*)) incurred or to be incurred by the Contractor in the relevant Contract Year to the extent that such Costs, taken together with any liabilities and obligations of the Parent Body Organisation and any payments of the Contractor paid or payable to the Authority pursuant to Clauses 7.2.1, 7.2.2 and 7.2.3 (*General Indemnity, Defective Performance and Major Incidents*) as limited by Clause 7.2.6 (*Limit on General Indemnity, Defective Performance and Major Incidents*) of the Parent Body Agreement, exceed the amount applicable to the relevant Contract Year pursuant to that Clause 7.2.6 (*Limit on General Indemnity, Defective Performance and Major Incidents*).

- 12.3 If the Contractor submits a Change Proposal as a result only of an event within Paragraph 12.2.15 and/or 12.2.16 above, the Authority shall not be obliged to approve any Baseline Change Proposal and/or amend any PBI by reason of such event.

13 REGULATORY IMPLICATIONS

Where any Change Proposal arises out of a Regulatory Requirement or may have regulatory implications, the Contractor shall consult the relevant Regulators in relation to the Change Proposal.

14 UNILATERAL VARIATIONS

- 14.1 Without prejudice to Paragraph 6.2 (*Baseline Change – Re-prioritisation*), Paragraph 7.1 (*Funding Change – Re-prioritisation*), Paragraph 7.3 (*Rejected Funding Change Proposals*) and paragraph 9 (*Change Control Approvals and Implementation*), where the Authority has made a unilateral variation pursuant to Clause 1.17.1 (*Unilateral Variation*), the Contractor shall be entitled to bring a Baseline Change, a Funding Change and/or a PBI Change setting out the scope, funding and cost and performance implications of such unilateral variation (a "**Unilateral Variation Change Proposal**").

- 14.2 The Authority shall, acting reasonably, consider such Unilateral Variation Change Proposal. If the Contractor considers that the Authority has not acted reasonably, it shall be entitled to challenge the Authority's decision on the grounds of reasonableness.

15 CHANGE PROPOSAL CLOSEOUT

- 15.1 Upon receipt of an Approved Change Proposal (whether Approved in whole or in part), the Contractor shall ensure that the Approved Change Proposals and the Approval and implementation dates are entered in the appropriate Change Control Logs and consequent adjustments to the LTP are made.
- 15.2 Upon receipt of a rejected Change Proposal, the Contractor shall note the rejection in the appropriate Change Control Log. Where a Change Proposal has been partly approved and partly rejected, the Contractor shall record the approved/rejected elements accordingly in the appropriate Change Control Logs and (save where the entire Change Proposal has been withdrawn or cancelled following its partial Approval) shall only implement the Approved aspects of the Change Proposal.

16 NOT USED

17 TREND AND CHANGE CONTROL LOGS

17.1 Change Control Log

17.1.1 The Contractor shall maintain and update a "Change Control Log" (as such term is used in PCP-05 (*Change Control*)) in accordance with PCP-05 (*Change Control*) and shall promptly make such "Change Control Log" available to the Authority as and when requested by the Authority.

17.1.2 The "Change Control Log" referred to in Paragraph 17.1.1 above (*Change Control Log*) shall be included in the SLC Monthly Performance Reports (as defined in PCP-13 (*Progress Reporting and Reviews*)) in accordance with PCP-13 (*Progress Reporting and Reviews*).

17.2 Trend Log

17.2.1 The Contractor shall record and monitor the status of trends by maintaining and updating a "Trend Log" (as such term is used in PCP-05 (*Change Control*)) in a

form reasonably satisfactory to the Authority and in accordance with the provisions of PCP-05 (*Change Control*).

17.2.2 The Contractor shall identify and categorise all trends in accordance with PCP-05 (*Change Control*).

18 DOCUMENTS AND MATERIALS

The Contractor shall maintain the supporting documents and materials that establish the basis for the decisions associated with the Change Proposals within a configuration control process defined by the site internal configuration management procedures.

18.1 Access to Change Supporting Documentation

18.1.1 The Contractor must provide the Change Logs, Trend Log and impact on the LTP Performance Plan and Contract Baseline to the Authority as part of the submittal of the Monthly Progress Report in accordance with Clause 4 (*Performance Management, Performance Assurance and Records*).

18.1.2 The Contractor shall make all Trend Logs and Change Control Logs and supporting data available to the Authority in accordance with the open book access provisions in Clause 4.5 (*Inspection and Audit*).

18.2 Access to Supporting Documentation and Materials

The Contractor must make the supporting information including but not limited to the detailed estimates, drawings, specifications, studies, reports, etc. available to the Authority.

19 RELATED APPROVALS

19.1 In addition to the requirements of PCP-05 (*Change Control*), if Approval under Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) is not required and the proposed Change arises out of or will result in:

19.1.1 the Contractor's entry into a new Subcontract or amendment of an existing Subcontract, the Contractor shall explain this in the Baseline and/or Funding Change Proposal and attach any details to the Baseline and/or Funding Change Proposal which the Contractor is required to produce pursuant to the requirements of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of the Subcontracting/Procurement Schedule; or

19.1.2 the Contractor's entry into a New Customer Contract or amendment to an existing Customer Contract or exercise of a discretion under a Customer Contract, the Contractor shall explain this in the Baseline and/or Funding Change Proposal and attach any details to the Baseline and/or Funding Change Proposal which the Contractor is required to produce pursuant to the requirements of Clause 3.6 (*Authority Rights In Respect Of Customer Contracts*) and Part 2 (*Customer Contracts*) of the Commercial Schedule, ("**Related Approvals**").

The Contractor must submit the Baseline and/or Funding Change Proposal to the Authority, seeking Approval at the appropriate level as set out in the paragraph 5 (*Baseline Change Requirement Thresholds*), above.

At the same time as evaluating the Baseline and/or Funding Change Proposal, the Authority shall consider any Related Approvals in accordance with the procedures set out in Part 1 (*Work Activity Management – Subcontracts and Procurement*) of the

Subcontracting/Procurement Schedule and Part 2 (*Customer Contracts*) of the Commercial Schedule (as applicable).

SCHEDULE 3
Commercial Schedule

Part 1: Permitted Activities

Part 2: Customer Contracts

SCHEDULE 3

Commercial Schedule

PART 1 – PERMITTED ACTIVITIES

1. PERMITTED ACTIVITIES

1.1 Subject to the conditionality described in Paragraph 1.2 (Conditionality) below, a Permitted Activity is any activity in relation to the management of new or existing Customer Contracts. This includes undertaking the day to day management of the Customer Contracts as follows:

- 1.1.1 Regular and ad hoc commercial meetings with Customers to ensure the smooth running of the Customer Contracts.
- 1.1.2 Hosting of customer visits including technical and quality audits and third party audits on behalf of Commercial Customers, in accordance with the Allowable Cost regime and seeking Advance Agreements as necessary.
- 1.1.3 Attending Customer meetings appropriately held away from the LLWR site, in accordance with the Allowable Cost regime and seeking Advance Agreements as necessary.

The Contractor must ensure successful customer relations are maintained on behalf of the Authority and the Contractor, and help minimise any disruption under this and the Customer Contract.

1.2 Conditionality

The activities described in Paragraph 1 can be carried out without further approval from the Authority providing that any proposal arising from these activities:

- 1.2.1 is not novel, contentious or repercussive;
- 1.2.2 does not involve the provision of any indemnity;
- 1.2.3 does not involve a waiver of debt;
- 1.2.4 does not involve a customer funded project;
- 1.2.5 does not involve a contractual compensation payment;
- 1.2.6 does not involve a potential cash deferment;
- 1.2.7 does not involve a price reduction, credit note or incremental risk;
- 1.2.8 will not, or is not expected to, be loss making;
- 1.2.9 does not entail the Contractor entering into new Customer Contracts; or

1.2.10 does not entail the Contractor amending or exercising a discretion under an existing Customer Contract.

1.3 In the event that there is uncertainty as to whether any of the conditions described in Paragraph 1.2 (Conditionality) apply, the Contractor will consult the Authority and the Authority will confirm in writing the appropriate course of action that the Contractor should take.

2. CONTENT OF PERMITTED ACTIVITIES REQUEST

2.1 The Contractor shall ensure that each Permitted Activities Request shall contain the following:

2.1.1 the date of the Permitted Activities Request;

2.1.2 the reasons for requesting the proposed new, amended or updated Permitted Activity; and

2.1.3 the terms of the proposed amendment to the Permitted Activity.

2.2 As soon as reasonably practicable after receipt by the Authority of the Permitted Activities Request, the Parties shall meet to discuss and attempt to agree the proposals set out in the Permitted Activities Request (or any modifications made pursuant to Paragraph 2.1 (*Content of Permitted Activities Request*) above).

2.3 If, as a result of the discussions undertaken pursuant to Paragraph 2.2 (*Content of Permitted Activities Request*), modifications to the proposal are required by the Authority in its sole discretion, the Contractor shall modify the Permitted Activities Request and shall issue any such modifications to the Authority as soon as reasonably practicable.

2.4 The Authority shall be entitled, at any time and in its sole discretion, to reject the Permitted Activities Request and the Authority shall give reasons for such a rejection.

2.5 If the Authority consents to the Permitted Activities Request (as modified (if relevant) pursuant to Paragraph 2.3 (*Content of Permitted Activities Request*)), it shall notify the Contractor in writing.

2.6 As soon as reasonably practicable after receipt of such notification, the Contractor shall amend the Permitted Activity to which the notification relates and provide a certified copy of such amendment to the Authority.

PART 2 – CUSTOMER CONTRACTS

1. AMENDMENTS TO CUSTOMER CONTRACTS AND NEW CUSTOMER CONTRACTS

- 1.1 Prior to seeking any approval required from the Authority in respect of a Customer Contract or a New Customer Contract, the Contractor shall first consult and comply with Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and relevant provisions of PCP-17.
- 1.2 Upon receipt of the Authority's AiP/sanction or self approval by the Contractor where applicable in relation to a Customer Contract Work Activity pursuant to Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and relevant provisions of PCP-17 and subject to the willingness of the counterparty (or proposed counterparty) to proceed, the Contractor shall negotiate the New Customer Contract or the Amendment (as applicable) with the counterparty (or proposed counterparty) in accordance with the terms of the Negotiation Mandate.
- 1.3 If, at any time, the Authority, acting reasonably, considers it necessary and/or efficacious to attend such negotiations with the counterparty (or proposed counterparty), the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the Authority's attendance at such negotiations.
- 1.4 Unless the Authority agrees otherwise, any AiP/sanction by the Authority to an AiP 1 Submission, AiP 2 Submission or Sanction Submission, where required, shall be conditional upon the Contractor confirming in writing to the Authority that:
- 1.4.1 subject to Paragraph 1.4.2 (*Amendments to Customer Contracts and New Customer Contracts*), no New Customer Contract and no Amendment (as the case may be) contains any term which:
- (A) provides the counterparty to the Customer Contract with a right of consent or a right of termination or amendment if the Contractor is subject to a change in ownership, management or control;
 - (B) directly or indirectly excludes or attempts to exclude any right of the Authority which arises under the Contracts (Rights of Third Parties) Act

1999 or in any other way seeks to prevent the Authority from enforcing the terms of the Customer Contract;

- (C) directly or indirectly excludes or attempts to exclude (as the case may be) any of the terms set out in Paragraphs 1.4.2 below;

1.4.2 subject to Paragraph 1.4.3, any New Customer Contract shall contain:

- (A) provisions allowing the disclosure to the Authority by the Contractor of such Customer Contract and any information passing between the parties in relation to it and, where permitted under Clause 10 (*Confidentiality, Security and Compliance with Law*), disclosure by the Authority to Third Parties;
- (B) an acknowledgement by the counterparty to the Customer Contract of the Contractor's obligations to comply with, and the Authority's rights under, Clauses 4.1 (*Reporting and Reviewing*), 4.2 (*Records*), 4.5 (*Inspection and Audit*) and 10 (*Confidentiality, Security and Compliance with Law*) and a waiver of any liability that may arise under the Customer Contract as a result of the Contractor complying with its obligations under such Clauses of this Contract;
- (C) an obligation on the counterparty to the Customer Contract to make its employees available for the purposes of the Authority's audit under Clause 4.5 (*Inspection and Audit*);
- (D) [Not Used];
- (E) [Not Used];
- (F) a termination for convenience provision enabling the Contractor to terminate at any time on giving reasonable notice to the counterparty to the Customer Contract (and, in the event of such termination for convenience, the Contractor shall only agree, subject to the Authority's approval, to pay the relevant counterparty's reasonable costs arising directly from the termination of the Customer Contract and shall not agree any payment in respect of loss of anticipated profits, loss of opportunity or the consequential losses of affiliates of the counterparty);

- (G) a provision ensuring that the Customer Contract is capable of being assigned to the Authority's nominee either without the consent of the counterparty to the Customer Contract or with the consent of the counterparty to the Customer Contract, such consent not to be unreasonably withheld (and in either case without requiring the consent of any other Third Party and without incurring any payment obligation or other additional liability),

- 1.4.3 where an existing Customer Contract contains any of the terms in Paragraphs 1.4.1 or excludes or attempts to exclude (as the case may be) any of the terms in Paragraph 1.4.2, the Contractor having used reasonable endeavours to ensure that the Amendment alters the terms of the existing Customer Contract so that such existing Customer Contract does not include any of the terms in Paragraph 1.4.1 and does not exclude or attempt to exclude (as the case may be) any of the terms in Paragraph 1.4.2.

- 1.5 Any AiP/sanction, where required, by the Authority to the Contractor's entry into a New Customer Contract or an Amendment (as applicable) pursuant to Clause 20.1 (*Amendments to Customer Contracts and New Customer Contracts*) of this Contract and this Schedule:
 - 1.5.1 shall be without prejudice to any of the Authority's rights under this Contract;

 - 1.5.2 shall not constitute acceptance by the Authority of any terms and conditions of the New Customer Contract or the Amendment (as applicable) which are outside the terms of the agreed Sanction Plan (as modified (where relevant) pursuant to Part 2 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Programme Management and Change Procedure*) and the relevant provisions of PCP-17);

 - 1.5.3 shall not, unless expressly agreed in writing between the Parties, relieve or excuse the Contractor from any liability or obligation under this Contract; and

 - 1.5.4 shall not in respect of any cost arising in relation to the New Customer Contract or, in the case of an Amendment, in relation to the relevant existing Customer Contract, unless expressly agreed in writing between the Parties, alter whether such cost is treated by the Authority as an Allowable Cost or a Disallowable Cost.

- 1.6 Within thirty (30) Calendar Days of the execution of any Customer Contract or of any Amendment being effected (as applicable), the Contractor shall provide the Authority with a certified copy of the New Customer Contract or a certified conformed copy of the existing Customer Contract incorporating the Amendment (as applicable).
- 1.7 If following any AiP/sanction, where required, by the Authority for entry into a New Customer Contract or Amendment the Contractor is unable to enter into such New Customer Contract or Amendment, the Contractor shall inform the Authority in writing that this is the case and at the same time shall provide an explanation as to why the entry into the New Customer Contract or the Amendment (as applicable) has not taken place.

2. CONTENTS OF AUTHORITY'S INSTRUCTIONS NOTICE

- 2.1 Any Authority instruction pursuant to Clause 3.6.3 (*Authority's right to instruct*) shall set out:
- 2.1.1 the date of the instruction;
- 2.1.2 sufficient detail to enable the Contractor to implement the instruction including:
- (A) in all cases where the instruction relates to an existing Customer Contract, details of the relevant Customer Contract including:
- (1) a sufficient description of the Customer Contract for the Contractor to be able to identify it;
- (2) the detailed instruction which the Authority requires the Contractor to implement;
- (3) details of any waiver to be given by the Authority pursuant to Paragraph 3.3 (*Authority's Instructions*); or
- (B) where the Authority wishes the Contractor to enter into a New Customer Contract, details of:
- (1) the identity of the counterparty to the New Customer Contract and any details in respect of the counterparty and its business and/or the Authority's relationship with the counterparty;

- (2) a description of the subject matter of the New Customer Contract;
 - (3) the term and commencement date of the New Customer Contract;
 - (4) any estimated Costs and Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the New Customer Contract;
 - (5) the estimated annual and total revenue likely to be receivable under the New Customer Contract;
 - (6) the principal terms which should be contained in the New Customer Contract such as the pricing mechanism, the parties' key obligations, any indemnities, any limits on the parties' liability, the force majeure provisions and the parties' termination rights including any termination payments payable;
- 2.1.3 any reason for the Authority's instructions which the Authority wishes (but, for the avoidance of doubt, is not obliged) to convey to the Contractor;
- 2.1.4 the date by which the Authority wishes its instructions to have been implemented (subject to agreement by the counterparty or the proposed counterparty); and
- 2.1.5 any other information that the Authority reasonably considers would assist the Contractor in carrying out its instructions.

3. AUTHORITY'S INSTRUCTIONS

- 3.1 As soon as reasonably practicable after the Contractor receives an instruction pursuant to Clause 3.6.3 (*Authority's right to instruct*), the Parties shall meet to discuss the instructions. The Contractor shall inform the Authority:
- 3.1.1 if the instructions may have any impact on any Subcontract or Series of Subcontracts; and
 - 3.1.2 of any impact of which the Contractor is aware of the instructions on the Authority, the Contractor, the performance or terms of this Contract and/or the Customer Contracts.

3.2 Subject to Paragraph 3.3 (*Authority's Instructions*), the Contractor shall be entitled at any time before the Authority confirms its instruction pursuant to Paragraph 3.4 (*Authority's Instructions*), to serve on the Authority a written notice (an "**Objection Notice**") setting out in detail the grounds on which the Contractor objects to the instruction, provided that the Contractor shall only be entitled to object to the instruction if the instruction would, if implemented:

3.2.1 be inconsistent with the Contractor's obligations under Clause 2.2 (*Standard of Performance*);

3.2.2 be inconsistent with the Contractor's obligations under Clause 2 (*Contractor's Obligations*);

3.2.3 result in the Contractor being in breach of any of its obligations under this Contract (other than its obligation to perform the Customer Contracts in relation to which a waiver will be provided under Paragraph 3.1 (*Authority's Instructions*));

3.2.4 materially alter the basic nature of the outputs to be provided,

and upon the Authority's receipt of any Objection Notice, the provisions of Paragraph 3.1 (*Authority's Instructions*) shall apply save for, if the Parties cannot agree within thirty (30) Calendar Days of meeting (or any longer period as the Parties may agree) whether the Contractor's objections are valid, the matter shall be referred to the Dispute Resolution Procedure under Clause 13 (*Dispute Management*). If the Parties agree, or the Disputes Resolution Procedure determines, that the Contractor's objections are valid, the Authority shall withdraw or modify the instruction.

3.3 If the Authority instructs the Contractor not to perform any of its obligations under any Customer Contract, the Authority shall waive the Contractor's obligation under this Contract to perform such obligations in respect of the relevant Customer Contract.

3.4 As a result of the discussions undertaken pursuant to Paragraph 3.1 (*Authority's Instructions*), the Authority may confirm, modify or withdraw its instruction.

3.5 Without prejudice to Paragraph 3.7 (*Authority's Instructions*), upon receipt of any confirmation pursuant to Paragraph 3.4 (*Authority's Instructions*), the Contractor shall implement the Authority's instructions in accordance with the instruction and in accordance

with any further guidance from the Authority (as applicable given the nature of the instruction). If, at any time, the Authority acting reasonably considers it necessary and/or efficacious to attend any negotiations with the counterparty (or proposed counterparty), the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the Authority's attendance at such negotiations.

- 3.6 Upon receipt of any modification pursuant to Paragraph 3.2 (*Authority's Instructions*) or 3.4 (*Authority's Instructions*), the provisions of Paragraphs 3.1 (*Authority's Instructions*) to 3.5 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.
- 3.7 If the counterparty (or proposed counterparty) to the Customer Contract is unwilling to proceed in the manner prescribed by the Authority in its instruction, the Contractor shall use its reasonable endeavours to overcome the counterparty's objections through negotiation (in which event it shall comply with the Authority's directions as to the negotiating strategy and approach to be adopted) and to carry out the Authority's instructions. The Authority and the Contractor shall consult with one another in order to agree how to resolve the issue.
- 3.8 The Authority may request from the Contractor such additional information and in such format as the Authority reasonably requires for the purpose of considering any issues raised by the Contractor in relation to an instruction. The Contractor shall provide any information requested by the Authority pursuant to this Paragraph 3.8 (*Authority's Instructions*) as soon as reasonably practicable after receiving such request and in any event by such deadline as the Authority reasonably requests.
- 3.9 If, as a result of any discussions pursuant to Paragraph 3.7 (*Authority's Instructions*), the Authority modifies or withdraws the instruction, the Authority shall issue to the Contractor any such modification or withdrawal (as the case may be) as soon as reasonably practicable.
- 3.10 Upon receipt of any modification pursuant to Paragraph 3.9 (*Authority's Instructions*), the provisions of Paragraphs 3.1 (*Authority's Instructions*) to 3.5 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.

SCHEDULE 4
Employee Schedule

- Part 1: Nominated Staff**
- Part 2: Key Personnel**
- Part 3: Pro Forma Secondment Agreement**
- Part 4: Deed of Participation**
- Part 5: Pro Forma Impartiality Undertaking**

Part 1 : Nominated Staff

Position	Name
-----------------	-------------

Part 2 : Key Personnel

POSITION	KEY PERSONNEL
-----------------	----------------------



Part 3 : Pro Forma Secondment Agreement

..... 20[]

(1) UK NUCLEAR WASTE MANAGEMENT LTD

and

(2) LLW REPOSITORY LTD

and

(3) [EMPLOYER – IF DIFFERENT FROM THE PARENT BODY ORGANISATION]

and

(4) [ULTIMATE PARENT]

(5) [EMPLOYEE]

SECONDMENT AGREEMENT

THIS AGREEMENT is made on []

BETWEEN:

- (1) **UK NUCLEAR WASTE MANAGEMENT LIMITED**, (a company incorporated in England and Wales (registered number 06040606) whose registered office is at Old Shore Road, Drigg, Holmbrook, Cumbria, CA19 1XH (the "**Parent Body Organisation**");
- (2) **LLW REPOSITORY LIMITED** (a company incorporated in England and Wales (registered number 5608448) whose registered office is at Old Shore Road, Drigg, Holmbrook, Cumbria, CA19 1XH (the "**Company**"); [and]
- (3) **[[EMPLOYER]**, a company incorporated under the laws of [England and Wales/other] (the "**Original Seconding Company**") [**Note: only include if employer different entity from Parent Body Organisation**]]; [and]
- (4) **[[ULTIMATE PARENT]**, a company incorporated in [•] (registered number [•]) whose registered address is at [•] (the "Ultimate Parent"); [and] [**Note: depending on the identity of the Original Seconding Company, it may be sensible to have the Ultimate Parent as a party to the secondment agreement as well.**]
- (5) **[EMPLOYEE]** of [address] (the "**Employee**").

WHEREAS

- (A) The Employee is employed by [the Parent Body Organisation/the Original Seconding Company] under an employment contract dated [●] (the "**Contract of Employment**") [and has been seconded to the Parent Body Organisation by the Original Seconding Company under a secondment [agreement/arrangement] dated [●] (the "**Original Secondment Agreement**")].
- (B) The Parent Body Organisation has agreed with the Company that it will make available the services of the Employee to the Company by way of a secondment arrangement in accordance with the terms of this Agreement and the Employee has agreed to such secondment arrangement. [The Original Seconding Company has also agreed to the Employee's services being made available to the Company by way of a secondment arrangement and the Employee has agreed to such secondment arrangement.]
- (C) By signing this Agreement, the parties record their agreement to the Employee being seconded to the Company on the terms set out below.

IT IS AGREED as follows:

1 COMMENCEMENT

1.1



accordance with the terms of this Agreement (the "**Secondment Period**"). For the avoidance of doubt, the Employee will continue to be an employee of the [Parent Body Organisation/Original Seconding Company] throughout the Secondment Period, and [his] Contract of Employment [as amended by the Original Secondment Agreement] will remain in full force and effect, save as may be varied from time to time. [At the end of the Secondment Period the [Parent Body Organisation/Original Seconding Company] will offer the Employee employment in either the same position (or, as similar a position as is reasonably practicable) as the position the Employee held with the [Parent Body Organisation/Original Seconding Company] immediately prior to the start of the Secondment Period.]

2 DUTIES OF THE EMPLOYEE

- 2.1 During the Secondment Period the Employee will be available, subject to the other provisions of this Agreement and to any short term leave taken in accordance with the Contract of Employment or other applicable policies of the [Parent Body Organisation/Original Seconding Company/Company], including but not limited to holiday, sick leave, compassionate leave and study leave ("**Short Term Leave**"), to provide services to the Company. In the event of any conflict between clause 2.1 and clause 4.2 of this Agreement, the provisions of clause 4.2 shall prevail.
- 2.2 The Employee's working hours shall be as set out in the Contract of Employment as may be varied from time to time ("**Normal Working Hours**").
- 2.3 During the Secondment Period, the Employee will at all times act in the best interests of the Company and will comply with all lawful directions given by or under authority of the board of directors of the Company (the "**Board**"). The Employee will comply with the provisions of any Company policy relating to health and safety and confidentiality. The Employee shall also be under a duty to use all reasonable endeavours to ensure that the Company does not contravene the terms of the Licence(s). In the event of any conflict during the Secondment Period between the duties that the Employee may owe to the Company and any duty that the Employee may owe to the [Parent Body Organisation/Original Seconding Company], [his] duties to the Company shall prevail.
- 2.4 If the Employee is a Board director of the Company, [he] shall owe a fiduciary duty to the Company. Any fiduciary duty that the Employee may owe as a Board director of the Company shall include (but not be limited to) a duty to use all reasonable endeavours to ensure that the Company does not contravene the terms of the Licence(s). In the event of any conflict during the Secondment Period between any duty that the Employee may have to the [Parent Body Organisation/Original Seconding Company] and [his] fiduciary duty to the Company, [his] fiduciary duty to the Company shall prevail.
- 2.5 During the Secondment Period the [Parent Body Organisation/Original Seconding Company] must obtain the Company's prior consent to the Employee taking holiday (such consent not to be unreasonably withheld or delayed).
- 2.6 The Employee acknowledges that before the expiry of the applicable Site Management and Operations Contract, the Authority may invite persons to tender for the right to own the Shares in the Company and to negotiate a replacement site management and operations contract to be entered into by the Company and the Authority upon the effective date of such replacement contract. The Employee agrees that if he or she is invited or required by the [Parent Body Organisation/Original Seconding Company] to form part of a team

assisting the Company with the competitive process, he or she will be required to enter into an impartiality undertaking with the Authority.

2.7 The Employee shall, and the [Parent Body Organisation/Original Seconding Company] shall procure that the Employee shall, during the Secondment Period:

2.7.1 work faithfully and diligently to serve the Company and use their reasonable endeavours to deliver the obligations of the Company under the Site Management and Operations Contract;

2.7.2 except for any Short Term Leave and any work to be undertaken for the [Parent Body Organisation/Original Seconding Company] in accordance with clause 2.8, devote the whole of [his] Normal Working Hours to the provision of services to the Company in accordance with clause 2.7.1 of this Agreement; and

2.7.3 except where the Employee has entered into an impartiality undertaking with the Authority in accordance with clause 2.6 of this Agreement, notify the Authority as soon as practicable of any actual or potential conflict between the duties that the Employee may owe to the Company and any duty that the Employee may owe to the [Parent Body Organisation/Original Seconding Company].

2.8 Subject to clause 2.3, the Employee may undertake the following work for the [Parent Body Organisation/Original Seconding Company] during the Secondment Period:

2.8.1 any work requested by the [Parent Body Organisation/Original Seconding Company] provided that such work is undertaken outside of [his] Normal Working Hours; and

2.8.2 *[insert details of other work, if relevant]*.

2.9 The [Parent Body Organisation/Original Seconding Company] shall grant the Authority a reasonable opportunity, on a no less frequent than annual basis, to provide oral or written feedback to the [Parent Body Organisation/Original Seconding Company] regarding the performance of the Employee during the Secondment Period in accordance with the employee appraisal/ review process used by the [Parent Body Organisation/Original Seconding Company] to assess the performance of the Employee [and the [Parent Body Organisation/Original Seconding Company] shall take such feedback into account when assessing the performance of the Employee in accordance with such process].

3 PAYMENT OF SALARY AND PROVISION OF BENEFITS

3.1 In respect of the Secondment Period the [Parent Body Organisation/Original Seconding Company] shall be responsible for paying the Employee the salary and providing the Employee with the contractual benefits referred to in the Contract of Employment (as may be varied from time to time) and for all other employment costs arising in respect of the Employee's employment during the Secondment Period, including any discretionary bonus awarded to the Employee by the [Parent Body Organisation/Original Seconding Company] and all related taxes and national insurance contributions, in accordance with the provisions of the applicable Site Management and Operations Contract. All such salary, contractual benefits and other employment costs and all related taxes and national insurance contributions shall be reimbursed by the Company.

- 3.2 Notwithstanding clause 3.1, the [Parent Body Organisation/Original Seconding Company] shall continue to be responsible for the payment of any employer's pension contributions in respect of the Employee's employment during the Secondment Period, the cost of which shall be reimbursed by the Company.
- 3.3 The Employee authorises the [Parent Body Organisation/Original Seconding Company] to deduct from the Employee's remuneration during the Secondment Period any employee's pension contributions and any other amounts required to be remitted to the [Parent Body Organisation/Original Seconding Company] in respect of any ongoing contributory benefits provided by the [Parent Body Organisation/Original Seconding Company] during the Secondment Period.
- 3.4 During the Secondment Period, the [Parent Body Organisation/Original Seconding Company] agrees that, subject to as required by Law (as defined in the applicable Site Management and Operations Contract), it will not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) amend any material term or condition of the Employee's Contract of Employment. For the purposes of this clause 3.4 only, "material" shall include, but not be limited to, any term or condition of the Employee's Contract of Employment which could affect the duration of this Agreement or the duties owed by the Employee to the Company.
- 3.5 For the avoidance of doubt, the [Parent Body Organisation/Original Seconding Company] shall reimburse the Employee all reasonable expenses incurred by the Employee wholly and necessarily in the course of providing [his] services to the Company during the Secondment Period or otherwise incurred in accordance with Internal Procedures (as defined in the Site Management and Operations Contract), subject to the production of appropriate evidence of expenditure and to the terms of the [Parent Body Organisation's/Original Seconding Company's] expenses policy as may be varied from time to time. The Company shall reimburse the [Parent Body Organisation/Original Seconding Company] for any such expenses that it reimburses to the Employee.

4 TERMINATION AND ASSIGNMENT

- 4.1 The [Parent Body Organisation/Original Seconding Company] may terminate this Agreement by withdrawing the Employee with the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed). It is agreed that it will not be unreasonable for the Authority to withhold such consent if the [Parent Body Organisation/Original Seconding Company] does not agree to replace immediately the Employee with a person who has the necessary skills and experience to provide the services to the Company required for the role undertaken by the Employee. Nothing in this clause 4.1 shall prevent the [Parent Body Organisation/Original Seconding Company] from immediately dismissing or suspending the Employee from his or her duties where, in the reasonable opinion of the [Parent Body Organisation/Original Seconding Company], such action is:
- 4.1.1 necessary to comply with any applicable Law or Regulatory Requirement (as defined in the applicable Site Management and Operations Contract); and/or
 - 4.1.2 required to safeguard the health and wellbeing of any employee on the site to which the Site Management and Operations Contract applies; and/or
 - 4.1.3 justified on the grounds that the Employee has committed an act of negligence or gross misconduct; and/or

4.1.4 justified on the grounds that the Employee has failed a drugs and/or alcohol test.

Reference in this clause 4.1 to "withdrawing" does not include the retirement, long term illness, death, the long term illness of a close family member (being a spouse, partner, children or other dependants) or voluntary resignation from the employment of the Parent Body Organisation or Relevant Affiliate of the relevant individual.

4.2 During the Secondment Period, neither the [Parent Body Organisation/Original Seconding Company] nor the Company may assign the Employee away (whether temporarily or permanently) from providing services to the Company without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed in accordance with clause 16.1.6 of the applicable Parent Body Agreement) and the provisions of clause 16.1.6 of the applicable Parent Body Agreement shall apply. It is acknowledged that it will not be unreasonable for the Authority to withhold such consent if the [Parent Body Organisation/Original Seconding Company] or the Company, as appropriate, fails to comply with the provisions of clauses 16.1.4 of the [Parent Body Agreement – insert definition/description]. [To the extent that the applicable Site Management and Operations Contract permits the [Parent Body Organisation/Original Seconding Company] temporarily to assign the Employee away in relation to business development work and other temporary assignments, the Authority's consent shall not be required provided that the [Parent Body Organisation/Original Seconding Company] gives reasonable notice of such assigning away, records the time spent on any such assigning away and provides that record to the Authority.

4.3 Without prejudice to the Authority's rights under clause 5 (Employees) of the Site Management and Operations Contract and clauses 16 (Provision of staff to the SLC) and 17 (Transition Out) of the Parent Body Agreement, if the Employee wishes to terminate this Agreement at any stage during the Secondment Period, the Employee agrees that [he] will not be able to relinquish [his] duties for the Company and return to the [Parent Body Organisation/Original Seconding Company] until such time as the [Parent Body Organisation/Original Seconding Company] is able to replace the Employee with a person who has the necessary skills and experience to provide the services to the Company required for the role undertaken by the Employee.

4.4 The Secondment Period shall automatically terminate on the termination of the Contract of Employment, howsoever arising.

4.5 For the avoidance of doubt, the termination of this Agreement or the expiry of the Secondment Period shall not automatically operate so as to terminate the employment of the Employee with the [Parent Body Organisation/Original Seconding Company]. In such a case the provisions of clause 1 of this Agreement will apply.

5 CONFIDENTIALITY

Save and so far as such information is already in the public domain the Employee agrees to keep confidential and not at any time (whether during or after the Secondment Period) use for [his] own or another's advantage, or reveal to any person, firm, company or organisation any information which the Employee knows or reasonably to have known to be confidential, concerning the business or affairs of the Company. These restrictions will not apply (i) to any disclosure authorised by the Board or required by law or to perform the Employee's duties during the Secondment Period; (ii) so as to prevent the Employee from using [his] own personal skill in any business in which [he] may be lawfully engaged after the Secondment Period ends; or (iii) to prevent the Employee making a protected disclosure within the meaning of section 43(A) of the Employment Rights Act 1996.

6 PROPER LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, English law.

7 EMPLOYEE DISPUTES

- 7.1 If any disputes arise between the Employee and the Company during the Secondment Period, the Company will provide the [Parent Body Organisation/Original Seconding Company] with full particulars of the dispute. Without prejudice to the Authority's rights under clause 5 (Employees) of the Site Management and Operations Contract and clauses 16 (Provision of staff to the SLC) and 17 (Transition Out) of the Parent Body Agreement, for the avoidance of doubt, the Company will not have the authority to dismiss or discipline the Employee in respect of any disputes or other matters.

8 RECOURSE FOR LIABILITY OF NOMINATED STAFF

- 8.1 Subject and without prejudice to Clause 8.2, all costs, claims, losses, liabilities and expenses suffered by the Authority in relation to the Employee (as defined in this Agreement) shall be dealt with under the regime set out in clause 7.2 (General Indemnity) of the Parent Body Agreement and there will be no separate liability regime under this Agreement.
- 8.2. The Parties agree that any costs, claims, losses, liabilities and expenses arising out of vicarious liability for the acts or omissions of the Employee shall be borne by the Parent Body Organisation both as between the Parent Body Organisation and the Company and between the Parent Body Organisation, the Original Seconding Company and the Ultimate Parent.

9 DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

"**Authority**" has the meaning given in the Site Management and Operations Contract;

"**Group Company**" shall mean the Company, any subsidiary of the company and any holding company of the Company or of any subsidiary (with subsidiary and holding company having the meanings ascribed to them in section 1159 of the Companies Act 2006.

"**Licence**" shall mean the Nuclear Site Licence for the relevant site or sites in respect of which the Employee is required to provide services under this Agreement.

"**Site Management and Operations Contract**" means the Site Management and Operations Contract between the NDA and the Company commencing on 1 April 2008, as amended from time to time.

Signed

For and on behalf of the Parent Body Organisation

Signed

For and on behalf of the SLC

[Signed

For and on behalf of the Original Seconding Company]

[Signed

For and on behalf of the Ultimate Parent]

Signed

Employee

Part 4 : Deed of Participation

Deed of Participation

DATED _____

NUCLEAR DECOMMISSIONING AUTHORITY (1)

[] (2)

DEED OF PARTICIPATION
for the
Combined Nuclear Pension Plan

DEED OF PARTICIPATION made on

BETWEEN

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a statutory body set up under section 1 of the Energy Act 2004 (the "**NDA**"); and
- (2) [] **LIMITED** a company incorporated in England and Wales with registered number [] whose registered office is at [●] (the "**New Employer**")

RECITALS

- (A) This deed is supplemental to the Scheme Documents by which the Scheme is constituted and established.
- (B) The NDA is currently the "Lead Company" for the purposes of the Scheme.
- (C) Clause 7 of the Definitive Deed permits companies or bodies which execute an appropriate deed of participation with NDA to participate in the Scheme.
- (D) The NDA and the New Employer have agreed that the New Employer should participate in the Scheme in a Section to be termed the "[]" with effect on and from the Effective Date on the terms set out in this deed.
- (E) The NDA has pursuant to clause 6.4 of the Definitive Deed notified the Trustees of the creation of the [] Section.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following words which begin with capital letters in this deed have the meanings set out below:

"Definitive Deed" means the deed dated 1st October 2006 by which the Scheme is established and constituted including the rules and schedules attached to it.

"Effective Date" means [].

"Energy Act CPS Member" has the same meaning as in the Definitive Deed.

"Energy Act GPS Member" has the same meaning as in the Definitive Deed.

"Scheme" means the Combined Nuclear Pension Plan.

"Scheme Documents" means the Definitive Deed and any other documents which relate to or govern the operation of the Scheme.

"Section" means a section of the Scheme created pursuant to clause 6 of the Definitive Deed.

"Trustee" means the trustee of the Scheme for the time being.

- 1.2 The introduction to and headings used in this deed have been inserted for ease of reference only. They do not affect its interpretation.
- 1.3 Unless the context requires otherwise, words in the singular include the plural and vice versa; words in the masculine gender include the feminine and vice versa.

2 NEW PARTICIPATION

- 2.1 Pursuant to clause 7 of the Definitive Deed the NDA admits the New Employer to participation in the Scheme on and from the Effective Date on the terms set out in this deed.
- 2.2 The New Employer shall participate in a separate Section, to be called the "[] Section".
- 2.3 All employees of the New Employer are eligible for Membership of the [] Section.
- 2.4 Employees who are Energy Act CPS Members shall be entitled to participate in the Scheme by reference to the CPS Benefit Structure as set out in Schedule 2 to the Definitive Deed. Employees who are Energy Act GPS Members shall be entitled to participate in the Scheme by reference to the GPS Benefit Structure as set out in Schedule 3 of the Definitive Deed. In each case, an employee's active membership shall commence on the Effective Date (subject to any employee exercising his option to opt out of the Scheme). Any other employees shall be entitled to participate in the Scheme by reference to the New Joiners Benefit Structure as set out in Schedule 4 to the Definitive Deed.
- 2.5 The New Employer agrees that the NDA may, if it wishes to do so, act as its representative on any and all occasions on which the trustee of the Scheme is required by general law or under the Scheme Documents to consult, negotiate or agree with the Employers.
- 2.6 The New Employer covenants with the NDA on behalf of the NDA and the Trustee to observe and perform all things which are applicable to it as an Employer under the provisions of the Scheme, the Scheme Documents, this deed and the general law on and from the Effective Date.

IN WITNESS of which this document has been executed and on the date set out above, delivered as a deed.

The **COMMON SEAL** of the **NUCLEAR DECOMMISSIONING AUTHORITY** was hereunto affixed in the presence of:

Director

Signature :

Name :

Director/Secretary

Signature :

Name :

SIGNED as a deed, and delivered when dated, by [] **LIMITED** acting by two directors or by one director and the secretary:

Director

Signature :

Name :

Director/Secretary

Signature :

Name :

Part 5 : Pro Forma Impartiality Undertaking

[Addressed to the Nominated Staff and Key Personnel who are invited to join an external facing competition team in relation to a competitive tender process]

[date]

Note: Nominated Staff and Key Personnel who are invited to join an external facing competition team in relation to a competitive tender process will be required to sign a letter in this form immediately prior to becoming a member of that team.

The Nuclear Decommissioning Authority (the “**Authority**”) is considering undertaking a competitive tender process to select [name of company] to be the Site Licence Company (“**SLC**”). [Name of PBO] (the “**PBO**”) has selected you to be a member of an external facing competition team (the “**Team**”). The outcome of the tender process may result in the PBO being required to transfer its shares in the SLC to the successful tenderer.

The Authority wishes to ensure that all tenderers are treated as equally as possible in connection with the tender process. In order to ensure this equality of treatment it is essential that, for example, all tenderers are provided with access to the same information, documentation and site related personnel so that none of the tenderers is at an advantage or disadvantage in relation to any other tenderer. In order to become a member of the Team you are required to sign, date and return this undertaking to [insert name] at the Authority (unless otherwise directed in writing by the Authority) to signify your understanding of and agreement to its terms. If you refuse to do so you will not become a member of the Team. By signing, dating and returning this undertaking you:

- (1) undertake to use all reasonable endeavours and act in good faith to treat all tenderers in an equal and impartial manner in relation to the competitive tender process;
- (2) when access to information, documentation or site related personnel is provided by you to any one of the tenderers, will use all reasonable endeavours and act in good faith to ensure that access to the same information, documentation and site related personnel is made available to all other tenderers and the Authority;
- (3) undertake to use all reasonable endeavours and act in good faith to keep all information which is in your possession, custody or power in relation to the tender process including, but not limited to, the identity of all participants in the tender process confidential, including keeping such information confidential from the PBO (unless otherwise authorised in writing by the Authority);
- (4) undertake that you will not disclose any information in relation to the tender process to any tenderer, other than that information identified by the Authority to be disclosed;
- (5) acknowledge that tenderers may on reasonable notice request an interview with you and you agree that if you receive a notification from the Authority asking you on reasonable notice to attend such an interview, you will attend and will fully co-operate with the tenderer subject to the terms of this undertaking;

If the PBO chooses to participate in the competitive tender process, you also undertake that you will not join or remain in the Team without the prior authorisation in writing of the Authority.

All references to the tenderer and/or to the PBO include reference to their respective directors, officers, employees, advisers, subcontractors and agents.

You should note that if, having signed this undertaking, you breach any of its terms you could be removed from the Team and that if you commit a serious or deliberate breach of any of its terms such breach could result in your employer taking disciplinary action against you. Depending on the circumstances of any serious or deliberate breach your employer could dismiss you summarily by reason of gross misconduct (for example, if you provide confidential information to one tenderer that gives it an advantage over another tenderer or other tenderers in relation to the tender process).

If at any time you become concerned that you cannot or can no longer comply with the terms of this undertaking you should contact [*insert name*] at the Authority immediately so that appropriate arrangements can be made.

Yours sincerely

[]

On behalf of SLC

[]

On behalf of the Authority

I, [*name*] understand and agree to the terms set out in this letter.

Signed:

Date:

SCHEDULE 5

Part 1: Work Activity Management–Subcontracts and Procurement

Part 2: Inter-SLC Service Contract Pro Forma

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

1 PURPOSE

- 1.1 This Part 1 (*Work Activity Management – Subcontracts and Procurement*) of 0 (*Subcontracting/Procurement Schedule*) sets out the Contractor's obligations in relation to the awarding of Subcontracts and other procurement activities as referred to in Clause 2.8 (*Subcontracts Procurement*) of this Contract.
- 1.2 In accordance with Clause 2.9 (*Contractor's Internal Procedures*) of this Contract, the Contractor shall ensure that it has in place Internal Procedures that comply with the Authority procedure set out in this Part 1 (*Work Activity Management – Subcontracts and Procurement*) and PCP-17 (*Sanction*).

2 EU PROCUREMENT RULES

- 2.1 The Contractor shall comply with EU Procurement Rules in all respects as they apply to a contracting authority or a utility for the purposes of the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006 as applicable.
- 2.2 If compliance with any provision of this Part 1 (*Work Activity Management – Subcontracts and Procurement*) or any other provision of or referred to by this Contract would cause a breach of EU Procurement Rules the Contractor shall comply with EU Procurement Rules.

3 APPLICATION

- 3.1 This Part 1(*Work Activity Management – Subcontracts and Procurement*) applies in respect of:
- (a) all Subcontracts to be awarded or amended by the Contractor; and
 - (b) the renewal of all Existing Agreements by the Contractor.
- 3.2 This Part 1 (*Work Activity Management – Subcontracts and Procurement*) does not apply in respect of Secondment Agreements.

4 PROCUREMENT PLANNING

4.1 The Contractor shall prepare and submit to the Authority a procurement plan in accordance with the requirements specified in paragraph 3.16 of PCP-07.

4.2 The Contractor shall ensure that the effectiveness of its procurement planning processes, and the Authority approval submissions required under the SaV procedure, are fully compliant with PCP-17. Performance metrics specified in PCP-17 shall be monitored and reported by the Contractor to the Authority each period, in accordance with the reporting process specified in PCP-13. For the avoidance of doubt, the performance metrics shall be applied by the Authority in accordance with the relevant agreement in place at the time between the Parties (as may be amended by agreement from time to time) and may be used (but not exclusively) to assess the payment of Fee in accordance with Schedule 6 (*Finance Schedule*).

5 SUBCONTRACT AND PROCUREMENT REPORTING

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

6 PAYMENTS TO SUBCONTRACTORS

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

7 MAKE OR BUY

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

8 RECORDS MANAGEMENT

The Contractor shall comply with and shall procure that any Subcontractor or Sub-Subcontractor complies with the record management requirements set out in Clause 4 (*Performance Management, Performance Assurance and Records*) of this Contract and any record management policies issued by the Authority from time to time.

9 INTELLECTUAL PROPERTY

The Contractor shall comply with the Contractor's obligations set out in Clause 8 (*Intellectual Property*) of this Contract and Commercial Guidance Document 02 in relation to the awarding of Subcontracts.

10 REQUIREMENT TO MAINTAIN A SKILLED WORKFORCE

10.1 The Contractor shall not, without the prior written approval of the Authority, enter into any contract or other arrangement as a consequence of which the employment of any of the Employees transfers to a Third Party (whether under the terms of such contract or by operation of Law).

10.2 In making an application to the Authority for its approval pursuant to paragraph 10.1 above, the Contractor shall set out in a level of detail reasonably satisfactory to the Authority how the benefits of the transaction as a whole outweigh any adverse impact of the transfer on the range, mix and quality of the skills of the Contractor's workforce together with the Contractor's strategy for:

- (a) ensuring the transfer is consistent with the requirements of Clause 5.5 (*Maintenance of Skills*) of the Contract;
- (b) its retention of intelligent customer capability and control; and
- (c) ensuring compliance with paragraph 11 (*Transfer of Employees*) below.

10.3 An application by the Contractor for approval under Clause 10.1 shall be submitted to the Authority at least six months prior to the entry into the relevant contract or arrangement.

11 TRANSFER OF EMPLOYEES

11.1 The Contractor shall procure that where as a result of entry into a Subcontract, Sub-Subcontract or Series of Subcontracts the employment of any Protected Employee will transfer to a Subcontractor, Sub-Subcontractor or any Third Party (the "**Transferee Employer**") and following the transfer of employment such Protected Employees will continue to undertake wholly or mainly Authority Facing Work the Subcontractor, Sub-Subcontractor or Third Party (as appropriate) (being the "**Transferor Employer**") shall:

- (a) ensure that on or before the date of transfer of employment the Transferee Employer has established or become a participant in a pension scheme which has been certified by the Government Actuary's Department ("**GAD Certified Pension Scheme**") as providing sufficient benefits, to enable the Authority to satisfy itself that its duties and obligations under Part 4 of Schedule 8 of the Energy Act 2004 have been met, and comply fully with the Fair Deal on Staff Pensions issued by HM Treasury in June 1999, including the supplementary guidance issued by HM Treasury in June 2004 concerning bulk transfer payments;
- (b) ensure that on or before the date of transfer of employment each Protected Employee is enrolled as a member of the GAD Certified Pension Scheme;
- (c) do and shall not omit to do any such other thing which the Authority determines to be necessary to enable the Authority to satisfy itself that its duties and obligations in respect of the Protected Employees under Schedule 8 to the Energy Act 2004 are met;
- (d) maintain for the duration of the Subcontract, Sub-Subcontract or Series of Subcontracts a record of those Protected Employees undertaking wholly or mainly Authority Facing Work; and
- (e) comply with the Authority's policies for the provision of pensions within the nuclear industry.

11.2 The Contractor shall further ensure that in the event of any breach of the undertakings required under this paragraph 11, the Transferor Employer shall do all things reasonably necessary, as directed by the Authority, to restore the rights and benefits of such Protected Employees so as to enable the Authority to satisfy itself that its duties and obligations under Schedule 8 to the Energy Act 2004 are, and continue to be, met.

12 CONTRACTS WITH AFFILIATES

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

- (a) the Subcontract has been offered for competitive tender and the Contractor has procured that there is open and equitable competition with no unfair advantage of any nature accruing to the relevant Affiliate(s); or

(b) the Contractor has awarded the Subcontract in accordance with paragraph 13 (*Sole Source Awards*) below and accordingly can provide adequate substantiating documentation and rationale for not competing the Subcontract.

12.2 The Contractor shall notify the Authority (in accordance with the notification requirements issued by the Authority from time to time) of:

(a) the inclusion of an Affiliate in any competitive tender; or

(b) the sole source award of a Subcontract to an Affiliate.

12.3 Should the Contractor wish to effect any subsequent changes to a Subcontract awarded to an Affiliate, it must consider the terms of any Authority approval to its Subcontract Strategy and identify whether any such change is required to be Re-Sanctioned in accordance with paragraph 10 of Part 2 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Programme Management*) and PCP 17.

13 SOLE SOURCE AWARDS

13.1 Unless the Authority agrees otherwise, the Contractor shall not make an award of any Subcontract where such Subcontract has not been offered for competitive tender unless the Contractor demonstrates to the satisfaction of the Authority that a sole source award is reasonably justified in the circumstances.

13.2 In demonstrating that it is not required to hold a competitive tender, the Contractor may not rely on the fact that:

(a) the award of the Subcontract does not exceed the financial thresholds specified in the EU Procurement Rules for the application of those Rules;

(b) the Subcontract constitutes a Part B services contract as defined in the Public Contracts Regulations 2006; or

(c) the Subcontract constitutes a services concession or works concession as defined in the Public Contracts Regulations 2006.

13.3 In demonstrating that it is not required to hold a competitive tender, the Contractor may rely on any of the grounds for use of the negotiated procedure without prior

publication of a contract notice set out in regulation 14 of the Public Contracts Regulations 2006.

14 TERMINATION PAYMENTS

The Contractor shall not, without the prior written approval of the Authority, enter into any Subcontract which includes the provision of termination payments which might reasonably be expected to exceed either £100,000 (one hundred thousand pounds Sterling) or 15% (fifteen per cent) of the total value of the Subcontract whichever is the greater. For the purposes of this paragraph 14 (*Termination Payments*) only, “termination payment” shall mean any payment due from the Contractor to the Subcontractor (or anyone nominated by the Subcontractor) which arises by reason of the termination of the Subcontract.

15 TERMS OF AUTHORITY APPROVAL

15.1 Unless any written Authority approval specifically provides otherwise in relation to a particular Subcontract, the written approval of the Authority to the award or amendment of any Subcontract or the renewal of any Existing Agreement shall not constitute an Authority agreement:

- (a) of the acceptability of any Subcontract terms and conditions which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to the notification and disclosure requirements of this Part 1 (*Work Activity Management – Subcontracts and Procurement*) and PCP-17;
- (b) of the definition of any Cost incurred under the Subcontract as either an Allowable Cost or a Disallowable Cost; nor
- (c) to relieve the Contractor of any responsibility for performing the works or delivering/receiving the supplies or service which form the subject matter of the Subcontract; nor
- (d) to relieve the Contractor of any of its responsibilities under this Contract.

16 FLOWDOWN OF CONTRACTUAL PROVISIONS

16.1 Subject only to paragraph 17 (*Exception to Flowdown of Contractual Provisions*) below, the Contractor shall ensure that:

- (a) all Subcontracts shall include the contractual provisions set out in Part A of the Appendix to this Part 1 (*Work Activity Management – Subcontracts and Procurement*); and
- (b) all Subcontracts and Sub-Subcontracts include the contractual provisions set out in Part B of the Appendix to this Part 1 (*Work Activity Management – Subcontracts and Procurement*).

16.2 For the purposes of this paragraph 16 (*Flowdown of Contractual Provisions*) the Contractor shall ensure, and shall procure that all its Subcontractors ensure, that the provisions referred to in paragraph 16.1 above are incorporated into all new Subcontracts and Sub-Subcontracts (other than contracts with utility companies) which have a value per annum in excess of one hundred and fifty thousand pounds Sterling (£150,000). For Subcontracts and Sub-Subcontracts which have a value per annum of less than one hundred and fifty thousand pounds Sterling (£150,000) the Contractor shall be required to use its professional judgement as to which of these provisions should be incorporated into the Subcontract or Sub-Subcontract.

17 EXCEPTION TO FLOWDOWN OF CONTRACTUAL PROVISIONS

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

- (a) the Contractor reasonably considers does not contain significant risk in terms of value, duration or nature; or
- (b) contracts with a value of less than one hundred and fifty thousand pounds Sterling (£150,000);

it shall not be required to flowdown the contractual provisions referred to in paragraph 16.1 (*Flowdown of Contractual Provisions*) above, but shall be required to use its professional judgement as to which of these provisions should be incorporated into the Subcontract.

17.2 Subject to paragraph 17.1 above, the Contractor shall not without the Authority's prior written approval (not to be unreasonably withheld or delayed) conclude any Subcontract which omits any of the contractual provisions referred to in paragraph 16.1 (*Flowdown of Contractual Provisions*) above.

17.3 When seeking the Authority's approval in accordance with paragraph 17.2, the Contractor must specify:

- (a) with reference to the Procurement Plan then current, which Subcontract is the subject of the request;
- (b) which contractual provision(s) specified in paragraph 16.1 (*Flowdown of Contractual Provisions*) the Contractor wishes to be excluded (in part if applicable) in respect of the proposed Subcontract; and
- (c) an explanation of the risks and benefits flowing from the proposed omission(s), particularly but not only how the relevant contractual provision(s) (or part of the contractual provision(s) if applicable) will affect the pricing mechanism of the Subcontract if not omitted.

17.4 When responding to any Contractor request submitted pursuant to this paragraph 17 (*Exception to Automatic Flowdown of Contractual Provisions*), the Authority shall:

- (i) not unreasonably withhold consent to the exclusion of the relevant contractual provision(s) (or part thereof if applicable) identified by the Contractor in its request;
- (ii) provide its decision in writing within fifteen (15) Working Days; and
- (iii) provide reasons for any refusal of consent to the Contractor's request.

18 AUTHORITY'S RIGHT TO INSTRUCT

18.1 The Authority, acting reasonably, shall be entitled to instruct the Contractor to:

- (a) exercise its rights to terminate (or not terminate) a Subcontract;
- (b) amend any Inter-SLC Service Contract (in accordance with Clause 2.10 (*Inter SLC Service Contracts*) of the Contract) or seek to amend any other Subcontract;
- (c) enter into a new Subcontract in accordance with timescales, with counterparties and on terms specified by the Authority;
- (d) resist an amendment proposed by a counterparty to any Subcontract;

- (e) waive or not waive any of the counterparty's obligations under a Subcontract, in each case where the Authority reasonably believes that such steps will best enable the Authority to fulfil its statutory functions and duties.
- 18.2 If the Authority wishes to issue instructions to the Contractor pursuant to paragraph 18.1 (*Authority's Right to Instruct*) above, the Authority shall where practicable discuss the instructions with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any objections or impact of which the Contractor is aware that such instructions may have upon the Authority, the Contractor, any Subcontract, the performance of or terms of this Contract (including the application of Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*)) or upon any Customer Contract in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*).
- 18.3 Any instructions issued by the Authority pursuant to this paragraph 18 (*Authority's Right to Instruct*) shall be deemed to be an Authority Change and the Contractor shall prepare and submit to the Authority a Change Proposal in accordance with Part 3 (*Change Control*) of Schedule 2 (*Programme Management and Change Procedure*) and/or Part 6 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance Schedule*), as applicable.
- 18.4 In issuing any instruction pursuant to this paragraph 18 (*Authority's Right to Instruct*) the Authority shall take into account the Contractor's obligations under the EU Procurement Rules.
- 18.5 If the counterparty (or proposed counterparty) to the Subcontract is unwilling to proceed in the manner prescribed by the Authority in its instruction, the Contractor shall use its reasonable endeavours to carry out the Authority's instructions and the Authority and the Contractor shall consult with one another in order to agree how to resolve the issue.

APPENDIX

Part A – Provisions to be incorporated into all Subcontracts

Pursuant to paragraph 16.1(a) of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of 0 (*Subcontracting/Procurement*) the Contractor shall include the following provisions in each and every Subcontract.

1 Change of Control

In the event of any change in ownership, management or control of the Contractor, the Subcontractor shall not be entitled to terminate the Subcontract or make any amendment to this Subcontract.

2 Novation and Assignment

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

- 2.1 without the consent of the Subcontractor;
- 2.2 without requiring the consent of any third party; and
- 2.3 without incurring any payment obligation or other additional liability.

3 Termination for Convenience

- 3.1 The Contractor shall be entitled to terminate this Subcontract at any time upon giving reasonable notice, to the Subcontractor. For the purposes of this paragraph 3.1 'reasonable notice' shall not be less than thirty (30) days' notice.
- 3.2 Where the Contractor terminates the Subcontract pursuant to paragraph 3.1 above, the Subcontractor shall be entitled to recover from the Contractor costs reasonably and actually incurred and arising directly from termination of the relevant Subcontract. For the avoidance of doubt, the Subcontractor shall not be entitled to recover any payment in respect of loss of anticipated profits, loss of opportunity or consequential losses.

4 Rights of Third Parties

The Authority shall, pursuant to the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce any of the Contractor's rights under the Subcontract and any term

in this Subcontract which directly or indirectly prevents or attempts to prevent the Authority from exercising those rights shall have no legal effect.

5 Agreement under section 12(3A) of the Nuclear Installations Act 1965 to provide protection for contractor equipment on the licensed site in the event of nuclear damage

5.1 Pursuant to section 12(3A) of the Nuclear Installations Act 1965 ("**the Act**"), the Contractor and the Subcontractor agree as follows:

- (a) In the event of an occurrence involving nuclear matter as defined within section 7 of the Act, the Contractor shall be liable to the Subcontractor for damage to the property of the Subcontractor and / or the property of the Subcontractor's subcontractors or suppliers which is located on the [*insert details of the nuclear licensed site*] for the purposes of the Subcontract.
- (b) The liability in (a) shall be limited to liability for property damage as would otherwise exist if section 7(3) of the Act did not apply and claims under this agreement for property damage shall be governed by the Act as if section 7(3) of the Act did not apply.
- (c) The Contractor shall not be liable under (a) unless and to the extent that the Subcontractor has notified the Contractor and the Authority of:
 - (i) the estimated value of the Subcontractor's plant, equipment and assets [and any such plant, equipment and assets of its subcontractors or suppliers brought onto [*insert details of the nuclear licensed site*]] on an annual basis for the purposes of the Subcontract in accordance with the Authority's insurance renewal requirements; and
 - (ii) where the value of such property has changed by (20%) or more during any one (1) year.
- (d) The liability in (a) shall be limited to the market value of the property notified in writing pursuant to paragraph 5.1(c) above.
- (e) The Contractor shall not be liable under (a) to the extent that the occurrence involving nuclear matter was attributable to any act or omission of the Subcontractor or any employee, servant or agent of the Subcontractor[, or the Subcontractor's subcontractor or any employee, servant or agent of the

Subcontractor's subcontractor] done with the intent to cause injury or damage or done with reckless disregard for the consequences of the act or omission.

5.2 For the avoidance of doubt, nothing in this Subcontract is or shall be deemed to be an agreement for the Subcontractor to incur liability under Section 12(3A) of the Act.

Part B - Provisions to be incorporated into all Subcontracts and Sub- Subcontracts

Pursuant to paragraph 16.1(b) of Part 1 (*Work Activity Management – Subcontracts and Procurement*) of 0 (*Subcontracting/Procurement*) the Contractor shall include the following provisions in each and every Subcontract and shall procure that such provisions are included within each and every Sub-Subcontract.

6 Rights of Audit, Inspection and Access

6.1 Subject to compliance with applicable Law and Regulatory Requirements, *[insert name of the relevant contractor]*, the Authority and the Authority's Agents shall be entitled at any time, or frequency, to conduct an audit, inspection, review, periodic monitoring and spot check for the purposes of:

- (a) reviewing *[insert name of relevant subcontractor]*'s activities in connection with, and performance in respect of, this *[Subcontract]*;
- (b) verifying the accuracy of the *[insert contract term used to refer to the contract price]* and any costs of suppliers (including subcontractors) of the *[Works][Services]* which shall include the verification of any supporting documentation in respect of the *[insert contract term used to refer to the contract price]*;
- (c) reviewing all information required to be kept by *[insert the name of the relevant subcontractor]* pursuant to this *[Subcontract]*;
- (d) verifying the accuracy and completeness of any management information delivered or required by this *[Subcontract]*;
- (e) reviewing the integrity, confidentiality and security of the information required to be kept by the *[insert name of relevant subcontractor]* pursuant to this *[Subcontract]*;
- (f) reviewing *[insert name of relevant subcontractor]*'s compliance with the Freedom of Information Act 2000, Environmental Information Regulations

2004 and the Data Protection Act 1998, in accordance with paragraph 8, compliance with the Bribery Act 2010 in accordance with paragraph 7 and any other Regulatory Requirements or legislation applicable to the [Works][Services].

6.2 For the purpose of carrying out an audit pursuant to this paragraph 6 [*insert the name of the relevant contractor*], the Authority and any Authority Agent shall, subject to compliance with applicable Law and Regulatory Requirements, be entitled to:

- (a) reasonable access to all parts of the [*Site or any other*] site and facilities used by the [*insert the name of the relevant subcontractor*] in the performance of the [Works][Services];
- (b) interview any employees, secondees or other personnel of the [*insert the name of the relevant subcontractor*];
- (c) carry out any inspections or tests to determine the integrity of information supplied and the quality of the information systems used by [*insert the name of the relevant subcontractor*];
- (d) request and receive all information, books of account, records and data together with appropriate rights of access to any equipment and/or information systems required to obtain such information; and
- (e) copy and collate any information requested pursuant to this paragraph 6.

6.3 For the purposes of:

- (a) carrying out the audit and certification of the Authority's accounts;
- (b) carrying out an examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof, of the economy, efficiency and effectiveness with which the Authority has used its resources;

the Comptroller and Auditor General may examine such documents relating to expenditure and income as he may reasonably require which are owned, held or otherwise within the control of [*insert the name of the relevant subcontractor*] and may require [*insert the name of the relevant subcontractor*] to produce such oral or written explanations as he considers necessary. [*insert the name of the relevant subcontractor*] agrees that they will make such documentation available for use by

the Comptroller and/or Auditor General in exercising his statutory duties and functions.

- 6.4 Where appropriate, *[insert the name of the relevant contractor]* shall discuss the outcome of the audit findings with *[insert the name of the relevant subcontractor]*. In such circumstances, *[insert the name of the relevant subcontractor]* shall maintain records of the audit findings together with details of any corrective action taken as a result of such audit findings.
- 6.5 During any inspection or audit of the *[insert the name of the relevant subcontractor]*'s site or facilities *[insert the name of the relevant subcontractor]* shall (on request) make available suitable office accommodation for the purposes of the audit.
- 6.6 *[insert the name of the relevant contractor]*, the Authority and any Authority Agent shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *[insert the name of the relevant subcontractor]* or delay the provision of the *[Works][Services]*. *[insert the name of the relevant subcontractor]* shall not be excused from performance of any aspect of its obligations under this *[Subcontract]* for any period of time during which the *[insert the name of the relevant contractor]*, Authority, Authority Agents and/or the Comptroller and Auditor General are exercising their respective rights under this paragraph 6.

7 Anti-Bribery and Corruption

- 7.1 *[insert the name of the relevant subcontractor]* shall and shall procure that persons associated with it or other persons who are performing services or providing goods in connection with this *[Subcontract]* shall:
- (a) comply with Relevant Requirements and Relevant Policies;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) not do, or omit to do, any act that will cause or lead the Authority, *[insert the name of the relevant contractor]* and/or *[insert the name of the relevant subcontractor]* to be in breach of any of the Relevant Requirements or Relevant Policies;

- (d) have and shall maintain in place throughout the term of this agreement its own policies, procedures or processes, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and this paragraph 7, and will enforce them where appropriate;
- (e) promptly report to [*insert the name of the relevant contractor*] any request or demand for any undue financial or other advantage of any kind received by [*insert the name of the relevant subcontractor*] or any person working for or engaged by [*insert the name of the relevant subcontractor*] in connection with the performance of this [*Subcontract*];
- (f) if requested, other than in relation to a breach of this paragraph 7, provide the Authority and/or [*insert the name of the relevant contractor*] with any reasonable assistance, at the [*insert the name of the relevant contractor*]'s reasonable cost, to enable the Authority and/or [*insert the name of the relevant contractor*] to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;
- (g) within 30 days of the date of this [*Subcontract*], certify to [*insert the name of the relevant contractor*] in writing signed by an officer of the [*insert the name of the relevant subcontractor*] compliance with this paragraph 7 by the [*insert the name of the relevant subcontractor*]. [*insert the name of the relevant subcontractor*] shall provide such supporting evidence of compliance as [*insert the name of the relevant contractor*] may reasonably request.

7.2 [*insert the name of the relevant subcontractor*] shall immediately notify the Authority and [*insert the name of the relevant contractor*] if, at any time during the term of this [*Subcontract*], its circumstances, knowledge or awareness changes such that it would not be able to comply with this paragraph 7.

7.3 If [*insert the name of the relevant subcontractor*] notifies [*insert the name of the relevant contractor*] that it suspects or knows that there may be a breach of paragraph 7.1, [*insert the name of the relevant subcontractor*], the [*insert the name of the relevant subcontractor*] must respond promptly to the [*insert the name of the relevant contractor*]'s enquiries, co-operate with any investigation, and allow the [*insert the*

name of the relevant contractor] and/or the Authority to audit books, records and any other relevant documentation.

7.4 [*insert the name of the relevant contractor*] may terminate this [*Subcontract*] by written notice with immediate effect if the [*insert the name of the relevant subcontractor*] or any persons associated with it or other persons who are performing services or providing goods in connection with this [*Subcontract*] (in all cases whether or not acting with the [*insert the name of the relevant subcontractor*]'s knowledge) breaches paragraph 7.1.

7.5 Any dispute relating to the interpretation of this paragraph 7, or the materiality of any breach of this paragraph 7 shall be determined by [*insert the name of the relevant contractor*] and its decision shall be final and conclusive.

8 Compliance with the statutory obligations of the Authority

Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)

8.1 [*insert the name of the relevant subcontractor*] acknowledges that the Authority is subject to the requirements of FOIA, and the EIR and the [*insert the name of the relevant subcontractor*] shall assist and co-operate with the Authority and/or [*insert the name of the relevant contractor*] to enable the Authority to comply with these information disclosure requirements.

8.2 If the Authority is required to provide information as a result of a request made to it under FOIA and /or EIR and such information is in the possession of any of [*insert the name of the relevant subcontractor*] or its suppliers then [*insert the name of the relevant subcontractor*] shall provide such information to the [*insert the name of the relevant contractor*] as soon as reasonably practicable.

8.3 [*insert the name of the relevant subcontractor*] shall provide all necessary assistance as reasonably requested by the Authority and/or [*insert the name of the relevant contractor*] to enable the Authority to respond to a Request for Information (as defined under FOIA) within the time for compliance set out in section 10 of the FOIA or regulation 5 of EIR.

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

- 8.5 [insert the name of the relevant subcontractor] acknowledges that the Authority may, acting in accordance with the FOIA or EIR disclose information without consulting [insert the name of the relevant subcontractor], or the Authority may, at its discretion, elect to consult [insert the name of the relevant subcontractor] and take its views into account.
- 8.6 [insert the name of the relevant subcontractor] acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this paragraph 8.

Data Protection Act 1998 (DPA)

- 8.7 [insert the name of the relevant subcontractor] shall comply at all times with the DPA or such other equivalent data protection legislation and shall not perform its obligations under this [Subcontract] in such a way as to cause [insert the name of the relevant contractor] or the Authority to breach any of its obligations under the DPA or such other equivalent data protection legislation.
- 8.8 Notwithstanding the general obligation in paragraph 8.7, where the [insert the name of the relevant subcontractor] is processing Personal Data (as defined by the DPA) as a Data Processor (as defined by the DPA) for the [insert the name of the relevant contractor], [insert the name of the relevant subcontractor] shall:
- (a) process the Personal Data only in accordance with instructions from the [insert the name of the relevant contractor] (which may be specific instructions or instructions of a general nature) as set out in this [Subcontract] or as otherwise notified by [insert the name of the relevant contractor];
 - (b) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (c) ensure that all employees or agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 8.

9 Insurance

9.1 *[insert the name of the relevant Contractor]* shall notify *[insert the name of the relevant subcontractor]* of the relevant insurance arrangements put in place by the Authority (the “Authority Insurances”), including any information provided by the Authority from time to time in respect of such Authority Insurances.

9.2 *[insert the name of the relevant subcontractor]* shall:

- (a) not purchase insurance that duplicates the Authority Insurances;
- (b) consent to being a joint named insured under the Authority Insurances; and
- (c) comply with (and shall procure that its subcontractors and suppliers to this *[Subcontract]* agree to comply with) any instructions issued by the Authority from time to time in relation to the Authority Insurances, claims handling and other procedures relevant to this *[Subcontract]*.

9.3 *[insert the name of the relevant subcontractor]* shall arrange appropriate insurance cover to reflect the nature of the *[Works][Services]* to be performed (for example public and product liability, employers’ liability, professional indemnity and motor insurance). For the avoidance of doubt, all such *[insert the name of the relevant subcontractor]*’s insurance policies, with the exception of any professional indemnity insurance, shall contain a provision which obliges the insurers to indemnify the *[insert the name of the relevant contractor]*, *[insert the name of the relevant SLC]*, *[insert the name of the relevant SLCs PBO]* and the Authority in respect of claims made against them arising from the performance of the *[Works][Services]* by the *[insert the name of the relevant subcontractor]*.

10 Agreements with trade unions or other bodies representing employees

The Subcontractor shall comply with the terms of all agreements which the Subcontractor has entered into with trade unions or other bodies representing the employees of the Subcontractor which relate to those employees of the Subcontractor.

Part 2: Inter-SLC Service Contract Pro Forma

Draft

Inter-SLC Services Contract Pro Forma

..... 20●

[]

and

[]

SERVICES AGREEMENT

For the provision of [] by

[Service Provider] to [Customer]

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BETWEEN:

- (1) **[SERVICE PROVIDER]**, a company incorporated under the laws of [] with registered number [] ("**Service Provider**"); and
- (2) [], a company incorporated under the laws of [] with registered number [] (the "**Customer**").

[Note: the services that are being provided under the contract will have a bearing on how to flow down obligations/rights from the Customer to the 2 separate Contractors]

WHEREAS:

- (A) [Service Provider] has agreed to provide certain services to the Customer on the terms and conditions set out in this Agreement.
- (B) The Customer is willing to accept the services and has agreed to perform certain obligations on the terms and conditions set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Energy Act except to the extent that such defined terms are given a different meaning in Schedule A (Definitions). Defined terms used in this Agreement which are not defined in the Energy Act shall have the meaning specified in Schedule A (Definitions).

1.2 Interpretation

1.2.1 In this Agreement:

- (A) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (B) all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to parts, sections and paragraphs contained in and annexes and appendices to the Schedules;
- (C) the Schedules are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- (D) all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference

to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

- (E) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (F) all references to any licence, authorisation or consent shall include references to any licence, authorisation or consent which amends, extends, consolidates or replaces the same or which has been, amended, extended, consolidated or replaced by the same;
- (G) words importing the singular include the plural and vice versa;
- (H) words importing a particular gender include all genders;
- (I) "**person**" includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- (J) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (K) references to "**Party**" and "**Parties**" means a party or the parties to this Agreement as applicable;
- (L) all monetary amounts are expressed in pounds sterling;
- (M) references to the word "**includes**" or "**including**" are to be construed without limitation;
- (N) references to a document being "**in the agreed form**" means a copy of such document initialled for the purposes of identification by the Parties; and
- (O) any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval.

2. TERM

This Agreement shall take effect on the date hereof and remain in full force and effect until the date on which any termination is effective in accordance with Clause 16 (Termination).

3. OBLIGATIONS OF [SERVICE PROVIDER]

[Service Provider] shall provide the Services set out in Schedule B to the Customer in accordance with the terms and conditions of this Agreement.

4. OBLIGATIONS OF THE CUSTOMER

4.1 The Customer shall pay all sums due to [Service Provider] pursuant to the terms of this Agreement in consideration for the provision of the Services and in accordance with Clause 11 (Billing and Payment) and Schedule C (Payment).

4.2 The Customer shall perform all of its obligations set out in Schedule B.

5. PARTIES' OBLIGATIONS

Each Party shall:

5.1 comply with the other Party's Internal Procedures which are relevant to the performance of this Agreement as notified to it by that other Party from time to time;

5.2 comply with all applicable Law;

5.3 comply with all applicable Regulatory Requirements of the Regulators; and

5.4 comply, or procure compliance, with each other's Internal Procedures relating to safety and Site security when such Party, or such Party's representatives, are on the other's Site.

6. ACCESS TO THE CUSTOMER SITE

6.1 The Customer agrees with the Service Provider that until the termination of this Agreement the Service Provider may have access to and (where previously authorised by the Customer) may use and/or occupy such part or parts of the land and buildings on the Customer Site specified by the Customer from time to time in order to enable the Service Provider to perform its obligations under this Agreement.

6.2 The Service Provider agrees with the Customer that when exercising the rights referred to in Clause 6.1 the Service Provider shall at all times:

6.2.1 not impede in any way the Customer or its officers servants or agents in the exercise of the Customer's rights of possession and ownership of the Customer Site; and

6.2.2 not do anything which would contravene the terms of any Nuclear Site Licence affecting the whole or any part of the Customer Site; and

- 6.2.3 comply with the terms of any regulations properly made by the Customer from time to time regarding access to and use/occupation of the whole or any part of the Customer Site.
- 6.3 The rights granted to the Service Provider by this Clause 6 are personal to the Service Provider and shall not be capable of being assigned or otherwise dealt with or disposed of.
- 6.4 The Service Provider shall not by virtue of the provisions of this Clause 6 claim to be or become entitled to any estate right or interest in or exclusive possession of any of the land or buildings comprising the Customer Site and nothing contained in this Clause 6 shall be construed as creating an legal or equitable demise of the whole or any part of the Customer Site.

7. STANDARD OF PERFORMANCE

[Service Provider] shall provide the Services to the standard set out in Schedule B (Services):

- 7.1 in a safe, secure, efficient, cost effective, transparent and co-operative manner;
- 7.2 exercising Good Industry Practice;
- 7.3 in a transparent and cooperative manner with both the Customer and the Regulators;
- 7.4 ensuring that all aspects of the Services meet all standards, specifications and requirements set out in Schedule B;
- 7.5 to the extent relevant and/or appropriate, in a manner which, in relation to the [Service Provider] Site and the Services provided under this Agreement, enables [Service Provider] to fulfil its obligations under its Nuclear Site Licence and in relation to the Customer Site and the Services received under this Agreement, enables the Customer to fulfil its obligations under its Nuclear Site Licence; and
- 7.6 to the extent relevant to and/or appropriate for such Services in a professional manner befitting an adviser including with reasonable competence, with integrity, impartiality, objectivity and confidentiality and avoiding conflicts of interest (and for the avoidance of doubt, notifying the Customer promptly of any potential for conflict of interest which arises).

8. MODIFICATIONS TO SERVICES

- 8.1 Subject to Clause 9 (Management of Change) and Clause 8.3, the Customer shall be entitled to serve notice on [Service Provider] requesting that [Service Provider] modifies the Services to enable the Customer to comply with any applicable Law or Regulatory Requirement. The Customer shall send a copy of such notice to the Authority. The Authority shall consider, amongst other things, the Customer's and [Service Provider]'s

respective obligations under Law and Regulatory Requirements and shall respond in writing to the Customer and [Service Provider] confirming whether, and the extent to which, it consents to the Services being modified as proposed in the Customer's notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].

8.2 Subject to Clause 9 (Management of Change) and Clause 8.3, [Service Provider] shall be entitled to serve notice on the Customer of an intention to modify the Services to enable [Service Provider] to comply with any applicable Law or Regulatory Requirement. [Service Provider] shall send a copy of the notice to the Authority. The Authority shall consider, amongst other things, the Customer's and [Service Provider]'s respective obligations under Law and Regulatory Requirements and shall respond in writing to the Customer and [Service Provider] confirming whether, and the extent to which, it consents to the Services being modified as proposed in [Service Provider]'s notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].

8.3 Any increase or reduction in the costs of providing the Services which is directly attributable to any modification of the Services in accordance with Clauses 8.1 or 8.2 shall be agreed between the Parties within thirty (30) Calendar Days of the date of receipt of the request in Clause 8.1 or of receipt of the notification in Clause 8.2 (as applicable). The Parties shall notify the Authority of the agreed adjustment in costs (if any). If the Parties cannot agree any such increase or reduction in costs within this time, either Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes).

8.4 Subject to Clause 9 (Management of Change), either Party shall be entitled to serve notice on the other Party requesting modifications to the Services for any other reason which does not fall within Clauses 8.1 or 8.2. The requesting Party shall send a copy of such notice to the Authority. The Parties shall agree any adjustment of the costs within thirty (30) Calendar Days of such request and notify the Authority of the agreed adjustment in costs (if any). If the Parties cannot agree the adjustment to the costs within this time, each Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). The Authority shall respond in writing to the Customer and [Service Provider] confirming whether, and the extent to which it consents to the Services being modified as proposed in the requesting Party's notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].

8.5 Schedules A to C shall be amended in writing to accommodate any modifications made in accordance with this Clause 8 (Modifications to Services). Any failure to make such amendments to Schedules A to C shall be without prejudice to any modifications so made.

9. MANAGEMENT OF CHANGE

9.1 Notwithstanding any provision contained in Clause 8 (Modifications to Services), each Party must comply with this Clause 9 (Management of Change).

9.2 The Parties acknowledge that any change in any aspect of the provision of the Services may have an impact on each other's ability to comply with the Authority's output requirements and/or perform its LTP (as appropriate) within relevant targets and budgetary constraints. To the extent relevant and/or appropriate, the Parties shall notify each other from time to time of the scope, schedule, cost and/or funding consequences to its LTP that will occur as a result of any proposed change to the Services.

9.3 Regardless of whether the Customer or [Service Provider] has received any notification in accordance with Clause 9.2:

9.3.1 [the Customer and [Service Provider] shall monitor and oversee the provision of the Services by [Service Provider] and they may:

- (A) agree appropriate performance targets as to scope, schedule and cost for the provision of the Services;
- (B) agree procedures for measuring the provision of the Services against such targets;
- (C) agree appropriate remedial and other actions to be taken in consequence of any failure to meet such targets; and
- (D) monitor the provision of the Services against the agreed performance targets.

9.3.2 the Customer and [Service Provider] shall have access to each other's relevant personnel when reasonably practicable in order to discuss and where necessary to meet to review the provision and the performance of the Services and agree any modifications in accordance with this Agreement;]

9.3.3 [Service Provider] shall provide the Customer with relevant and adequate information on a timely basis to keep the Customer informed of the status and progress of the Services and of any trends which may affect the provision of the Services;

9.3.4 immediately upon [Service Provider] becoming aware that it is or may become unable to provide any aspect of the Services resulting in actual or anticipated interruption or limitation of the Services or any part thereof for any reason other than a Force Majeure Event, [Service Provider] shall give

as much notice to the Customer as is reasonably practicable in the circumstances specifying:

- (A) the extent to which the Services are affected;
- (B) the reason for the interruption or limitation of the Services;
- (C) the action being taken to remedy the situation;
- (D) [Service Provider]'s best estimate of the duration of the interruption or limitation of the Services; and
- (E) [Service Provider] shall, as soon as possible, provide a copy of the notice served on the Customer in accordance with this Clause 9.3.4 to the Authority.

Nothing in this Clause 9.3.4 shall affect [Service Provider]'s obligation to provide the Services or its other obligations under this Clause 9 (Management of Change). Each Party shall take such steps as may be reasonably practicable in the circumstances to mitigate against the consequences of the interruption or limitation. If the interruption or limitation exceeds or is estimated to exceed 48 hours, in addition to the Parties continuing to mitigate, the Parties will consult with a view to making suitable alternative arrangements.

- 9.4 Without prejudice to this Clause 9 (Management of Change), [Service Provider] shall use its best endeavours to assist the Customer in complying with its obligations contained Clause 4 (Trend Log and Change Control Log) Schedule 2 (Change Control) and Schedule 3 (Financial Sanction and Validation) of the Customer M&O Contract as and when, and in such manner as, the Customer reasonably requests.

[Note: The cross referencing to the M&O Contract will depend on whether SLC is the Customer or the Service Provider under this agreement.]

- 9.5 Without prejudice to this Clause 9 (Management of Change) the Customer shall use its best endeavours to assist [Service Provider] in complying with its obligations contained in Clause 4 (Trend Log and Change Control Log) Schedule 2 (Change Control) and Schedule 3 (Financial Sanction and Validation) of the [Service Provider] M&O Contract as and when, and in such a manner as [Service Provider] reasonably requests.

10. REPLACEMENT OF EMPLOYEES

- 10.1 [Service Provider] shall, in respect of the provision of the Services, ensure that when it replaces any Employee engaged in the provision of the Services, the replacement has the level of skills and experience which:

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

10.1.2 if more appropriate, in the opinion of [Service Provider], depending on the relevant job position, matches the necessary skills and experience required for that job position.

11. BILLING AND PAYMENT

11.1 By each Invoice Date, [Service Provider] shall submit to the Customer an invoice specifying as separate items of account in respect of the period to which that invoice relates:

11.1.1 the amount due as calculated in accordance with the costing principles set out in Schedule C (Payment);

11.1.2 any adjustment as applicable in accordance with Clause 8 (Modification to Services); and

11.1.3 any VAT payable on any sums as are due from the Customer.

11.2 Subject to Clause 11.3, within thirty (30) Calendar Days of receipt of an invoice in accordance with Clause 11.1 the Customer shall pay to [Service Provider] all sums due in respect of such invoice by direct bank transfer or equivalent instantaneous transfer of funds to such account as [Service Provider] may from time to time notify to the Customer.

11.3 Where any sum included in an invoice submitted in accordance with Clause 11.1 is disputed by the Customer in good faith, the Customer shall within fifteen (15) Calendar Days of receipt of such invoice provide [Service Provider] with a statement of the amount in dispute and the reason why it is disputed. The undisputed amount shall be paid by the date specified in Clause 11.2. If the Parties cannot agree the disputed amount within fifteen (15) Calendar Days of receipt of the statement by [Service Provider], either Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). Any amount agreed or determined to be payable shall be paid within twenty-one (21) Calendar Days of such agreement or determination and interest shall accrue on such amount from the date such amount was originally due until the date of payment at the rate of one (1) per cent. per annum above the base rate during such period of [bank] compounded annually.

11.4 Should the Customer fail to make payment on the due date of any sum due in accordance with Clause 11.2 (other than any sum which is notified as being the subject of a bona fide dispute in accordance with Clause 11.3), interest on the amount unpaid shall accrue from the date such amount was due until the date of payment at the rate of three (3) per cent. per annum above the base rate during such period of [bank] compounded annually.

11.5 Except as set out in Clause 11.3, all payments to be made under this Agreement shall be made without any set-off or deduction in respect of any claims or disputes or

otherwise (other than any set-off, counterclaim, deduction or withholding required by Law) but shall be without prejudice to any claims or rights which the Parties may have against the other.

12. CO-OPERATION

12.1 The Parties shall co-operate with each other and provide all reasonable assistance and take all reasonable action to enable the other to perform their respective obligations under this Agreement and under the [Service Provider] M&O Contract and the Customer M&O Contract (as applicable).

12.2 [Service Provider] shall notify the Customer of any changes to [Service Provider]'s obligations in the [Service Provider] M&O Contract that, in its reasonable opinion, may affect the rights and/or obligations of the Parties under this Agreement, and the Customer shall notify [Service Provider] of any changes to its obligations in the Customer M&O Contract that, in its reasonable opinion, may affect the rights and/or obligations of the Parties under this Agreement. The Customer or [Service Provider], as relevant, shall also notify the Authority if the changes to the relevant M&O Contract affects the rights and/or obligations of the Authority under this Agreement.

12.3 Such notification must be provided to the other Party, within [●] days from the date the relevant amendment is effected. Following such notification, the Parties shall consult to determine what variations are required to this Agreement as a result of the relevant amendment. To the extent that the Parties cannot agree on the variations that are required to this Agreement within [●] days, the Parties shall [be entitled to] refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). No variation agreed between the Parties pursuant to this Clause 12.3 shall be effective unless the Authority has given its prior written consent to the variation.

13. RECORDS AND ACCESS TO INFORMATION

13.1 [Service Provider] shall be responsible for the maintenance of all records ordinarily maintained by service providers providing equivalent services, or as otherwise reasonably requested by the Customer (including training records) relating to the provision of the Services. The Customer shall, at all reasonable times, have access to such records.

13.2 Each Party shall provide to the other Party such information, records or reports as the other Party may reasonably request from time to time in order for the other Party to monitor the performance of the obligations under this Agreement and/or to conduct any audit of the Services in order to comply with any applicable Law or Regulatory Requirement or any request or direction given by the Authority.

13.3 The Customer may request any information (including justification, technical options, details of relevant accounting principles and cost allocations) that it may reasonably

require to review any amounts payable or which would be payable by it under this Agreement. On receiving such a request [Service Provider] shall use its reasonable endeavours to provide all such information within such timescales as reasonably requested by the Customer.

14. INSPECTION AND AUDIT

- 14.1 [Service Provider] shall use its best endeavours to assist the Customer in fulfilling its obligations under [Clause 15] (Inspection and Audit) of the Customer **M&O** Contract.
- 14.2 The Customer shall use its best endeavours to assist [Service Provider] in fulfilling its obligations under [Clause 15] (Inspection and Audit) of the [Service Provider] **M&O** Contract.

[Note: the cross reference to the SLCA will depend on whether the SLC is the Customer or the Service Provider]

15. LIMITATION OF LIABILITY

- 15.1 Save as expressly set out in this Agreement, neither Party (the "**Party Liable**") nor any of its officers, employees, agents or contractors shall have any liability whatever to the other Party for any direct, indirect or consequential loss (including loss of profit, loss of production, loss of contract or loss of goodwill and any liability arising out of any liability of the other to any other person) whether resulting from the performance or non-performance by the Party Liable of its obligations under this Agreement or negligence, breach of contract or otherwise on the part of the Party Liable or any of its officers, employees, agents or contractors under or arising out of this Agreement.
- 15.2 Nothing in this Agreement shall have the effect of excluding or restricting the liability of either Party or of its officers, employees, agents or contractors for death or personal injury arising out of such person's negligence if such exclusion or restriction would be unlawful under the Unfair Contract Terms Act 1977.
- 15.3 Each Party agrees that the other Party (the "**relevant Party**") holds the benefit of Clauses 15.1 and 15.2 above as trustee for itself and for its officers, employees, agents and contractors provided that in enforcing those provisions the relevant Party shall be obliged to take only such steps as it may, in its absolute discretion, think fit.
- 15.4 [Notwithstanding Clause 15.1, [the Customer] [Service Provider] acknowledges that if it is in breach of this Agreement as a result of its negligence, inaction or wilful default, the Authority shall be able to recover any losses the Authority incurs arising from such negligence, inaction or wilful default from [the Customer's] [Service Provider]'s Parent Body Organisation under the terms of the relevant Parent Body Agreement.

15.5 Notwithstanding Clause 15.1, [the Customer] [Service Provider] acknowledges that its liability to the Authority pursuant to part 11 of the [Customer] [Service Provider] M&O Contract is not limited by this Clause 15.]

OR

15.6 [Notwithstanding Clause 15.1, the Parties acknowledge that if a Party is in breach of this Agreement as a result of its negligent action or inaction or wilful default, the Authority shall be able to recover any losses the Authority incurs arising from such negligence, inaction or wilful default from that Party's Parent Company in accordance with, and subject to, the terms of the relevant Parent Body Agreement].

[Note: Under the 2005 M&O Contracts, NDA can seek to recover from the Parent Body Organisation for the SLC's negligence, inaction or wilful default. Under the draft liability regime in the Period 2 LLWR M&O Contract, NDA would have to recover from the SLC. Therefore, if the draft liability regime is incorporated into future M&O contracts, clauses 15.4 and 15.5 will be required. Clause 15.6 will be required where LLWR SLC is not party to the agreement.]

[Note: The above will have to be considered in light of the SLCA drafting]

16. TERMINATION

16.1 Notwithstanding any provision of this Clause 16 (Termination):

16.1.1 no termination of this Agreement shall be effective without the prior written consent of the Authority, such consent to be sought by the relevant Party prior to its seeking to exercise any rights or option to terminate this Agreement; and

16.1.2 [Service Provider] shall not be entitled, in any circumstances, to terminate this Agreement until the date six (6) Months following the Commencement Date.

16.2 Subject to Clause 16.1, this Agreement shall terminate as a result of:

16.2.1 early termination caused by an Event of Default in accordance with Clause 16.3 (Event of Default);

16.2.2 Termination for Convenience in accordance with Clause 16.7 (Termination for Convenience); or

16.2.3 termination for Long Term Force Majeure in accordance with Clause 17.3 (Long Term Force Majeure).

16.3 Event of Default

16.3.1 Either Party (the "**Initiating Party**") may terminate this Agreement in accordance with Clause 16.4 (Termination or Remedy for Event of Default)

on the occurrence of an Event of Default with respect to the other Party (the "Breaching Party"). The following events are Events of Default:

- (A) The occurrence of an Insolvency Event in respect of the Breaching Party except where in the case of [Service Provider] such Insolvency Event was caused by the Customer not making any undisputed payment in accordance with Clause 11 (Billing and Payment);
- (B) Any revocation of any licence, authorisation, permit or consent which is necessary to enable the Breaching Party to comply with its obligations under this Agreement; and/or
- (C) The breach by the Breaching Party of any of its obligations under this Agreement which materially and adversely affects the performance of this Agreement.

16.4 Termination or Remedy for Event of Default

- 16.4.1 If an Event of Default has occurred and the Initiating Party wishes to terminate this Agreement, the Initiating Party shall be entitled, subject to Clause 16.1, to serve (copied to the Authority at the same time) a termination notice (the "**Termination Notice**") on the Breaching Party.
- 16.4.2 The Termination Notice shall specify the type of Event of Default that has occurred, giving reasonable details.
- 16.4.3 If the Initiating Party (acting reasonably) considers that the Event of Default is incapable of remedy the Initiating Party shall specify this in the Termination Notice and this Agreement shall terminate on the date falling thirty (30) Calendar Days after the date of receipt by the Breaching Party of the Termination Notice.
- 16.4.4 In the case of an Event of Default which the Initiating Party (acting reasonably) considers is capable of remedy, the Termination Notice shall require the Breaching Party at the Breaching Party's option either:
 - (A) to remedy the Event of Default within thirty (30) Calendar Days of the date of the Termination Notice (or such longer period as may be agreed by the Initiating Party in its absolute discretion);
 - (B) to propose within thirty (30) Calendar Days of the date of the Termination Notice and obtain the Initiating Party's approval to a programme to remedy the Event of Default (the "**Remedial Programme**").

16.5 Remedial Programme

- 16.5.1 The Remedial Programme shall specify in detail how the Event of Default is proposed to be remedied and the latest date by which the Breaching Party anticipates that the Event of Default will be remedied.
- 16.5.2 Where the Breaching Party proposes a Remedial Programme in accordance with Clause 16.4.4, the Initiating Party shall have thirty (30) Calendar Days within which to notify the Breaching Party whether the Initiating Party accepts the proposed Remedial Programme (such acceptance not to be unreasonably withheld). Failure of the Initiating Party to provide such notification shall constitute deemed acceptance by the Initiating Party. Where the Initiating Party notifies the Breaching Party that it does not accept the Remedial Programme, Initiating Party and the Breaching Party shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remedial Programme. In the absence of agreement within such thirty (30) Calendar Day period, either the Initiating Party or the Breaching Party shall refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes).
- 16.5.3 Subject to Clause 16.1 (Termination), if the Event of Default is not remedied within the period agreed between the Initiating Party and the Breaching Party or the period determined by the Authority for such remedy, the Initiating Party shall be entitled to terminate this Agreement on giving thirty (30) Calendar Days written notice.

16.6 Performance Warning

If a Party (the "**Notifying Party**") reasonably believes that the other Party is demonstrating a pattern of behaviour which is reasonably likely to lead to an Event of Default, it shall serve a notice (copied to the Authority at the same time) on the other Party specifying its concerns and requiring the other Party to take steps to address those concerns by a date specified by the other Party acting reasonably.

16.7 Termination for Convenience

Subject to Clause 16.1, the Customer shall be entitled to terminate this Agreement at any time upon giving not less than six (6) Months' written notice to [Service Provider].

[Note: Only the Customer will have termination for convenience rights in those Inter SLC Service Contracts which relate to sole source services.

This template may be used for non-sole source contracts where the SLC providing the service wins the Customer's procurement competition]

16.8 Costs on Termination

Termination of this Agreement by a Party in accordance with this Clause 16 (Termination) shall not entitle either the other Party to the payment of any costs or result in the terminating Party or its Parent Body Organisation incurring any other liability to the other Party (as appropriate) or any Third Party.

17. FORCE MAJEURE

17.1 Performance of Obligations

Subject to Clause 17.2 (Notification and Mitigation), if a Party (the "**Affected Party**") is, or could reasonably be expected to be, materially hindered, prevented or delayed from performing any of its obligations under this Agreement by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event except that [Service Provider] shall not be excused from the due and punctual performance of any of its obligations under this Agreement by reason of any circumstances to the extent that the impact of such circumstances on [Service Provider]'s ability so to perform its obligations could have been avoided or mitigated by the maintenance and implementation of appropriate business continuity and disaster recovery plans consistent with ISO/IEC 17799 and Good Industry Practice in respect of the Critical Site IT Systems.

17.2 Notification and Mitigation

17.2.1 The Affected Party shall, as soon as reasonably practicable, on becoming aware of a Force Majeure Event, notify the other Party (copied to the Authority at the same time) in writing of:

- (A) the nature of the Force Majeure Event relied on;
- (B) the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement; and
- (C) the period for which it is estimated the Force Majeure Event will continue.

17.2.2 As soon as reasonably practicable following notification pursuant to Clause 17.2.1, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate arrangements to mitigate the effects of the Force Majeure Event and facilitate the resumption of the affected obligation.

17.2.3 The Affected Party shall:

- (A) use all reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under this Agreement;

- (B) where the Affected Party is [Service Provider], provide written reports as often as the Customer reasonably requires in the circumstances of [Service Provider]'s progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume; and where the Affected Party is the Customer, provide updates to [Service Provider] as often as is reasonably possible in the circumstances of the Customer's progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume;
- (C) so far as reasonably practicable provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and
- (D) (without prejudice to any applicable Law and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense.

17.2.4 The Affected Party shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

17.2.5 The Affected Party shall, as soon as reasonably practicable after the cessation of a Force Majeure Event, notify the other Party in writing that the Force Majeure Event has ended and shall resume the full performance of its obligations under this Agreement as soon as is reasonably practicable.

17.2.6 For the avoidance of doubt, save to the extent stipulated in this Clause 17 (Force Majeure), neither Party shall be released from any of its obligations under this Agreement as a result of a Force Majeure Event. To the extent that [Service Provider] cannot perform its obligations in respect of the Services, the Customer shall have no obligation to make payments in respect of the Services.

17.3 **Long Term Force Majeure**

If the performance by the Affected Party of substantially all of its obligations under this Agreement is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than ninety (90) consecutive Calendar Days ("**Long Term Force Majeure**"), the other Party may, subject to Clause 16.1, terminate this Agreement with immediate effect by notice to the Affected Party (copied to the Authority at the same time) on or at any time after the expiry of such ninety (90) Calendar Day period.

18. CONFIDENTIALITY

18.1 Disclosure by the Authority

The Parties acknowledge the Authority's rights in relation to confidentiality under the **M&O** Contracts.

18.2 Confidential Information

18.2.1 Subject to Clause 18.4, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other disclosing Party (including all documents and information supplied for the purposes of the Authority determining a dispute between the Parties in accordance with this Agreement) and all documents, materials and other information of any nature relating to a Third Party which it may acquire or have access to directly or indirectly and shall not, except with the written authority of the other, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

18.2.2 Neither Party shall make use of this Agreement or any information issued or provided by or on behalf of the other Party in connection with this Agreement otherwise than for the purpose of complying with its obligations under this Agreement and otherwise than as expressly provided for in this Agreement except with the written authority of the other Party.

18.3 Disclosure of Confidential Information by the Authority

18.3.1 So far as is practicable, to the extent the Authority gives the Customer or [Service Provider] reasonable notice of any proposed disclosure pursuant to [clause 25.3] (Disclosure by the Authority) of the [Service Provider] **M&O** Contract or [clause 25.3] (Disclosure by the Authority) of the Customer **M&O** Contract (as appropriate) the Party receiving the notice (the "**Notifying Party**") shall give reasonable notice to the other Party (the "**Recipient Party**") of the proposed disclosure.

[Note: the cross reference to the SLCA will depend on whether the SLC is the Customer or the Service Provider]

18.3.2 In the event of a notice being given under Clause 18.3.1, the Recipient Party may, but shall not be required to, request the Notifying Party to make representations to the Authority in relation to the Authority's proposed disclosure. If so requested, the Notifying Party shall make such

representations to the Authority as soon as reasonably practicable. The Notifying Party shall keep the Recipient Party apprised of all communications with the Authority in relation to the representations made on the Notifying Party's behalf.

18.4 Disclosure by the Parties

Each Party may disclose without the consent of the other Party, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by ONR to be security sensitive (unless the recipient of information pursuant to this Clause 18.4 (Disclosure by the Parties) holds all relevant security clearances) to:

- 18.4.1 the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the Government of the United Kingdom, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- 18.4.2 the Authority;
- 18.4.3 the Regulators;
- 18.4.4 the extent required by any parliamentary obligation, applicable Law or pursuant to an order of any court of competent jurisdiction;
- 18.4.5 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information);
- 18.4.6 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information); and
- 18.4.7 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 18.4.1 to 18.4.6 subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information), to obtaining such an undertaking of confidentiality.

18.5 Damages not the only remedy

Without prejudice to any other rights or remedies the Parties may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for a breach by the Parties of this Clause 18 (Confidentiality) and that any Party shall be entitled to apply to the English Courts for injunctive relief or specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 18

(Confidentiality) by the Parties which the Parties agree would be more appropriate remedies.

18.6 Authority's rights

The Parties acknowledge that any breach of this Clause 18 (Confidentiality) may affect the Authority's interests and therefore the Parties agree that the Authority shall be entitled to enforce the terms of this Clause 18 (Confidentiality). In particular, the Parties agree that the Authority shall be entitled to apply to the English Courts for relief pursuant to Clause 18.5 (Damages not the only remedy).

18.7 Freedom of Information Act

18.7.1 This Clause 18 (Confidentiality) is subject to the Parties' respective obligations under the Freedom of Information Act 2000.

18.7.2 Each Party acknowledges that the other is under an obligation to facilitate the Authority's compliance with the Freedom of Information Act 2000. If the Authority is required to provide information to a person as a result of a request made to it under the Freedom of Information Act 2000 and such information is in the possession of a Party or any of its Subcontractors, but not in the possession of the Authority, the Parties shall assist each other in providing such information to the Authority as soon as reasonably practicable.

18.8 National Audit Office

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

19. DISPUTES

19.1 Subject to Clause 18.5, any dispute arising between the Parties in relation to this Agreement shall be referred in writing to the Authority (copied to the other Party at the same time) for determination.

19.2 The determination shall be conducted as follows:

19.2.1 the Authority will act as an expert and not as an arbitrator;

19.2.2 the Authority shall provide the Parties with an opportunity to make representations in writing;

19.2.3 the Authority shall consider any written representations and counter representations, made by or on behalf of the Parties which are received by it (and copied to the other Party at the same time) within twenty-one (21) days of the date of the referral of the Dispute;

- 19.2.4 the Authority shall have an unfettered discretion to determine the reference to it;
- 19.2.5 the determination of the Authority (the "Determination") shall be final and binding on the Parties and the Parties shall give effect to the Authority's Determination unless and until the Dispute to which it relates is finally determined in accordance with the **M&O** Contract Procedure or in writing and signed by the Parties;
- 19.2.6 for the avoidance of doubt a Party shall not be deemed to have committed a breach of contract by reason of having acted in accordance with the Authority's Determination;
- 19.2.7 the Authority shall be required to give reasons for its Determination;
- 19.2.8 if any Party is dissatisfied with the Determination, then it may on or before twenty-eight (28) Calendar Days after the day on which it received notice of such Determination refer, the Determination to be finally determined in accordance with the **M&O** Contract Procedure.
- 19.3 For the avoidance of doubt, this Clause 19 shall not prevent either Party from applying to the English Courts for relief pursuant to Clause 18.5.

20. GENERAL

20.1 Survival of Rights and Obligations

20.1.1 Survival of Provisions

The provisions of Clause 18 (Confidentiality) and any other provisions in this Agreement (including any Schedule) which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination shall survive the termination of this Agreement.

20.1.2 Rights and Obligations

Save as expressly provided in this Agreement, upon expiry or termination of this Agreement (for whatever cause) any accrued rights or obligations to which either Party may be entitled or be subject before such date shall remain in full force and effect.

20.1.3 Ceasing of Rights and Obligations

Save as provided for in this Clause 20.1, all rights and obligations of the Parties under this Agreement shall cease and be of no further force and effect upon expiry or termination of this Agreement.

20.2 **Severability**

If any condition, Clause or provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, it shall be deemed to be severed to that extent and the remaining provisions of this Agreement shall continue in full force and effect.

20.3 **Notices**

20.3.1 A notice, approval, consent, electronic mail (in the case of Clause 20.3.5 only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 20.3 or, for the purposes of Clause 20.3.5 only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

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

20.3.3 Each Party shall ensure that where it serves a Notice pursuant to this Agreement on the other Party it shall provide a copy of such Notice to the Authority as soon as possible thereafter. For the purposes of this Clause 20.3 the relevant details of the Authority are:

Authority

Address []

Facsimile: []

Addressee: []

Email: []

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

Customer

Address: []

Facsimile: []

Addressee: []

Email: []

[Service Provider]

Address []

Facsimile: []

Addressee: []

Email: []

20.3.4 Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with this Clause 20.3 (Notices).

The Parties' respective addresses and facsimile numbers must be within the United Kingdom.

20.3.5 If an email address has been provided pursuant to Clause 20.3, the following Notices may be sent by electronic mail:

- (A) electronic transmittal of a scanned image of an original executed Notice; and
- (B) day-to-day communication in connection with this Agreement and the documents referred to in it.

20.3.6 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 20.3 (Notices).

20.3.7 Subject to Clause 20.3 (Notices), a Notice is deemed to be received:

- (A) where delivered by hand, upon delivery at the address of the addressee;
- (B) where delivered by posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;
- (C) where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (D) where sent by electronic mail (where applicable), on the second day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 20.3 (Notices).

20.3.8 A Notice received or deemed to be received in accordance with Clause 20.3 (Notices) on a day which is not a Working Day or after 5 p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.

20.4 **Waiver**

Failure or delay by either Party at any time to enforce any provision of this Agreement or to require performance by the other Party of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing and signed by the Party granting it.

20.5 **Entire Agreement**

20.5.1 Each Party confirms that this Agreement and the documents referred to in it represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

20.5.2 Each Party confirms that:

(A) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents referred to in it; and

(B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or the documents referred to in it are those contained or referred to in this Agreement or such documents, and for the avoidance of doubt and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

20.6 **Variation**

Notwithstanding the foregoing, no variation of this Agreement shall be effective unless the Authority has given its prior written consent and the variation is in writing (which for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "variation" includes any supplement, modification, deletion or replacement, however effected.

20.7 **Assignment and Sub-contracting**

20.7.1 Subject to Clause 20.7.2, neither Party may assign, novate or transfer, or purport to assign, novate or transfer or otherwise dispose of this Agreement without first having obtained the Authority's written consent.

20.7.2 Notwithstanding Clause 20.7.1, each Party may assign, novate or transfer or purport to assign, novate, transfer or otherwise dispose of this Agreement

to the Authority or any nominee of the Authority without the consent of the other Party or any other third party.

20.7.3 No assignment, novation or other transfer of this Agreement by either Party shall incur any payment obligation or additional liability on the part of such Party.

20.8 Change of Control

No change in ownership, management or control of either Party shall entitle the other Party to terminate or make any variation to this Agreement.

20.9 Contracts (Rights of Third Parties) Act 1999

Except in relation to rights conferred herein on the Authority, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

20.10 Governing Law and Jurisdiction

20.10.1 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

20.10.2 Subject to Clause 19 (Disputes), if any claim, legal action or proceedings arise out of or in connection with a dispute concerning this Agreement and any matter arising there from, each Party irrevocably:

(A) agrees to submit to the exclusive jurisdiction of the courts of England and Wales; and

(B) waives any right that it may have to object to an action being brought in the courts of England and Wales on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

20.11 No Partnership

Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner of the other Party.

20.12 Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

IN WITNESS whereof this Agreement has been entered into the day and year first above written

SIGNED by [])
on behalf of [])

SIGNED BY [])
on behalf of [])

SCHEDULE A

Definitions

"**Affected Party**" has the meaning given in Clause 17.1;

"**Affiliate**" means:

- (i) the Parent Body Organisation;
- (ii) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty (30) % in the Parent Body Organisation;
- (iii) wholly owned subsidiaries of the Contractor or Parent Body Organisation;
- (iv) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty (30) % of the shares in issue;
- (v) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;
- (vi) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty (30) % economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- (vii) a company owned or controlled, directly or indirectly, to the extent of thirty (30) % or more of the outstanding equities, securities or assets by any of the companies described in (i), (ii) or (iii) above;

"**Analogous Standards**" means the level of duty to exercise skill and care to which a skilled, diligent and prudent contractor would reasonably and ordinarily be subject in any jurisdiction where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom provided that for the purposes of assessing compliance with:

Regulatory Requirements, the only regulatory standards against which the Contractor will be judged under this Agreement will be those relating to the United Kingdom; and

Analogous Standards, any regulatory or other constraints to which the Contractor is subject and which would not reasonably be expected to constrain a contractor in the relevant jurisdiction or jurisdictions shall be taken into account.

"**Asset Purchase**" means the purchase of supplies, goods, materials, equipment and/or utilities (including gas, electricity, water, sewerage, heat, cable and telecommunications) and excluding the creation, design, development or building by any Subcontractor of any supplies, goods, materials, equipment and/or utilities, and "**Asset Purchases**" shall be construed accordingly;

"**Authority**" means the Nuclear Decommissioning Authority;

"**Calendar Day**" means a period of twenty-four hours ending at twelve midnight;

"**Commencement Date**" means [the date of this Agreement];

"**Critical Site IT Systems**" has the meaning given to it in the Customer **M&O** Contract or the [Service Provider] **M&O** Contract as appropriate;

"**Customer **M&O** Contract**" means the Site Management and Operations Contract entered into on [●] between the Authority (1) and the Customer (2) as amended from time to time;

"**Customer Parent Body Organisation**" means the organisation owning 100% of the issued share capital in the Customer from time to time;]

"**Customer Parent Body Agreement**" means the agreement between the Authority, the Customer and the Customer Parent Body Organisation dated [] as amended from time to time;]

"**Customer Site**" means [];

"**Energy Act**" means the Energy Act 2004;

"**Employees**" means all persons, whether part-time, full-time or self-employed, engaged by [Service Provider] wholly in the performance of [Service Provider's] obligations under the [Service Provider] **M&O** Contract, from time to time, and "**Employee**" shall be construed accordingly;

"**Event of Default**" means anyone of those events described as described in Clause 15.3 (Event of Default);

"**Force Majeure Event**" means any act, event or occurrence affecting any Party's performance of its obligations under this Agreement, the cause of which is not of such Party's making nor within that Party's reasonable control (having acted in accordance with Good Industry Practice), and which is not attributable to any act or failure to take preventative action consistent with the standards expected on a nuclear site by the Party concerned, including (to the extent not of that Party's making nor within that Party's reasonable control) but not limited to:

- (i) war, hostilities (whether or not war has been declared), terrorist acts, or acts of any civil or military authority;
- (ii) riot, insurrection, civil commotion, public demonstration, sabotage, or acts of vandalism;
- (iii) fire, flood, earthquake, extreme weather conditions, epidemic, or explosion;
- (iv) impact from Third Party aircraft or things falling from Third Party aircraft;

- (v) any strike, lock-out or trade dispute not involving solely the employees or subcontractors of that Party and not originating with that Party's employees or subcontractors or the employees or subcontractors of any Affiliate of that Party;
- (vi) Acts of God;
- (vii) delay in transport or communications;
- (viii) accidental damage to equipment; and
- (ix) structural shift or subsidence;

but expressly excluding:

- (a) any unlawful act of a Third Party who has gained entry to the Party's Site due to a failure of the Party to comply with the security plan or other failure to comply with its obligations under [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the [Service Provider] M&O Contract or the Customer M&O Contract as applicable in the context;
- (b) any unauthorised release of ionising radiation from, or contamination by radioactivity from an occurrence involving nuclear matter on, the Party's Site or from materials in the course of transportation to or from the Party's Site save to the extent that such unauthorised release or contamination is caused by any of the events listed in (i) to (ix) of this definition;
- (c) any radioactive, chemical or biological contamination on the Party's Site or emanating from the Party's Site or matter in the course of transportation to or from the Party's Site save to the extent that such contamination is caused by any of the events listed in (i) to (ix) of this definition; and
- (d) failure to obtain or maintain a Nuclear Site Licence, any Environmental Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other material requisite licence or permit;

"Good Industry Practice" means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider and/or customer engaged (in the United Kingdom or in any jurisdiction with Analogous Standards) in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances, where such service provider and/or customer is seeking to comply with its contractual obligations and all applicable Law and Regulatory Requirements;

"Insolvency Event" means the occurrence of any of the following:

- (i) the presentation of a petition for the appointment of an administrator;
- (ii) the court making an administration order;

- (iii) the presentation of a petition for winding up;
 - (iv) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
 - (v) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
 - (vi) the appointment of a receiver or manager or administrative receiver,
- unless, in the case of the events set out in paragraphs (iii) and (vi) above, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within twenty-one (21) Calendar Days of their commencement;

"Internal Procedures" means, in relation to the Customer and [Service Provider], in all internal company documentation (regardless of the manner in which it is held, stored or collated) which:

- (i) in the reasonable opinion of a director of the Party constitutes a mandatory internal guideline, standard, procedure or policy;
- (ii) in the reasonable opinion of a director of the Party, relates directly or indirectly to the Party's structure, operation and management; and
- (iii) relates materially and directly to the duties imposed on the Party in accordance with [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the [Service Provider] M&O Contract or [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the Customer M&O Contract (as applicable) and/or the manner in which the Party chooses to fulfil its contractual, legal and regulatory obligations therein;

and **"Internal Procedure"** shall be construed accordingly;

"Invoice Date" means [●];

"Law" means any Act of Parliament or subordinate legislation with the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right with the meaning of section 2 of the European Communities Act 1972, and any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where a Party's obligations under this Agreement are carried out;

"Long Term Force Majeure Event" has the meaning given in Clause 17.3 (Long Term Force Majeure);

"LTP" means the Lifetime Plan prepared by each of the [Service Provider] and/or the Customer pursuant to its M&O Contract, as applicable;

"M&O Contract" means the [Service Provider] M&O Contract or the Customer M&O Contract (as appropriate) and **"M&O Contracts"** shall mean both of them;

"M&O Contract Procedure" means the dispute resolution rules attached at schedule 12 to [the Customer M&O Contract] [the Service Provider M&O Contract] and at schedule 12 (Dispute Resolution Procedure) to [the Customer M&O Contract] [the Service Provider M&O Contract];

"Month" means a calendar month which is a period of time consisting of thirty (30) days if the period commences in April, June, September and November, and thirty-one (31) days if it commences in any other month excepting February when it consists of twenty-eight (28) days, or twenty-nine (29) in a leap year and **"Monthly"** shall be construed accordingly;

"Notice" has the meaning given to it in Clause 20.3.1;

"Nuclear Site Licence" means the nuclear site licence granted to the Party pursuant to Section 1 of the Nuclear Installations Act 1965 (as amended);

"Parent Body Organisation" means the [Service Provider] Parent Body Organisation or the Customer Parent Body Organisation as applicable in the context;

"Parent Body Agreement" means the Customer Parent Body Agreement or the [Service Provider] Parent Body Agreement, as applicable in the context;

"Regulators" means the Health and Safety Executive (HSE), the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), the Office for Nuclear Regulation (ONR), the Scottish Executive, the Financial Services Authority (FSA), the Pensions Regulator, the Pension Protection Fund, others specific to [Service Provider's] and/or the Customer's obligations under this Agreement and as applicable in the relevant jurisdiction (including in relation to international waters) where [Service Provider's] and/or the Customer's obligations under this Agreement are carried out and **"Regulator"** shall mean each or any one of them;

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"[Service Provider] Parent Body Organisation" means the organisation owning 100% of the issued share capital in [Service Provider] from time to time;

"[Service Provider] Parent Body Agreement" means the agreement between the Authority, [Service Provider] and the [Service Provider] Parent Body Organisation dated [] as amended from time to time;

"[Service Provider] Site" means [];

"**[Service Provider] M&O Contract**" means the Site Management and Operations Contract entered into on [1st April 2005] between the Authority (1) and [Service Provider] (2) as amended from time to time;

"**Services**" means the goods and/or services described in Schedule B (Services);

"**Site**" means the [Service Provider] Site, or the Customer Site as applicable in the context;

"**Subcontract**" means any agreement entered into by a Party in connection with the performance of its obligations under this Agreement, including Asset Purchases;

"**Subcontractor**" means any person who has entered into a Subcontract with a Party in connection with the performance of that Party's obligations under this Agreement;

"**Termination for Convenience**" has the meaning given to it in Clause 15.10 (Termination for Convenience);

"**Third Party**" means any person other than the Parties, the [Service Provider] Parent Body Organisation and the Customer Parent Body Organisation;

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

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

**SCHEDULE B
SERVICES**

[To be completed in relation to each service provided under this agreement in accordance with Clause 7].

SCHEDULE C

PAYMENT

[To be completed as appropriate in accordance with Clause 11.1].

SCHEDULE 6

Finance Schedule

- Part 1: General**
- Part 2: Non-PBI Profit**
- Part 3: Funding Limits and Total Maximum Fee**
- Part 4: Changes**
- Part 5: Costs Principles and Procedures**
- Part 6: Use of Performance Based Incentives**
- Part 7: Working Capital Arrangements**

PART 1: GENERAL

1.

Total Remuneration

- 1.1 The payment by the Authority of the Allowable Costs, amounts owed pursuant to the terms of the Schedule 21 (*Extended Environmental Safety Case*), Incentive Fee and any amounts owed by the Authority pursuant to any additional incentivisation mechanisms agreed from time to time in writing between the Authority and the Contractor (together the "**Contract Price**") will be the total remuneration due to the Contractor pursuant to this Contract.

Other Service Providers

- 1.2 Nothing in this Contract shall prevent the Authority from engaging other service providers to undertake studies, give advice or provide consultancy or any similar services in respect of low level waste management, transport, storage, disposal or similar activities. The Authority shall have no liability whatsoever to the Contractor for loss of profit, loss of contract or other similar losses or other compensation arising as a result of the Authority engaging such other service providers.

Payment Mechanics

- 1.3 The Authority shall make payments to the Contractor in accordance with the provisions of Clause 6.12 (*Invoicing and Payment*).

Currency of Contract

- 1.4 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.

No Double Counting

- 1.5 Notwithstanding the terms of Schedule 21 (*Extended Environmental Safety Case*):
- 1.5.1 if any cost is charged by the Contractor as an Allowable Cost, such part of the cost as is charged shall not also be payable by the Authority pursuant to the terms of Schedule 21 (*Extended Environmental Safety Case*), and if any cost is charged by the Contractor pursuant to the terms of Schedule 21 (*Extended Environmental Safety Case*), it shall not also be payable as an Allowable Cost.
- 1.5.2 The Contractor shall not be entitled to charge (either as an Allowable Cost or pursuant to the terms of Schedule 21 (*Extended Environmental Safety Case*)) any profit which is calculated by reference to payments made by the Contractor to the PBO or any PBO Affiliates pursuant to the provision of services by the PBO or any PBO Affiliates to the Contractor whether directly or indirectly.

- 1.6 **Exclusive of VAT**

The Contract Price is exclusive of VAT.

1.7 **Cost Transparency**

The Authority's right to costs transparency in respect of the Contract and throughout the subcontracting chain for any Task is set out in Clause 6.15 (*Cost Transparency and Auditing*) and the Contractor's obligation to ensure that Subcontractors provide the required cost transparency is set out in Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*).

PART 2: NON PBI PROFIT

2.

2.1 Not Used

2.2 Carrying Out the Extended ESC Task

In consideration for the payment of the amounts set out in Paragraph 6 of Schedule 21 (*Extended Environmental Safety Case*), the Contractor shall carry out the Extended ESC Task in accordance with the terms of Schedule 21 (*Extended Environmental Safety Case*).

PART 3: FUNDING LIMITS AND TOTAL MAXIMUM FEE

3.

3.1 The Annual Site Funding Limit for the Contract Year 1 April 2013 to 31 March 2014 is [REDACTED] and includes the funding components of Current Budget and Capital Budget, as follows:

A. AUTHORITY PROVIDED CURRENT BUDGET: [REDACTED]
[REDACTED]; and

B. AUTHORITY PROVIDED CAPITAL BUDGET: [REDACTED]

3.1A The estimated Category II Revenue for the Contract Year 1 April 2013 to 31 March 2014 is [REDACTED] and will be used to negate the attrition of the Current Budget and consequently the Annual Site Funding Limit.

3.2

[REDACTED] The Total Maximum Fee for each Contract Year in Period 2 is [REDACTED]
[REDACTED]

3.2.2 The Parties acknowledge and agree that, in the event that the Authority exercises any of its rights under clause 2.2 (*Term*) of the Parent Body Agreement to extend the term of the Parent Body Agreement for any Subsequent Period (as defined in the Parent Body Agreement), the Total Maximum Fee for such Subsequent Period shall be as agreed between the Parties at that time and the Total Maximum Fee of [REDACTED] for each Contract Year in Period 2 shall not, in any way, act as a precedent or reference point for determining the Total Maximum Fee for such Subsequent Period.

3.3 On or before 30 November in each Contract Year, the Authority shall use reasonable endeavours to provide the Contractor with written funding guidance which outlines, for the purposes of the Contractor's business planning only, indicative and non-binding estimates of:

3.3.1 the Annual Site Funding Limit for the following Contract Year, divided into the funding components of Current Budget and Capital Budget set out in Paragraph 3.1 of this Part 3 (*Funding Limits and Total Maximum Fee*); and

3.3.2 the Category II Revenue for the following Contract Year that will be used to negate the attrition of the Current Budget and consequently the Annual Site Funding Limit.

3.4 On or before 31 March in each Contract Year, the Authority shall notify the Contractor in writing of the final amounts in respect of the estimates provided by the Authority to the Contractor in accordance with Paragraph 3.3 above of this Part 3 (*Funding Limits and Total Maximum Fee*).

PART 4: CHANGES

4.

Change to the calculation and/or apportionment of the Incentive Fee

- 4.1 The Total Maximum Fee for each of the 5 (five) Contract Years of Period 2 will be [REDACTED] and thereafter will be agreed for each Contract Year between the Parent Body Organisation and the Authority as part of any Renewal pursuant to clause 2 (*Term*) of the Parent Body Agreement.
- 4.1A The Authority may commence an assurance review of the allocation and/or calculation of the Incentive Fee in accordance with Paragraph 4.1B below (*Change to the calculation and/or apportionment of the Total Maximum Fee*) prior to the following dates:
- 4.1A.1 the commencement of the 3rd (third) Contract Year of Period 2;
- 4.1A.2 the commencement of the 5th (fifth) Contract Year of Period 2; and
- 4.1A.3 the end of the 5th (fifth) Contract Year of Period 2,
(each, an "**Assurance Review**").
- 4.1B Each Assurance Review will review the following:
- 4.1B.1 the performance of the Contractor compared to the targets and requirements set out in LTP 13, including in respect of:
- (A) benefits realisation;
 - (B) target achievement;
 - (C) milestone achievement;
 - (D) Incentive Fee criteria/ performance; and
 - (E) contract management,
- 4.1B.2 whether the stretch criteria for Fee Element 4 remain appropriate and any changes in circumstances which has resulted in the stretch target being too easy/ difficult to achieve as compared to the achievement of the stretch target at the time of the previous Assurance Review; and
- 4.1B.3 any written proposal made by the Contractor in respect of the allocation and/or calculation of the Incentive Fee.
- 4.1C Following each Assurance Review, the Authority may elect to:
- 4.1C.1 introduce a new Fee Element;
- 4.1C.2 change the apportionment of the Incentive Fee between each of the Fee Elements other than Fee Element 4B; and/or
- 4.1C.3 amend any of the criteria (including any stretch criteria) used to calculate any Fee Element,

provided that the Authority shall have due regard to the maintenance of the commercial balance of this Schedule 6 (*Finance Schedule*) as at the commencement of Period 2, including in respect of the ability of the Contractor to earn the Incentive Fee as a proportion of the Total Maximum Fee.

- 4.1D In the event that the Authority makes any election under Paragraph 4.1C above (*Change to the calculation and/or apportionment of the Total Maximum Fee*), the terms of Paragraph 4.1 (*Changes to PBI during the then current Contract Year*) of Part 3 of Schedule 2 (*Change Control*) shall have effect.

Change to the Extended ESC Task

- 4.2 Notwithstanding the terms including the scope of work for the Extended ESC Task, if either the Contractor or the Authority seeks to change any terms or such scope of work the terms of Paragraph 4.1 (*Changes to PBI during the then current Contract Year*) of Part 3 of Schedule 2 (*Change Control*) shall have effect.

Cancellation of Activity

- 4.3 If, for any reason, the Authority requests the Contractor to cease work on any RC Task, the Authority shall bring a Change and will be liable to pay all Allowable Costs incurred but will only pay Incentive Fee on a pro rata basis for work which, in the reasonable opinion of the Authority, achieves the standards and milestones for the relevant RC Task.
- 4.4 If, for any reason, the Authority requests the Contractor to cease work on the Extended ESC Task or any part thereof and shall bring a Change as necessary, the payment of costs incurred will be made in accordance with the terms of Schedule 21 (*Extended Environmental Safety Case*).
- 4.5 The Authority shall have no liability whatsoever to the Contractor for loss of profit, loss of contract or other similar losses or other compensation arising as a result of the Authority requesting the Contractor to cease work under Paragraphs 4.3 or 4.4 above (*Cancellation of Activity*).

PART 5: COSTS PRINCIPLES AND PROCEDURES

1. PURPOSE

This Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*) sets out the basis on which Costs are treated as Allowable or Disallowable.

2. DEFINITIONS

In this Part 5 (*Costs Principles and Procedures*) of Schedule 6 (*Finance Schedule*), the defined terms used shall have the same meaning as defined terms used in Clause 1.1 (*Definitions*) of this Contract.

3. ALLOWABLE COSTS

3.1 All Costs incurred by the Contractor in the performance of, or as otherwise contemplated or permitted by, this Contract (including, for the avoidance of doubt, Costs paid to Subsidiaries under their subcontract(s) with the Contractor) are Allowable Costs except to the extent that such Costs are Disallowable Costs in accordance with Paragraph 5 (*Disallowable Costs*) and provided that such Costs when added to all other monies paid and payable by the Authority to the Contractor excluding Fee are not Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).

3.2 Costs which are incurred by the Contractor otherwise than in the performance of this Contract but which are also Allowable Costs are amounts owed 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 litigation, defence, dispute, compromise, appeal or other 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:

3.2.1 in the case of an agreement entered into 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

3.2.2 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 1.27 (*Claims Handling*) of this Contract and/or clause 8.5 (*Parent Body Organisation Handling*) of the Parent Body Agreement,

and provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).

3.3 BNF Historical Costs, Contractor Historical Costs, Pension Costs and Transfer Scheme Losses are Allowable Costs provided that such Costs when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, are not:

- 3.3.1 Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*); and/or
- 3.3.2 fraudulent.
- 3.4 For the avoidance of doubt, insurance excesses are Allowable Costs provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.5 For the avoidance of doubt, all Costs incurred by the Contractor in relation to carrying out procurement activities pursuant to Part 1 (*Work Activity Management – Subcontracts and Procurement*) of Schedule 5 (*Subcontracting/Procurement Schedule*) are Allowable Costs provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.6 For the avoidance of doubt, any Taxation paid in respect of Costs that are Allowable Costs under Paragraphs 3.1 to 3.4 above is an Allowable Cost, with the exception of any corporation tax on the chargeable profits of the Contractor provided that such Cost when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, is not Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.7 Costs incurred by the Contractor exclusively as a result of providing rights of continuous employment to a former employee of Sellafield Ltd (company number 1002607) are Allowable Costs, and provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.8 Compensation payments in respect of breaches of the Nuclear Installation Act 1965 are Allowable Costs, and provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.9 Costs falling within the definition of Exceptional Costs, Exceptional Historical Costs and Exceptional Pensions Costs where the Authority has not funded such Exceptional Costs, Exceptional Historical Costs and Exceptional Pension Costs in advance are Allowable to the extent such Costs are not inherently Disallowable, and provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).
- 3.10 Criminal fines, penalties and any associated interest payments imposed on the Contractor after the Commencement Date as a result of a breach of applicable Law or Regulatory Requirements are Allowable Costs where such fines, penalties and interest payments arise as a result of any action or inaction of the Contractor or the Outgoing Parent that occurred prior to the Commencement Date, and provided that such Costs are not when added to all other monies paid and payable by the Authority to the Contractor excluding Fee, Disallowable Costs pursuant to Clause 6.2.2 (*Determination of Funding Limits and Compliance with Funding Limits*).

- 3.11 Costs payable to third parties pursuant to a Third Party Claim in relation to which the Contractor and the PBO and/or an Indemnified Party have been found by a court to have joint and several liability for the entire amount of the judgement are Allowable Costs.

4. ADVANCE AGREEMENTS

- 4.1 Where the Contractor is unclear whether a Cost will be an Allowable Cost, it may seek an Advance Agreement with the Authority that a particular Cost (or part of the Cost) will be an Allowable Cost. No sign-off by the Authority of an Advance Agreement overrides the limits set out in Clause 6.1 (*Funding Limits*) of this Contract. An Advance Agreement is made when the subject of the agreement is limited to:

4.1.1 Costs under this Contract; and

4.1.2 whether a defined category of cost for this Contract is an Allowable Cost; and

4.1.3 is for a specified period that does not exceed the term set forth in this Contract,

and, for the avoidance of doubt, any Advance Agreement is subject to the limits set out in Clause 6.1 (*Funding Limits*).

- 4.2 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 such requests for consent should not be included in Advance Agreements but should be submitted to the Authority separately for approval.

- 4.3 An Advance Agreement should also be considered by the Contractor when it will have costs that are exceptional or abnormal in size or where particular accounting treatment is required. The Authority may agree (in its sole discretion (except in the circumstances set out in Paragraph 6.3 where the Contractor has an absolute right to defer)) to the deferral of the recognition of the Cost or its amortisation over subsequent years for the purposes of determining compliance with the Annual Site Funding Limit and Capital Budget.

- 4.4 Authority approval of a Lifetime Plan (LTP) or other budgetary approval will not be construed as an Advance Agreement affecting the allowability of Costs on an Authority contract.

- 4.5 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 of whether the Advance Agreement is approved or rejected giving reasons for any rejection.

5. DISALLOWABLE COSTS

- 5.1 Except when treated otherwise under an Advance Agreement or a document expressly required to be submitted for approval under this Contract (for example, the Socio-Economic Development Plan) requesting the Authority's approval, a Cost incurred by the Contractor on or after Commencement Date, in whole or in part, and any Associated Allocable Cost, is a Disallowable Cost if it is:

5.1.1 Costs of investments in shares and securities;

- 5.1.2 Costs of raising and servicing capital, including short-term financing however represented save that:
 - (A) charges in respect of the permitted overdraft facility in respect of the Contractor's Payments Account are Allowable if such charges arise due to the error or default of the Authority; and
 - (B) the costs of an Approved Working Capital Facility are Allowable; up to a level pre-agreed with the Authority on an annual basis;
- 5.1.3 Costs of accounting and/or economic hedges (this includes both the costs of entering into a transaction and any costs arising as a result of the hedging activity);
- 5.1.4 extravagant outlays (the Contractor is entitled to a full written explanation when these costs are disallowed by the Authority);
- 5.1.5 charges in respect of provisions and contingent liabilities in anticipation of future costs or write-offs;
- 5.1.6 subscriptions and donations of a political nature;
- 5.1.7 donations, including cash, property and services, regardless of recipient;
- 5.1.8 Costs of research and development (such Costs not being limited to those in respect of research and development of the type identified in Clause 6.17.8 (*Research and Development Tax Reliefs*));
- 5.1.9 marketing, advertising and selling expenses;
- 5.1.10 Costs paid or payable to Affiliates:
 - (A) in excess of those set out in Subcontracts specifically approved by the Authority pursuant to Clause 2.8 (*Subcontracting/Procurement*) of this Contract;
 - (B) unless pursuant to Clauses 6.12.6 (*Payments to Parent*) of this Contract;
- 5.1.11 Costs incurred on rationalisation and/or plant closures. Such costs may include:
 - (A) redundancy payments;
 - (B) employee relocation expenses;
 - (C) job creation scheme costs;
- 5.1.12 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:
 - (A) mergers and acquisitions;
 - (B) de-mergers;
 - (C) joint ventures;

- (D) raising capital;
- 5.1.13 Travel costs, subsistence and other human resources allowances in excess of that provided for in an Internal Procedure relating to human resources approved by the Authority;
- 5.1.14 Appropriation of profits including corporation tax on the chargeable profits of the Contractor;
- 5.1.15 Value Added Tax (VAT) and any other Tax in respect of or in connection with any Disallowable Costs;
- 5.1.16 Costs of membership in social, dining or other similar organisations and excessive costs for entertainment and/or social activities;
- 5.1.17 Costs for registration or maintenance of intellectual property not owned by the Authority including costs of Parent IP licensed to the Authority which are not the subject of an Advance Agreement (for the avoidance of doubt, the Costs of complying with Clauses 8.4.15 (*Protection of Developed IP*), 8.5 (*Infringement of IP owned by the Authority*) and 8.8 (*Contractor's Obligation to Protect IP*) and complying with Clause 8.7 (*Third Party IP*) in respect of Third Party IP are Allowable Costs);
- 5.1.18 Royalties or amortised costs for a licence to use intellectual property when the Authority has a royalty-free licence or right to free use of the intellectual property, the patent has been found to be invalid or unenforceable, or the patent has expired;
- 5.1.19 Fines, penalties and any interest payments imposed on the Contractor or its Affiliates as a result of a breach of applicable Law or Regulatory Requirements save where such Fines, penalties and any associated interest payments are Allowable pursuant to paragraph 3.10 of this Part 5 of Schedule 6;
- 5.1.20 Costs arising from arbitration or litigation (and/or the preparation for arbitration or litigation) except where the Authority has specifically approved such activity pursuant to Clause 6.3 (*Restrictions on Payment to Parent Body Organisation*) and 6.4 (*Other Financial Restrictions*) of this Contract or where such arbitration or litigation (and/or the preparation for such arbitration or litigation) is:
 - (A) commenced in accordance with Clause 7.6 (*Necessary Consents*), Clause 8 (*Intellectual Property*) or Clause 1.27 (*Claims Handling*) of this Contract;
 - (B) commenced in accordance with the Dispute Resolution Procedure;
 - (C) an attempt to commence judicial review proceedings against the Authority in connection with this Contract;
 - (D) commenced to challenge any threatened or actual revocation of the Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Law; or

- (E) commenced to apply for or resist or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority;
- 5.1.21 Costs incurred in connection with any civil proceedings brought by the Authority for violation, or failure to comply with, Law or regulation by the Contractor (including its agents or employees), if the result is an imposition of a monetary fine or penalty;
- 5.1.22 Costs of preparing and submitting a bid or proposal and participation in the Authority source selection cycle (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 such Costs);
- 5.1.23 Any amounts owed 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 the Contractor has failed to use all reasonable endeavours to mitigate the amount of the claim and/or:
 - (A) where, in the case of an agreement entered into after the Commencement Date, the Contractor has failed to obtain 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/or
 - (B) in respect of the Costs of any litigation, defence, dispute, compromise, appeal or other 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 1.27 (*Claims Handling*) of this Contract and/or clause 8.5 (*Parent Body Organisation Handling*) of the Parent Body Agreement;
- 5.1.24 Costs which are defined as Disallowable (or a term with the same effect) in cost reimbursable Subcontracts;
- 5.1.25 Cost of the use by the Parent Body Organisation of the services of the Nominated Staff or any Employees or any Authority Assets for any period of time for a purpose other than in fulfilment of the Contractor's obligations under this Contract;
- 5.1.26 Costs of pursuing a claim pursuant to clause 8.5.1 of the Parent Body Agreement save that where the Authority subsequently decides that the Parent Body Organisation is not liable for the entire financial effect of a third party claim, the Authority shall provide the Contractor with an Advance Agreement that agrees that the Contractor's Costs in respect of such third party claim both incurred and to be incurred are Allowable Costs;
- 5.1.27 Payments to creditors during the term of any prepayment;
- 5.1.28 Costs incurred in carrying out any activity (and/or any Costs which arise directly as a result of such activity being undertaken) which are not set out in the Current

Contract Term of the LTP and are not otherwise permitted in accordance with Clause 2.3.1 (*No activities outside current Contract Year of LTP*) and any Costs incurred by the Contractor in providing information and/or processing an insurance claim on behalf of the Authority under Clause 2.3.3 (*Costs and Risk of activities outside LTP*);

- 5.1.29 Costs (including preparation Costs) relating to the reference of any dispute to the Dispute Resolution Procedure in the event that the Authority is found to have acted reasonably;
- 5.1.30 Costs (including preparation Costs) relating to the Contractor's pursuit of a claim against a Third Party where the Parent Body Organisation has directed the SLC to pursue such claim (for the avoidance of doubt, Costs incurred by the Contractor in pursuit of a claim against a Third Party where the Contractor proceeds in the manner directed by the Authority are Allowable Costs);
- 5.1.31 Costs charged to the Contractor by the Parent or any Affiliate (except as otherwise agreed by the Authority);
- 5.1.32 The amount of any debt due and payable by the Contractor to the Authority pursuant to this Contract;
- 5.1.33 Costs paid to Nominated Staff as salary, bonus, or otherwise in excess of levels for such costs agreed by the Authority in writing;
- 5.1.34 Insurance other than the Authority Insurances;
- 5.1.35 Costs incurred in the performance of the Extended ESC Task (for the avoidance of doubt, such Costs are payable to the Contractor in accordance with the terms of Schedule 21 (*Extended Environmental Safety Case*)).

6. ACCOUNTING BASIS

- 6.1 Subject to Paragraph 6.3, all Current Costs, Capital Costs and Category II Revenue and all amounts of money payable by the Authority to the Contractor excluding Fee are to be determined for the purposes of the Annual Site Funding Limit, the Current Budget and the Capital Budget on an accruals accounting basis in accordance with UK GAAP (for such time as the Authority accounts under UK GAAP and thereafter in accordance with the accounting principles adopted from time to time by the Authority and notified to the Contractor) as modified by the application of FReM, as if the transaction were being carried out directly by the Authority as though the Authority were a company limited by shares under the Companies Act 2006 and as modified for the following:
 - 6.1.1 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;
 - 6.1.2 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;

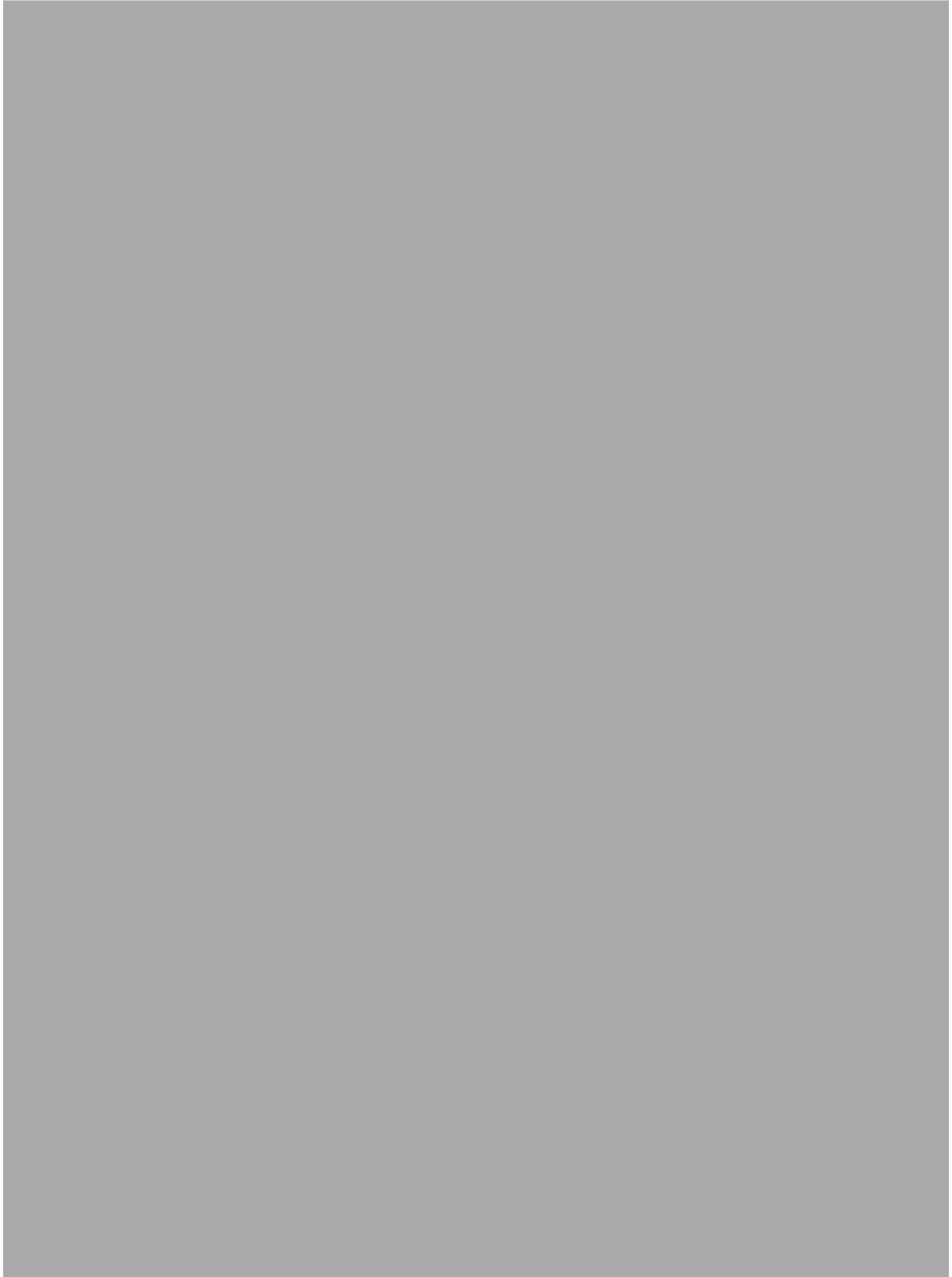
- 6.1.3 costs of creating long-term contract work-in-progress are recognised at the point at which the underlying goods or services are received or the cost becomes payable, whichever is later;
- 6.1.4 pensions costs are to be recognised when each payment, as determined according to the funding agreements between the pensions trustees and the Authority, falls due for payment;
- 6.1.5 finance leases should be accounted for as if they were classified as operating leases in accordance with SSAP 21 (or as otherwise advised by the Authority to the Contractor),

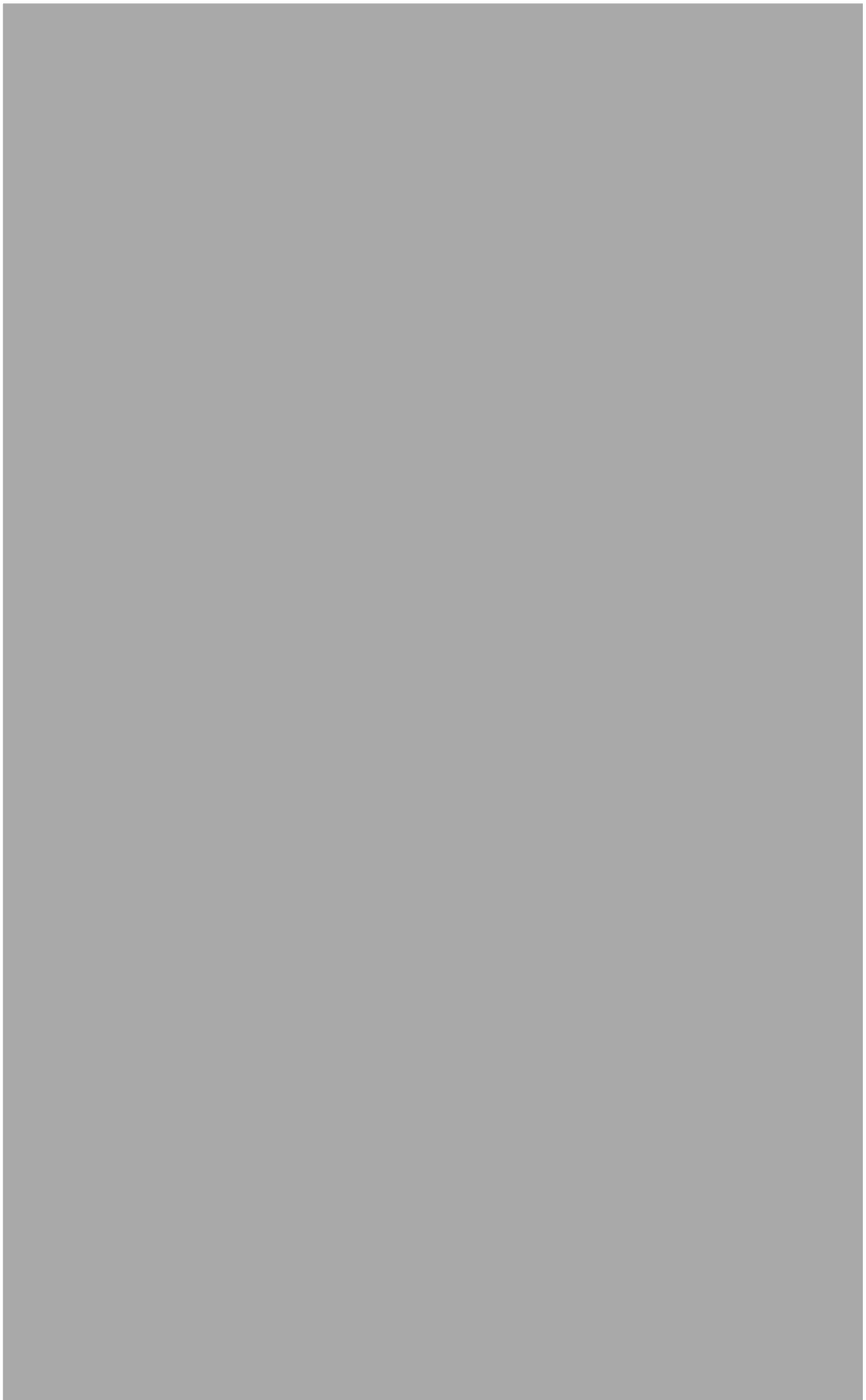
except as otherwise described in an Advance Agreement.

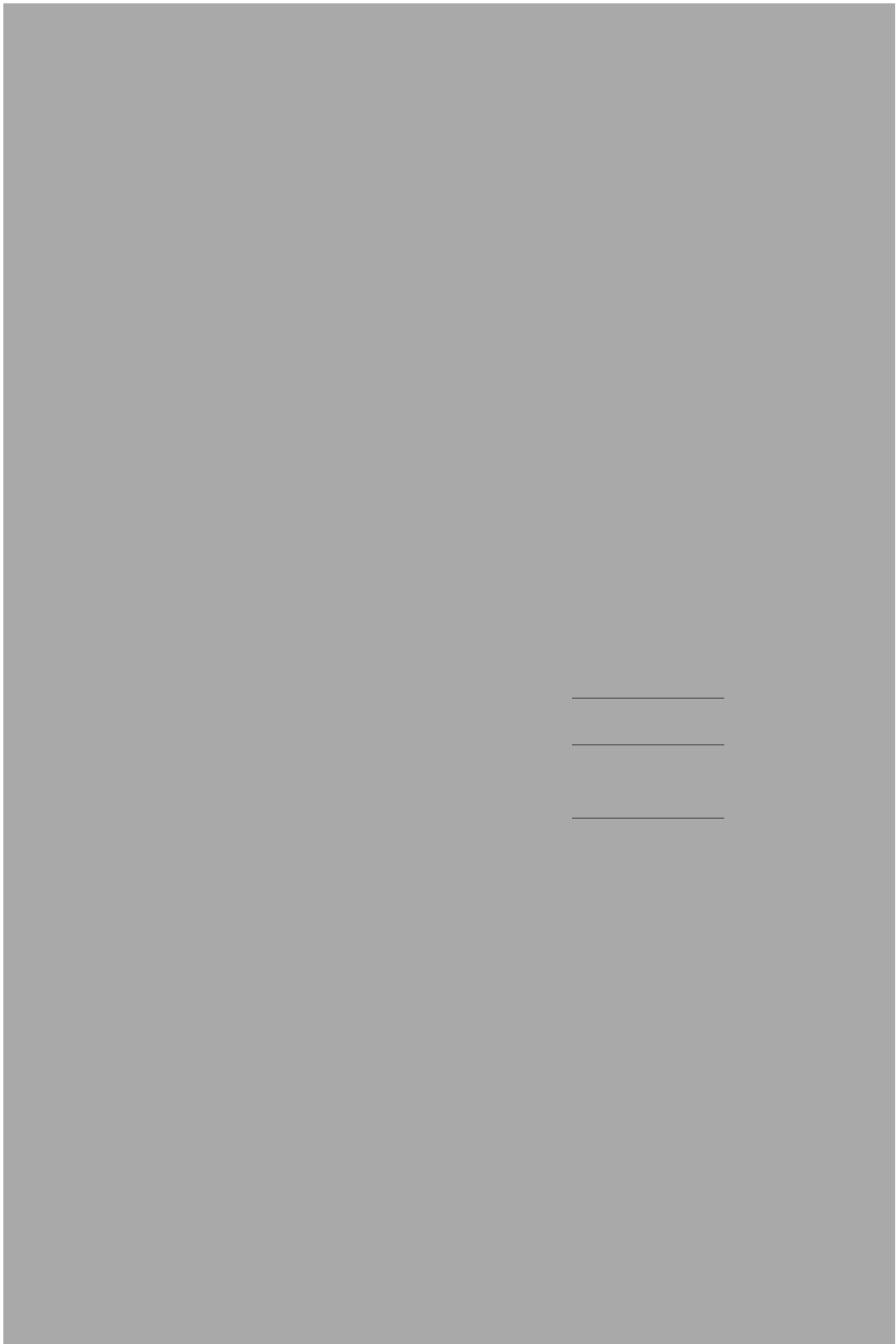
- 6.2 Subject to Paragraph 6.3, for the purposes of this Contract only and for calculating the impact on the Annual Site Funding Limit, Current Budget and Capital Budget, the Authority may determine, acting reasonably, the accounting treatment of any item of Current Cost, Capital Cost and Category II Revenue and all amounts of money payable by the Authority to the Contractor excluding Fee which requires the exercise of accounting judgment. The Authority must consult the Contractor before making such a determination and must explain to the Contractor in writing the reasons for its determination.
- 6.3 For the purposes of calculating expenditure in relation to the Annual Site Funding Limit, the Contractor is entitled to defer to the following Contract Year the recognition of part or all of a Cost which would otherwise be recognised under UK GAAP (or another applicable accounting framework) in the current Contract Year when, in the opinion of the Contractor (acting reasonably), all of the following circumstances apply to the Cost:
 - 6.3.1 if the Contractor becomes aware of the circumstances leading to the Cost too late in the Contract Year to be able to manage the Cost using its Reprioritisation Procedures; and
 - 6.3.2 if the quantification of a Cost that would otherwise be recognised in accordance with Paragraph 6.1 requires the exercise of accounting judgment; and
 - 6.3.3 the cost is abnormal or unusual in the context of the Contractor's activities and the incurrence of other Costs at the Site.

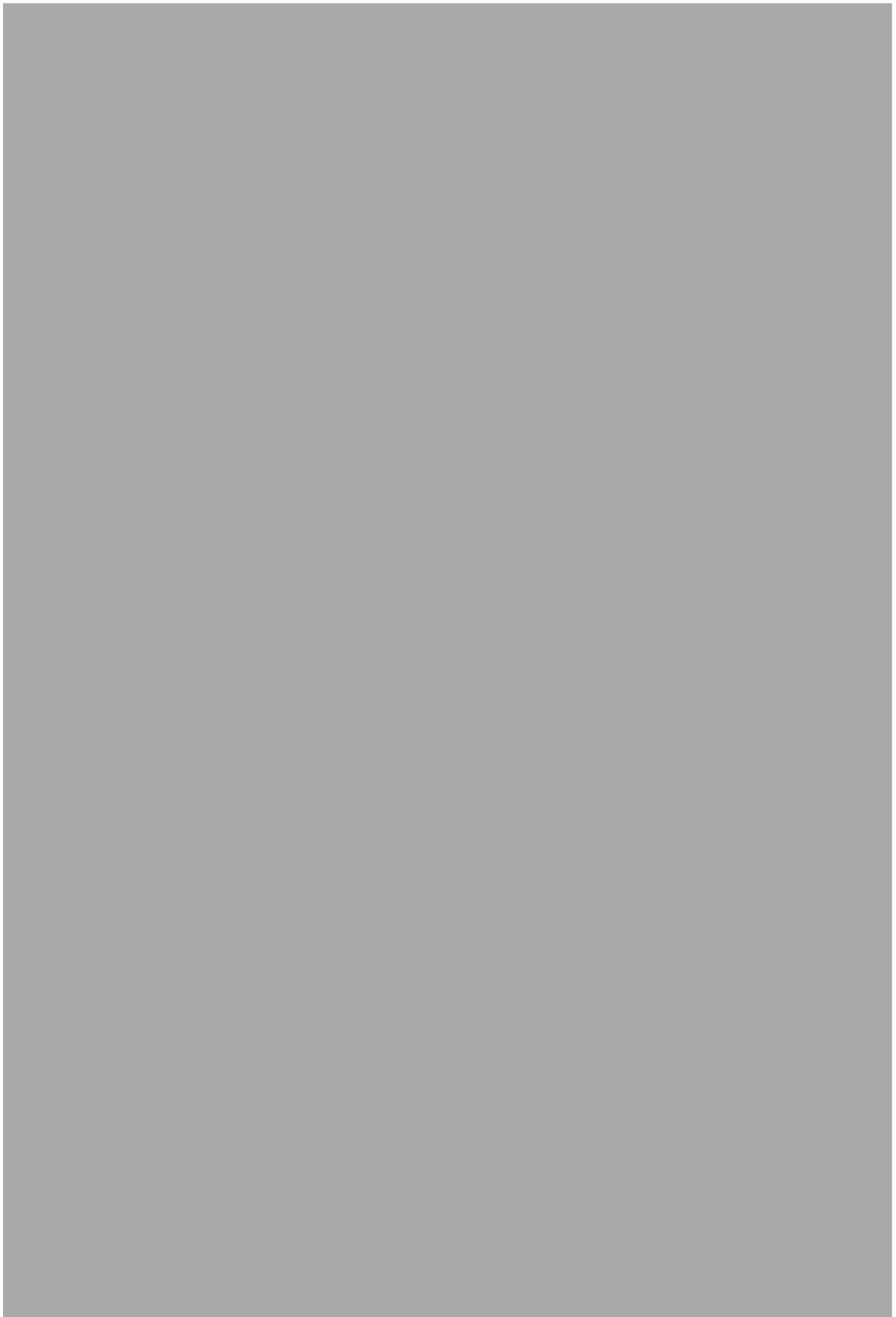
For the avoidance of doubt, where the circumstances above apply to a proportion of a Cost, only that proportion of the Cost to which the circumstances apply shall be eligible for deferment.

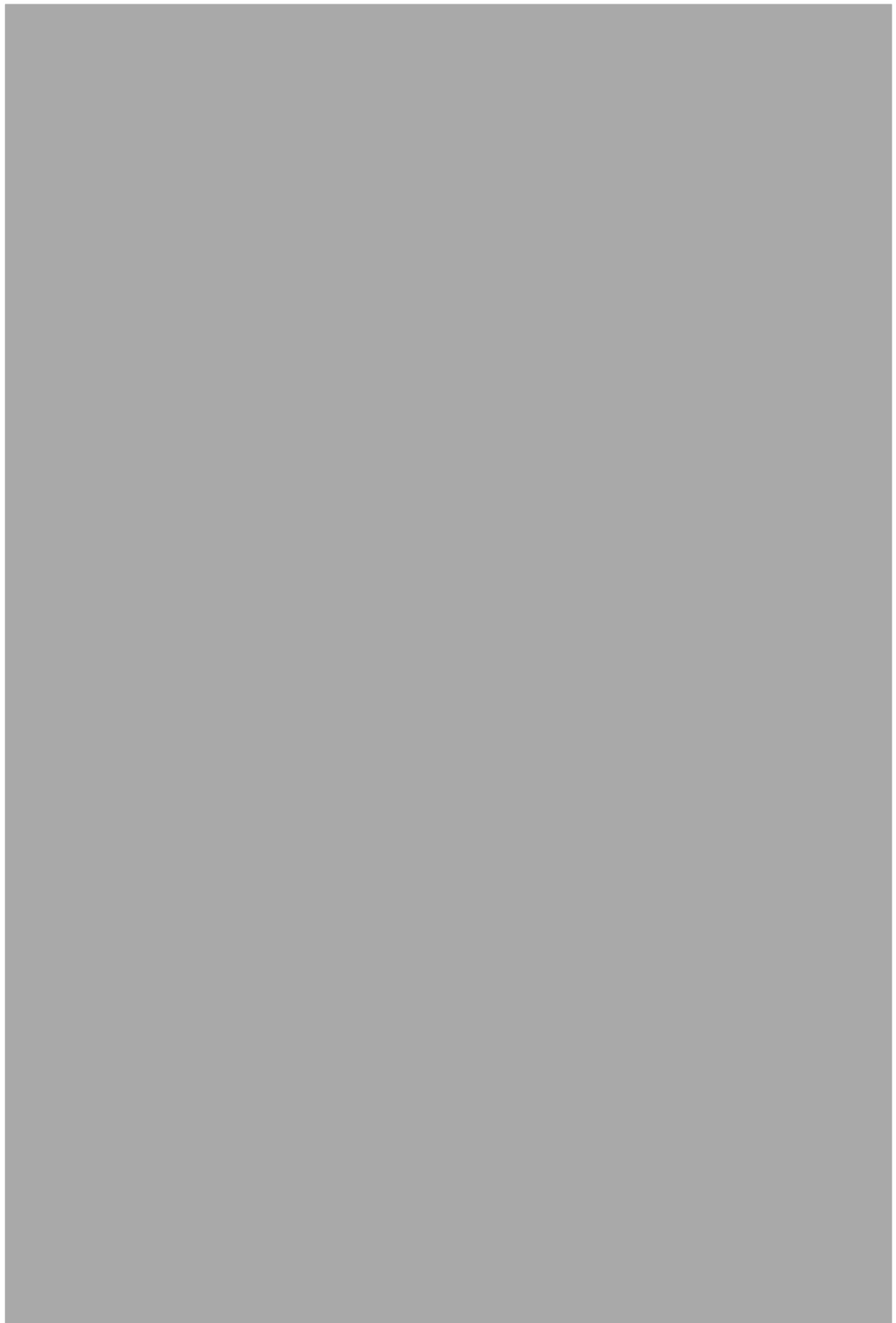
PART 6 – USE OF PERFORMANCE BASED INCENTIVES

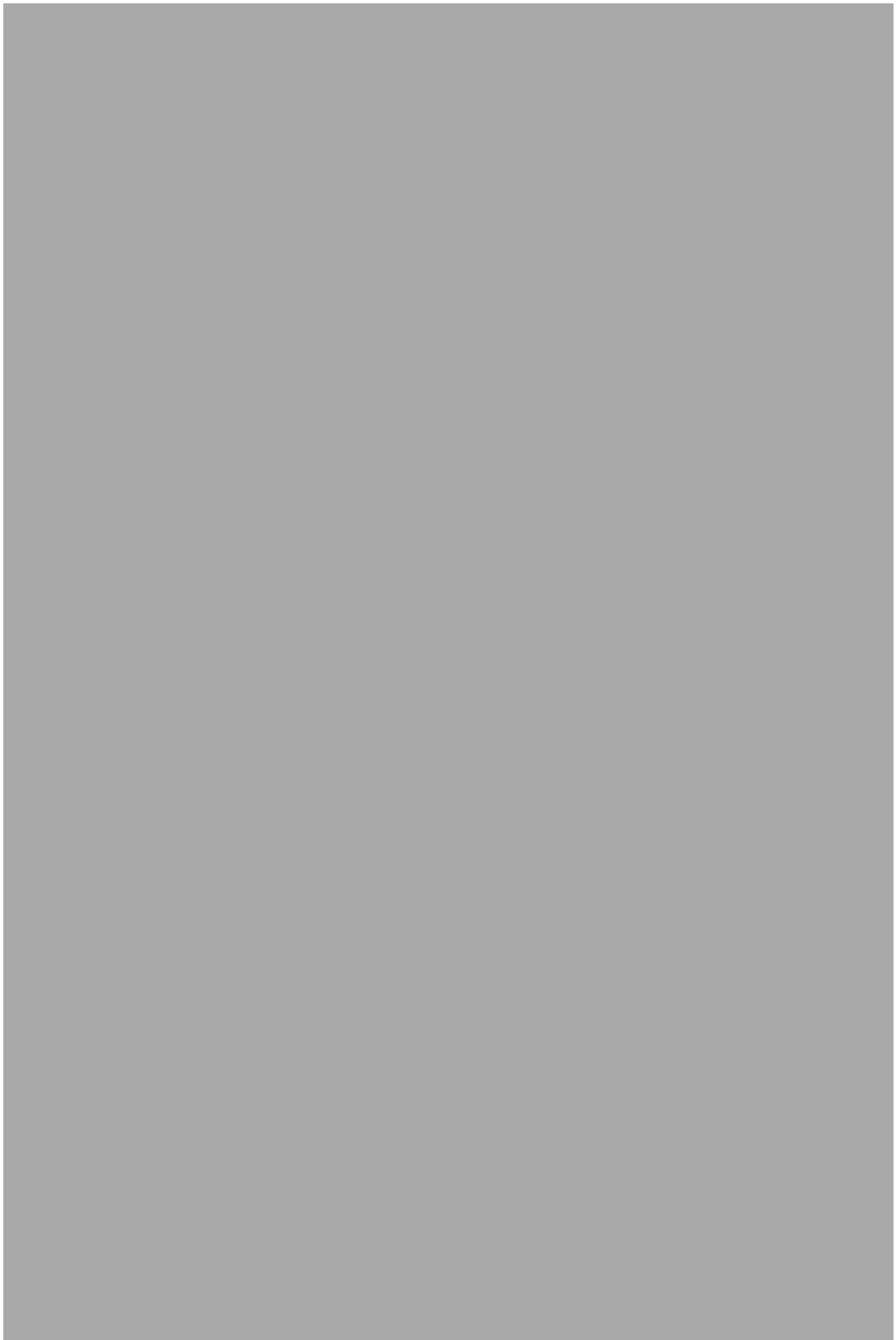


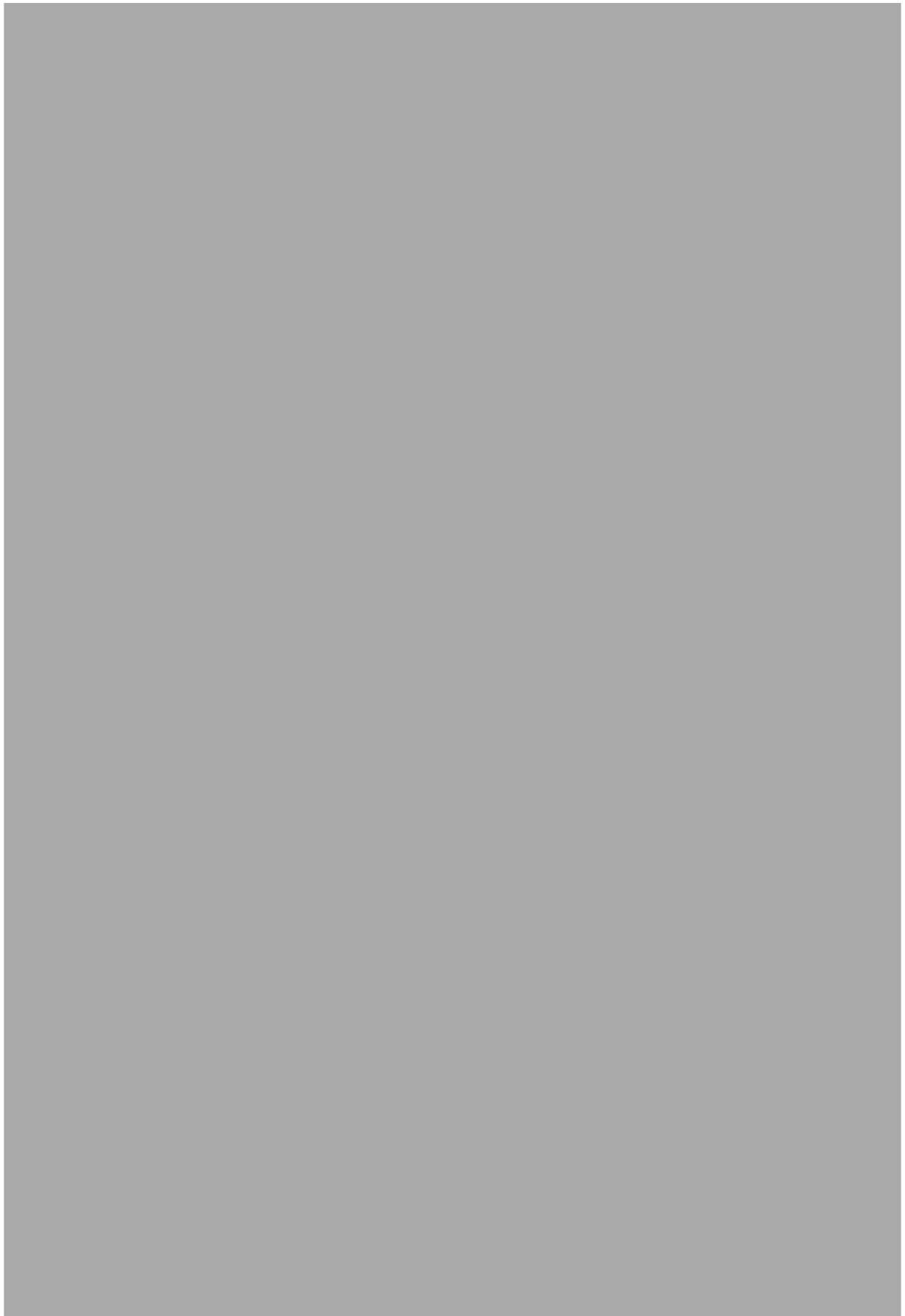


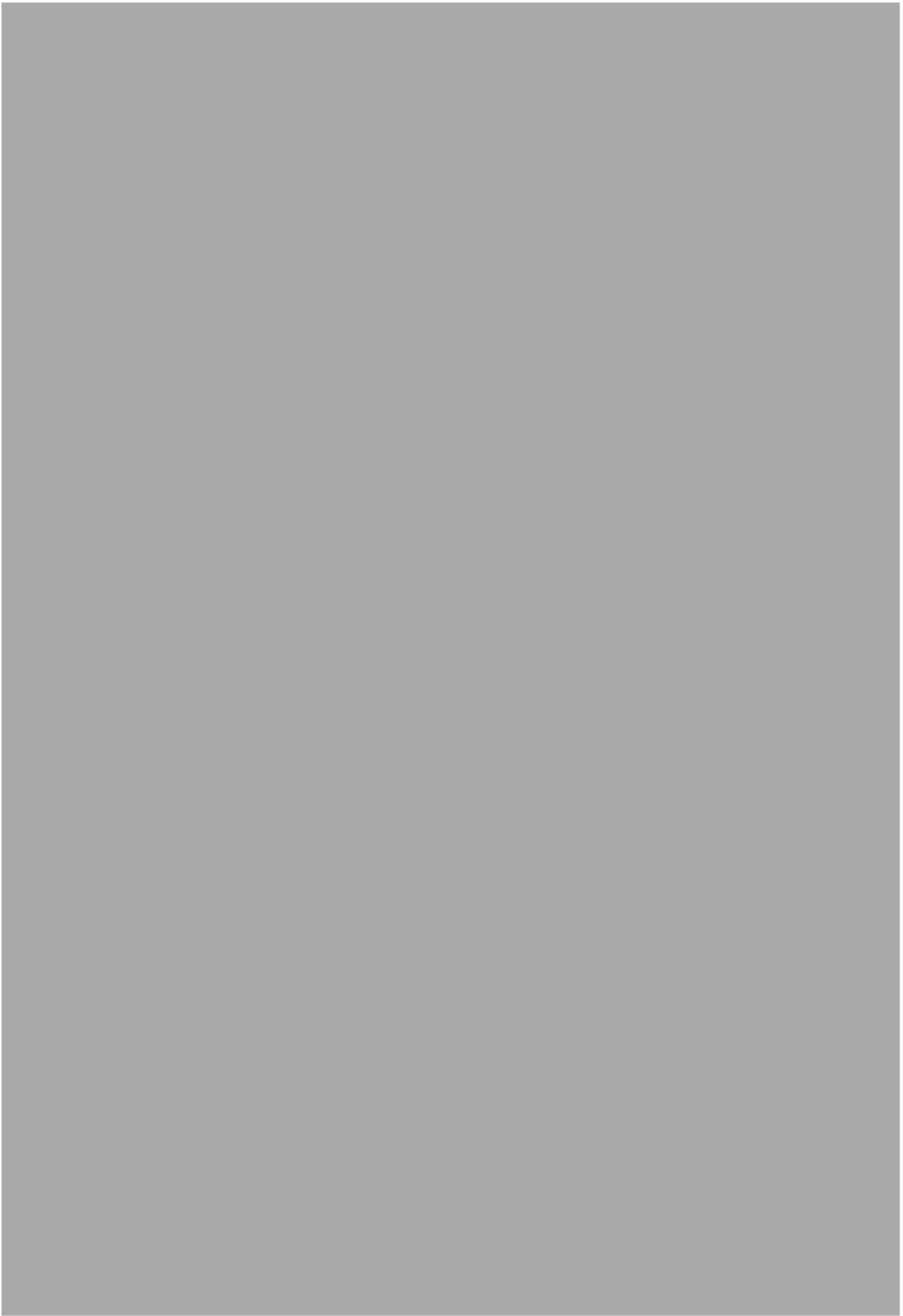


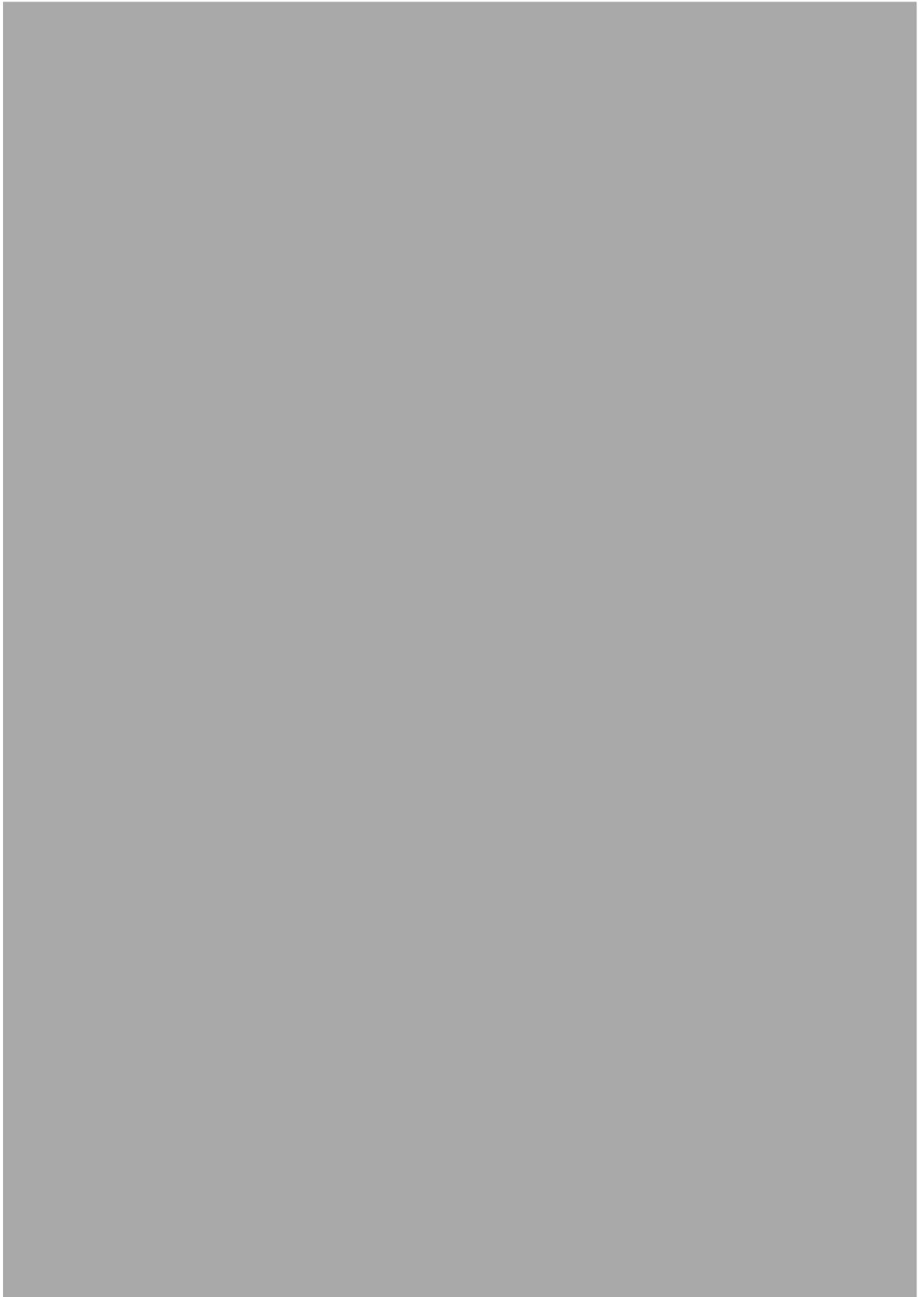


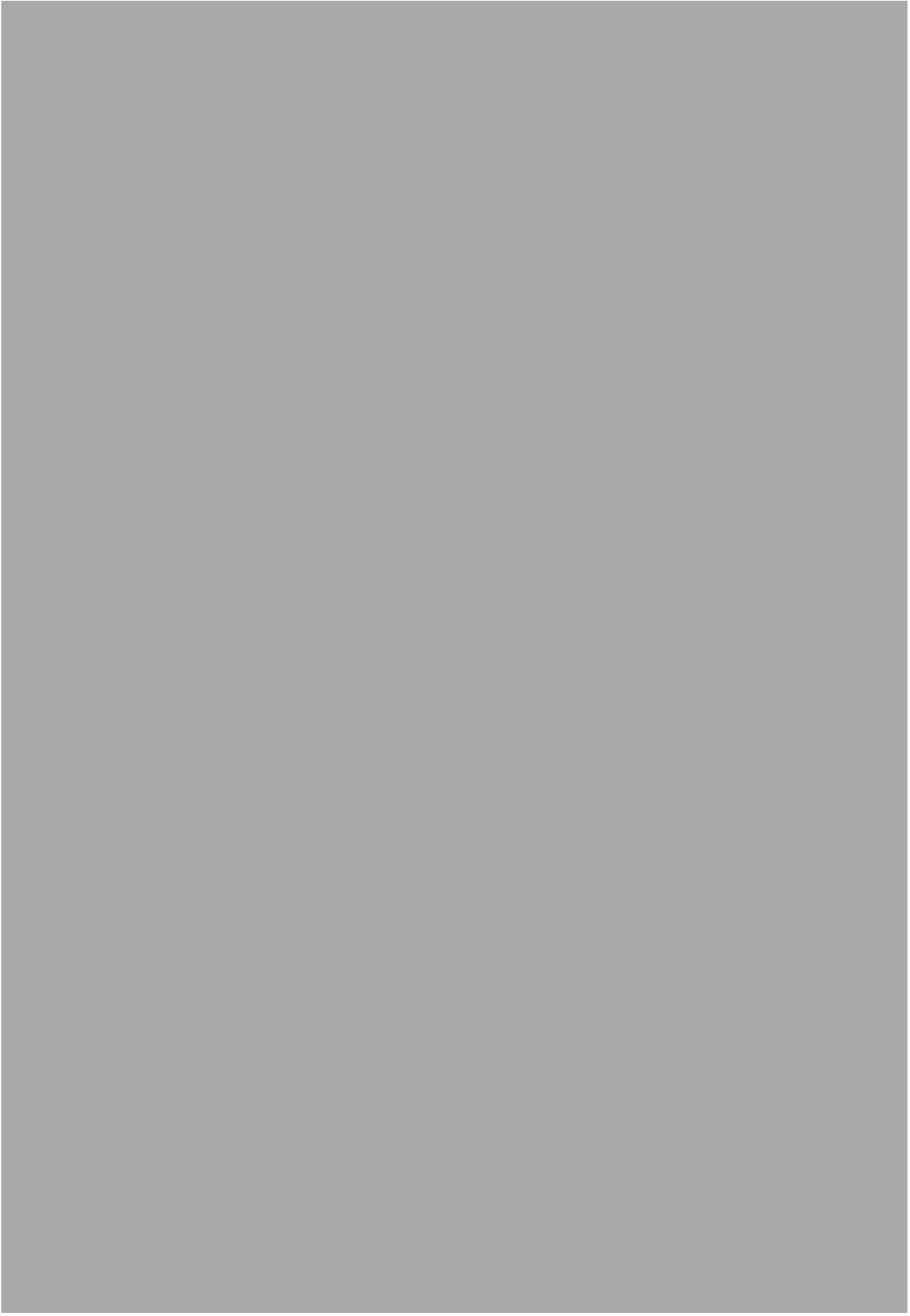


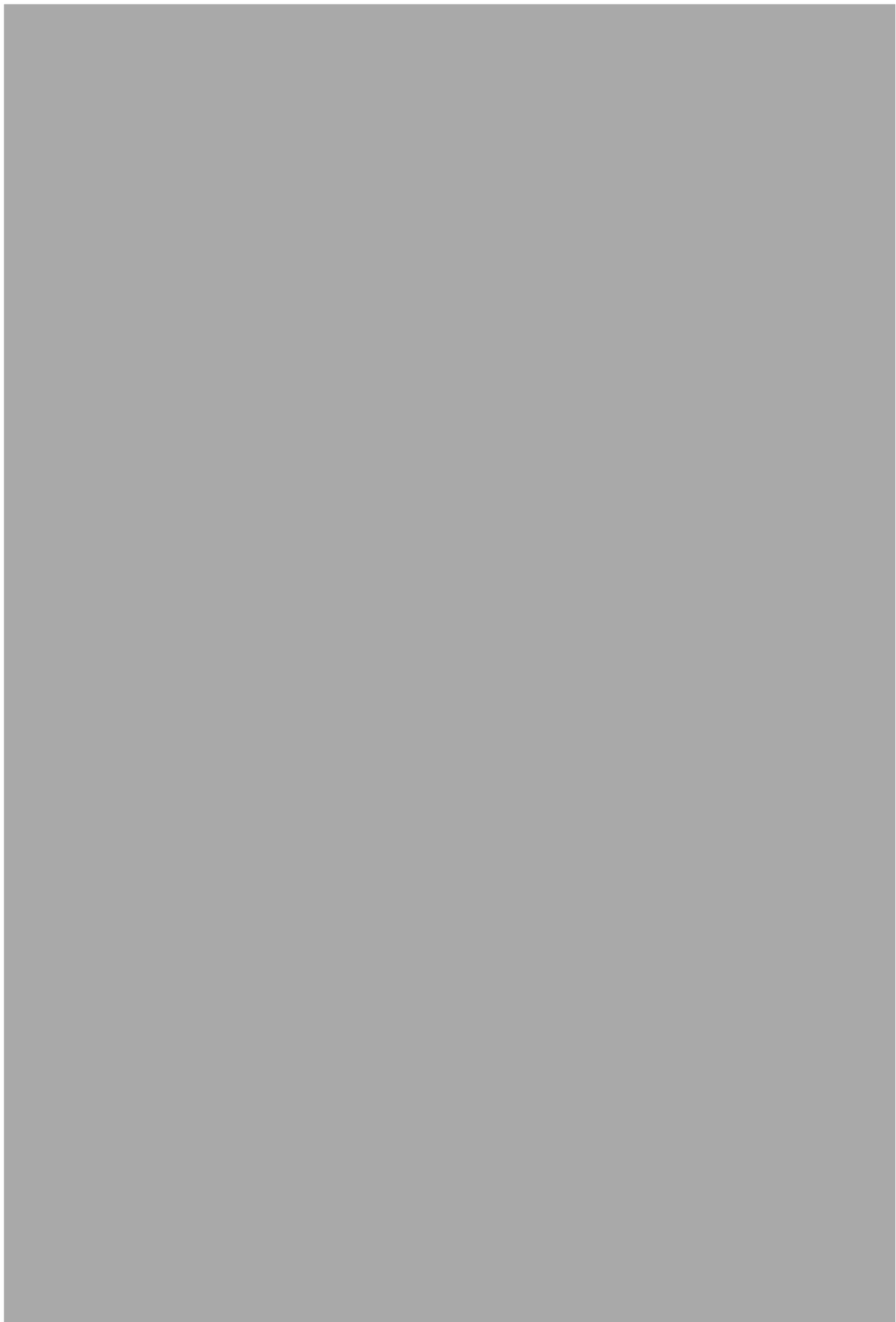














APPENDIX A

Criteria for Evaluating PBIs

- Justification for incentivising the Task must be provided with the benefits to the Authority clearly defined.
- Outcomes/results shall be incentives rather than processes.
- Schedule performance and technical performance must be defined along with estimated cost of the work to be performed and the proposed Incentive Fee.
- Proposed Incentive Fee must be justified relative to the cost of the work and the benefit to the Authority.
- A cost incentive or cost constraint must be specified for each PBI.
- Conditions for acceptance of performance must be specified.
- The work scope being incentivised must be wholly within the Contractor's control with any assumptions stated clearly, e.g. regulatory implications.

APPENDIX B

Template Performance Agreement Form

Performance Agreement Form	
Site PBI Reference:	L[NN]-[YY/YY]-34
Part 1: Performance Objective and Related Information	
Site Name	LLW Repository Ltd
Objective Short Title	[Short Title]
WBS Element Number(s)	[WBS Element]
Multi Year PBI [if so detail number of years and any aspirations for out years]	Financial Year [YYYY/YY]
Budgeted Cost of Work Scheduled under this objective (BCWS)	[BCWS]
Maximum available incentive fee associated with this Objective. [Can be expressed as a percentage of overall fee pool until fees set for each year]	Total Fee Allocation: £[££££] Fee Element Allocation: <ul style="list-style-type: none"> • L[NN].[NN]: [££££££] • L[NN].[NN]: [££££££]
Part 2: Performance Objective and Related Information	
Detailed Objective:	
[Long Title] [Overall Description] L[NN].[NN] – [Element Title] [Description of Element Objective]	
Justification for this Objective:	
[Justification]	
Part 3: Fee earning schedule	
L[NN].[NN] – [Element Title] [This element of fee is worth [££££££] and will be earned as follows: <ul style="list-style-type: none"> • [Detail Fee Earning Process]; 	

Part 4: Performance Requirements

Cost & Schedule Performance

Cost Performance:
 [Detail Cost Performance]

Schedule Performance:
 [Detail Schedule Performance]

Completion definition / documentation / evidence

L[NN].[NN] – [Element Title]
 • [Detail definition / documentation / evidence];

Assumptions and definitions

Assumptions:
 • [Assumptions]

Definitions:
 • [Definitions]

Part 5. Approvals

Name	Date	Signature
LLWR Single Point of Accountability		
LLWR Managing Director		
NDA Site Programme Manager		
NDA Head of Contracts		
NDA Head of Programme		

APPENDIX C

Template Validation Certificate

LLW Repository Ltd Reference:

Version:

Introduction

This Form is used to request final payment of the Incentive Fee following completion of a Performance Based Incentive milestone by LLW Repository Ltd. It also confirms that the completion has been verified through LLW Repository Ltd's assurance activities and that the appropriate evidence has been provided to NDA. The Form is used to record NDA's approval of completion of the milestone and the signed Form confirms that the request for final payment is approved.

1. Milestone Information

PBI Reference:	
PBI Title:	
Milestone Title:	
Completion Definition:	
Milestone Completion Date:	
Actual Completion Date:	
Incentive Fee Available:	£
Incentive Fee Claimed:	£
Completion Evidence:	
Evidence Location:	
Comments:	

2. LLWR Validation

Declaration:

By signing this Form, I declare that the milestone has been completed in line with the requirements of the Performance Agreement Form, that I have verified the evidence of completion and that the information provided in this Form is accurate and complete.

Name: (Please Print)

Role:

Signature:

Date:

3. NDA Approval

Declaration:

By signing this Form, I declare that the milestone has been completed and approve LLW Repository Ltd's request for final payment.

Name: (Please Print)

Role:

Site Programme Manager

Signature:

Date:

Name: (Please Print)

Role:

Contract Manager

Signature:

Date:

PART 7 - WORKING CAPITAL ARRANGEMENTS

Definitions

"**LIBOR**" means the overnight London Inter Bank Offer Rate as calculated by the British Bankers Association;

"**PBO Current Account**" means the nominal ledger account in the Contractor's accounting records that records the transfer of working capital funding between the Parent Body Organisation and the Contractor.

General principles

The Contractor shall provide an Approved Working Capital Facility (AWCF) that meets its obligations under clause 6.6 (Cashflow) of the M&O Contract.

The Contractor and the Authority shall work together to ensure that the AWCF represents value for money to the Authority and they shall have regard to the following principles:

- (A) The Contractor and the Authority will work together to improve the accuracy of the Cash Flow Forecasts produced by the Contractor provided that the Contractor is ultimately responsible for the Cash Flow Forecasts.
- (B) The Contractor and the Authority will work together to minimise the overall size of the AWCF, without compromising the Contractor's obligations under clause 6.6.1 of the M&O Contract to pay all creditors of the Contractor as they fall due.
- (C) The Contractor and the Authority will work together to identify any Exceptional Costs that will minimise the overall size and cost of the AWCF.
- (D) The Contractor and the Authority will annually (and as otherwise required by the circumstances described in paragraph 3.2 of this Part 7) review the payment terms of the Monthly Invoice, in order that the overall size and cost of the AWCF is minimised and that the Authority is not pre-funding the Contractor in any three month cycle.

1. CALCULATION OF TARGET INTEREST COST

1.1 Not Used.

1.2 Prior to the start of each Contract Year, the Contractor and the Authority shall meet and agree:

- 1.2.1 The validity and accuracy of the 12 month forecast of the daily movements in the Contractor's Payments Account for the next Contract Year that has been produced by the Contractor;
- 1.2.2 Any Exceptional Costs that would reduce the overall size and cost of the AWCF;
- 1.2.3 The payment profile to be applied to the Monthly Invoices;
- 1.2.4 The forecast working capital that will be required from the Parent Body Organisation;

1.2.5 The budgetary assumptions to be used for the purposes of cashflow forecasting.

The cash flow forecast that results from the above agreements is the "**Agreed Cash Flow Forecast**".

1.3 An interest rate of LIBOR plus [REDACTED] (the "The Approved Interest Rate") will be applied equally on a daily basis to:

1.3.1 The forecast cumulative drawings from the Parent Body Organisation in the year as represented by the credit balance on the PBO Current Account ("**Interest payable on PBO Funding**");

1.3.2 The forecast surplus cash balances ("**Interest on surplus cash balances**"); and

1.3.3 The forecast periods where the PBO Current Account is a debit balance ("**Interest on Working Capital Provided to the PBO**").

1.4 **The "Annual Target Interest Charge" will be calculated as follows:**

Interest payable on PBO funding	£X
LESS:	
Interest on surplus cash balances and	(£X)
<u>Interest on working capital provided to the PBO</u>	(X)
<u>ANNUAL TARGET INTEREST CHARGE</u>	£X

1.5 **The Annual Target Interest Charge will be adjusted monthly within the year for changes in the rate of LIBOR.**

2. CALCULATION AND REIMBURSEMENT OF ALLOWABLE INTEREST COSTS

2.1 By applying the Approved Interest Rate to the daily balances on the Contractor's Payment Account and the PBO Current Account, the Contractor will calculate the monthly Allowable Interest Cost that is due from the Authority. The Allowable Interest Cost for any month will be:

Interest payable on PBO funding	£X
LESS:	
Interest on surplus cash balances and	(£X)
<u>Interest on working capital provided to the Parent Body Organisation</u>	(X)
<u>MONTHLY ALLOWABLE INTEREST COST</u>	£X

2.2 If the monthly Allowable Interest Cost, when added to the Allowable Interest Costs claimed in earlier months of the financial year, is no greater than the Annual Target Interest Cost, the Contractor may claim the Monthly Allowable Interest Cost on the Monthly Invoice as an allowable cost. Interest costs above the Annual Target Interest Charge in any financial year will be Disallowable Costs.

- 2.3 The Authority will reimburse the Allowable Interest Cost to the Contractor in line with the agreed payment terms of the monthly invoice.

3. REVIEW OF THE MONTHLY INVOICE PAYMENT PROFILE

- 3.1 The Contractor and the Authority will review cash management on a monthly basis.
- 3.2 The Authority or the Contractor may request a change in the payment profile of the Monthly Invoice if any of the following events are identified at the monthly review of cash management.
- 3.2.1 If in the previous three months the interest due to the Contractor from surplus cash balances plus interest on working capital provided to the Parent Body Organisation is greater than the interest payable on PBO Funding;
- 3.2.2 A change in business circumstances that could not have reasonably been incorporated into the Agreed Cash Flow Forecast and which results in a movement in the Annual Target Interest Charge of more than the greater of:-
- (A) [REDACTED] of the Annual Target Interest Charge and
- (B) [REDACTED] or
- 3.2.3 An unforeseen event that was not known by the management of the Contractor at the time of preparation of the Agreed Cash Flow Forecast and which results in a movement in the Annual Target Interest Charge of more than the greater of:-
- (A) [REDACTED] of the Annual Target Interest Charge and
- (B) [REDACTED]
- 3.3 The impact of any agreed changes to the cash flows and/or the payment profile of the Monthly invoice will be incorporated into the Agreed Cash Flow Forecast to produce a Revised Cash Flow Forecast and a Revised Annual Target Interest Charge.
- 3.4 In considering any changes to the payment profile of the Monthly Invoice, both the Contractor and the Authority will have regard to the General Principles contained in this Schedule.

4. REPORTING

- 4.1 The Contractor will provide the following reports to the Authority:
- 4.1.1 A Base Cash Flow Forecast for the following financial year by 31 January in each year;
- 4.1.2 An Agreed Cash Flow Forecast for each financial year by 31 March.
- 4.1.3 Every month, a cash flow report that identifies actual performance against forecast and also forecasts the Contractor cash flows over the following 12 months
- 4.1.4 By the last day of every month, a report that identifies the forecast cash flows for each day of the following two months

4.1.5 Any other reports that the Authority may require during the life of the contract.

These reports will be in the format required by the Authority from time to time.

5. ACCURACY AND PUNCTUALITY

The accuracy and punctuality of all cash management reports will be an item recorded on the Balanced Scorecard. Consequently, inaccurate or late reports may result in the deduction of Incentive Fee.

APPENDIX A

Payment Profile of Monthly Invoice

The Monthly Invoice submitted by the Contractor will be reimbursed by the Authority in the following manner:



SCHEDULE 7
NOT USED

SCHEDULE 8
NOT USED

SCHEDULE 9
Information Technology



SCHEDULE 10
Form of Broker's Appointment Letter

BROKER APPOINTMENT LETTER TO BE ISSUED ON COMPANY LETTERHEAD

[DATE]

To Whom It May Concern

[COMPANY NAME]

We appoint [Name of Insurance Broker] as our insurance brokers with effect from [date] to [date].

This letter rescinds any previous appointment of insurance brokers to act on our behalf.

Yours faithfully

[Authorised Signatory]

SCHEDULE 11
ORGANISATIONAL STRUCTURE



SCHEDULE 12

DISPUTE RESOLUTION PROCEDURE

1. INTERPRETATION AND CONSTRUCTION

Defined terms in this Dispute Resolution Procedure shall have the meanings given to them in Clause 1.1 of the M&O Contract and Clause 1.1 of the Parent Body Agreement except for the following terms which shall have the meanings given below solely for the purposes of this Dispute Resolution Procedure:

"Adjudicator" means a person appointed as an adjudicator pursuant to Paragraph 4 or Paragraph 8;

"Agreement" means a contract into which this Dispute Resolution Procedure has been incorporated and the expression "Agreements" shall be construed accordingly;

"Construction Act Dispute" has the meaning given in Paragraph 4.1;

"Customer" means a counterparty to a Customer Contract;

"Customer Dispute" has the meaning given in Paragraph 7.1;

"Date of Appointment" has the meaning given in Paragraph 4.3;

"Date of Referral" has the meaning given in Paragraph 4.5;

"Dispute" any dispute or difference arising out of or in connection with an Agreement including, but not limited to, any question regarding the existence, interpretation, validity, construction or termination of any such Agreement;

"Dispute Notice" has the meaning given in Paragraph 3.1;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in this Schedule 12 (*Dispute Resolution Procedure*) together with the relevant dispute resolution rules contained in this Schedule 12 (*Dispute Resolution Procedure*), including those dispute resolution rules incorporated by reference;

"HGCRA" means the Housing Grants, Construction and Regeneration Act 1996 incorporating amendments in the Local Democracy, Economic Development and Construction Act 2009;

"LCIA" means the London Court of International Arbitration;

"LCIA Arbitration Rules" means the arbitration rules of the LCIA as are in force at the date of the Request for Arbitration;

"Mediation Notice" has the meaning given in Paragraph 5.2;

"Mediation Settlement Agreement" has the meaning given in Paragraph 5.4;

"Mediator" has the meaning given in Paragraph 5.3;

"Non-Construction Act Dispute" means a Dispute which is not a Construction Act Dispute;

"Notice of Intention to seek Adjudication" has the meaning given in Paragraph 4.1;

"Notice to Terminate the Mediation" has the meaning given in Paragraph 5.6;

"Party" means a party to an Agreement and the expression **"Parties"** shall be construed accordingly;

"Related Dispute" means any Dispute in which issues of fact or law arise which are substantially the same as or connected with one or more issues of fact or law which arise in another Dispute;

"Request for Arbitration" means the Request (as such term is defined in the LCIA Arbitration Rules) for arbitration of a Dispute under this Dispute Resolution Procedure;

"Senior Representative" means the designated senior representative of a Party who has authority to meet with other Parties' Senior Representatives in accordance with the Dispute Resolution Procedure and the expression "Senior Representatives" shall be construed accordingly;

"Senior Representative Settlement Agreement" has the meaning given in Paragraph 3.3;

"Subcontract Dispute" has the meaning given in Paragraph 7.1;

"TeCSA" has the meaning given in Paragraph 4.2;

"Tribunal" means the arbitrator, or arbitrators, appointed or determined to resolve the Dispute in accordance with Paragraph 6.3.

2. OUTLINE OF THE DISPUTE RESOLUTION PROCESS

2.1 Save as otherwise expressly provided in an Agreement, in the event a Dispute arises:

2.1.1 the Parties to the Dispute shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties to the Dispute in accordance with Paragraph 3;

2.1.2 if the Senior Representatives are unable to resolve the Dispute in accordance with Paragraph 3, the Parties may agree to refer the Dispute to mediation in accordance with Paragraph 5 at any time, whether before or after the Dispute is referred to adjudication in accordance with Paragraph 4 or Paragraph 8, or to arbitration in accordance with Paragraph 6, but before the issue of the decision of the Adjudicator or the Tribunal;

2.1.3 if the Senior Representatives are unable to resolve the Dispute in accordance with Paragraph 3, and if the Dispute is a Non-Construction Act Dispute, either Party may refer the Dispute to adjudication in accordance with Paragraph 8; and

2.1.4 in the event the Dispute is not otherwise settled, compromised or resolved in accordance with this Dispute Resolution Procedure (other than Paragraph 6), it shall be finally resolved by reference to arbitration in accordance with Paragraph 6.

2.2 Notwithstanding any other provision of this Dispute Resolution Procedure, any Party may at any time:

2.2.1 where and to the extent a Dispute is a Construction Act Dispute, invoke a statutory right to adjudicate pursuant to the HGCRA, in which case the adjudication procedure set out in Paragraph 4 shall apply;

- 2.2.2 apply to the English Courts for:
- (A) an order restraining a Party from doing any act or compelling a Party to do any act; or
 - (B) Judgement to enforce a Senior Representative Settlement Agreement, the decision of an adjudicator, or an arbitral Award; and/or
- 2.2.3 commence proceedings in accordance with Paragraph 6 so as to prevent the expiry of any applicable limitation period.

3. SENIOR REPRESENTATIVES

- 3.1 Any Party may refer any Dispute to the Dispute Resolution Procedure by notice in writing to all other Parties to the Dispute (a "**Dispute Notice**"). The Dispute Notice shall include the following details:
- 3.1.1 the subject matter of the Dispute and the issues to be resolved;
 - 3.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
 - 3.1.3 the identity of the other Parties;
 - 3.1.4 the identity of the referring Party's Senior Representative;
 - 3.1.5 copies of any documents which the referring Party considers to be important and relevant; and
 - 3.1.6 a statement of the determination, remedy or recourse which the referring Party seeks.
- 3.2 Within five (5) working days of service of the Dispute Notice, the Parties to the Dispute shall procure that the Senior Representatives of each Party to the Dispute shall meet during the period within fifteen (15) working days from the Dispute Notice, and if necessary shall meet more than once, to seek to resolve the Dispute by agreement.
- 3.3 Any agreement reached by the Senior Representatives which resolves the Dispute must be in writing and signed by the Senior Representative of each Party to the Dispute (the "**Senior Representative Settlement Agreement**").
- 3.4 If the Senior Representatives of the Parties to the Dispute are unable to resolve the Dispute within fifteen (15) working days of the service of the Dispute Notice (or within such further time as the Senior Representatives to the Dispute may agree in writing) then any Party to the Dispute may refer the Dispute to a Tribunal in accordance with Paragraph 6.
- 3.5 Unless the Parties to the Dispute otherwise agree in writing, any concessions, waivers or agreements (other than a Senior Representative Settlement Agreement) made by a Party in the course of discussions pursuant to this Paragraph 3 shall be without prejudice and shall not be raised by the Parties in any subsequent adjudication, arbitration or other legal proceedings.

4. ADJUDICATION

- 4.1 If and to the extent a Dispute is a dispute or difference that a Party has the right to refer to adjudication pursuant to the HGCRA (a "**Construction Act Dispute**"), a Party to that Dispute may notify the other Parties to the Dispute of its intention to refer the Dispute to an Adjudicator by written notice (a "**Notice of Intention to seek Adjudication**"). The Notice of Intention to seek Adjudication shall include:
- 4.1.1 the nature and a brief description of the Dispute and the Parties involved (including as appropriate their addresses for service of any notices);
 - 4.1.2 details of where and when the Dispute has arisen;
 - 4.1.3 the nature of the redress sought;
 - 4.1.4 the proposed identity and terms of Appointment of any Adjudicator.
- 4.2 The Party or Parties receiving the notice (the "**Respondent(s)**") shall notify in writing the Party giving the notice (the "**Claimant**") within two (2) Calendar Days of service of the Notice of Intention to seek Adjudication whether or not the appointment of the proposed Adjudicator is agreed and, in default of agreement, the Respondent(s) shall propose an alternative person to act as Adjudicator. If the identity and terms of appointment of the Adjudicator are not agreed within three (3) Calendar Days of service of the Notice of Intention to seek Adjudication, the Claimant shall apply in writing to the Technology and Construction Solicitors Association ("**TeCSA**") to nominate and determine the terms of appointment of an Adjudicator within two (2) Calendar Days of the matter being referred to TeCSA and in accordance with this Dispute Resolution Procedure.
- 4.3 The Adjudicator shall within twenty four (24) hours of receipt of the proposed appointment or nomination confirm his appointment (the "**Date of Appointment**") in writing to the Parties to the Dispute stating:
- 4.3.1 his willingness and availability to act; and
 - 4.3.2 that he has no interest in the Dispute.
- 4.4 Within seven (7) Calendar Days of service of the Notice of Intention to seek Adjudication, the Claimant shall send a submission to the Adjudicator which shall include the following:
- 4.4.1 the subject matter of the Dispute and the issues to be resolved;
 - 4.4.2 the position the Claimant believes is correct and the Claimant's reasons for that position;
 - 4.4.3 copies of all the documents which the Claimant considers to be important and relevant; and
 - 4.4.4 a statement of the determination, remedy or recourse which the Claimant seeks.
- 4.5 Under this Dispute Resolution Procedure, the date on which the Adjudicator and the other Parties receive the Claimant's submission shall be the date on which the Dispute is referred to the Adjudicator ("**Date of Referral**").

- 4.6 The Respondent(s) shall be entitled (but not obliged) to submit a written response to the Adjudicator and copies of any documents the Respondent(s) intend(s) to rely on within ten (10) Calendar Days of service of the Notice of Intention to seek Adjudication.
- 4.7 Any communication between a Party and the Adjudicator shall be communicated contemporaneously also to all other Parties to the Dispute.
- 4.8 The Adjudicator shall reach a decision within twenty eight (28) Calendar Days of the Date of Referral. This period of twenty eight (28) Calendar Days may be extended by up to fourteen (14) Calendar Days by the Adjudicator with the consent of the Claimant, or longer if agreed by all Parties to the adjudication.
- 4.9 The Adjudicator shall:
- 4.9.1 act fairly and impartially;
 - 4.9.2 establish the timetable and procedure for the adjudication;
 - 4.9.3 take the initiative in ascertaining the facts and the law;
 - 4.9.4 reach his decision in accordance with the applicable law in relation to the Dispute referred to him;
 - 4.9.5 if requested by one of the Parties to the Dispute, provide reasons for his decision, which shall be communicated to all Parties to the adjudication;
 - 4.9.6 have the power to decide the Parties' liability for costs arising out of or in connection with the adjudication and to make an award of costs in favour of any Party;
 - 4.9.7 be permitted to correct his decision so as to remove a clerical or typographical error arising by accident or omission; and
 - 4.9.8 render his decision as an adjudicator for the purposes of the HGCRA and the Arbitration Act 1996 (or any re-enactment or amendment thereof) and the law relating to arbitrators and arbitrations shall not apply to the Adjudicator or his decision or the procedure by which he reaches his decision.
- 4.10 In determining any dispute referred to him for a decision the Adjudicator shall at his absolute discretion take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral which may include:
- 4.10.1 considering any written representations, statements and experts' reports submitted to him by the Parties;
 - 4.10.2 if requested by any Party affording the Parties the opportunity to address him in a meeting or meetings at which all Parties to the Dispute referred to him must be present;
 - 4.10.3 requiring the Parties to produce to him and to all other Parties to the Dispute copies of any documents relevant to the Dispute (save any which would be privileged from production in Court proceedings);

- 4.10.4 instructing an expert and/or taking counsel's opinion as to any matter raised in the adjudication, but he shall not be entitled to delegate any decision to such expert or counsel; and
- 4.10.5 open up, review and revise any opinion certificate, instruction, determination or decision of whatsoever nature given or made under an Agreement.
- 4.11 If a Party fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, or fails to produce any document or written statement requested by the Adjudicator, or fails to comply with any other procedural requirement relating to the adjudication, the Adjudicator may continue the adjudication in the absence of that Party and the document or written statement requested.
- 4.12 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless such act or omission is in bad faith, and any employee, agent or adviser of the Adjudicator is similarly protected from liability.
- 4.13 If the appointed Adjudicator is or becomes unable or unwilling to act or fails to come to a decision within the specified time allowed, any Party may within two (2) working days of receiving notice of the Adjudicator being or becoming unable or unwilling to act, apply to TeCSA to nominate and determine the terms of appointment of the Adjudicator within two (2) Calendar days of the matter being referred to TeCSA and in accordance with this Dispute Resolution Procedure.
- 4.14 The replacement Adjudicator shall within twenty four (24) hours of receipt of the proposed appointment or nomination confirm in writing to the Parties to the Dispute:
- 4.14.1 his willingness and availability to act; and
- 4.14.2 that he has no interest in the Dispute referred to him.
- He shall have the power to decide any Dispute that was submitted to his predecessor but had not been decided at the time when his predecessor became unable or unwilling to act.
- 4.15 The Adjudicator's decision is binding upon the Parties to the Dispute unless and until the Dispute to which it relates is finally determined by the Tribunal appointed in accordance with Paragraph 6, or by written agreement of the Parties in accordance with Paragraph 3 or otherwise.
- 4.16 If any Party does not comply with the decision of the Adjudicator, any other Party to the adjudication shall be entitled to take proceedings in the English Courts to secure enforcement of the decision pending any final determination of the Dispute.
- 4.17 Each Party to the adjudication shall be liable for such proportion of the fees and reasonable expenses of the Adjudicator, and those of any person employed or engaged by the Adjudicator to assist him in the adjudication, as the Adjudicator shall in his absolute discretion direct.

5. MEDIATION

- 5.1 Subject to Paragraph 2.2.1, a Party may not refer a Dispute to mediation, unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Paragraph 3.
- 5.2 In the event a Party refers a Dispute to mediation (the "**Mediation Notice**"), it shall be in accordance with the LCIA Mediation Procedure, as amended by Paragraph 5.3, which procedure is deemed to be incorporated by reference into this Paragraph 5.

- 5.3 If the parties agree any individual or individuals to act as mediator (the "**Mediator**"), that individual or those individuals shall be appointed as the Mediator. If the Parties do not agree that any individual or individuals be appointed as Mediator, the Mediator shall be selected and appointed by the LCIA in accordance with the LCIA Mediation Procedure.
- 5.4 Any settlement reached by the Parties which resolves the Dispute must be in writing and signed by the Parties to the Dispute (the "**Mediation Settlement Agreement**").
- 5.5 Unless the Parties to the Dispute otherwise agree in writing, any concessions, waivers or agreements (other than a Mediation Settlement Agreement) made by a Party in the course of discussions pursuant to this Paragraph 5 shall be without prejudice and shall not be raised by the Parties in any subsequent adjudication, arbitration or other legal proceedings.
- 5.6 Notwithstanding the provisions of Paragraphs 5.2 and 5.3, any Party to the mediation may serve a "**Notice to Terminate the Mediation**" on the Mediator and the other Party (or Parties), to terminate the mediation at any time after the first meeting has taken place pursuant to Paragraph 5.2.

6. ARBITRATION

- 6.1 Subject to Paragraph 2.2.1, a Party may not refer a Dispute to arbitration unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Paragraph 3.
- 6.2 Any Dispute shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules, which are deemed to be incorporated by reference into this Paragraph 6.
- 6.3 There shall be either one or three arbitrators. The number of arbitrators for a Dispute shall be agreed by the Senior Representatives during the period set aside for their meetings or, failing such agreement, shall be determined by the LCIA Court (as defined in the LCIA Arbitration Rules), which shall take account of the value and complexity of the Dispute and any Related Dispute and the number of Parties to the Dispute and any Related Dispute.
- 6.4 The seat, or legal place, of arbitration shall be London.
- 6.5 The language to be used in the arbitral proceedings shall be English.
- 6.6 The Parties shall not be entitled to call any individual who was previously appointed as an Adjudicator or Mediator in connection with any aspect of the Dispute, in accordance with Paragraph 4, Paragraph 5 or Paragraph 8, to act as witness in the arbitration.

7. JOINDER AND CONSOLIDATION

- 7.1 If a Dispute arises between the Contractor and a Subcontractor (a "**Subcontract Dispute**") or between the Contractor and a Customer (a "**Customer Dispute**") and the Contractor serves or receives a Dispute Notice and/or a Mediation Notice and/or a Notice of Intention to seek Adjudication and/or a Request for Arbitration in accordance with this Dispute Resolution Procedure on the Subcontractor or the Customer (as applicable) it shall provide a copy to the Authority and the Parent Body Organisation at the same time;
- 7.2 On receipt of a copy of a Dispute Notice and/or a Mediation Notice and/or a Notice of Intention to seek Adjudication and/or a Request for Arbitration from the Contractor in relation to a Subcontract Dispute or Customer Dispute (as applicable) the Authority shall, regardless of

whether it has not exercised such right before in relation to the Subcontract Dispute or Customer Dispute (as applicable):

7.2.1 be entitled (but not obliged), at its absolute discretion and upon notice to the Contractor to take over and conduct any claim brought by the Contractor in the Subcontract Dispute or the Customer Dispute (as applicable) in the name of the Contractor;

7.2.2 be entitled (but not obliged), to handle any claim made against the Contractor, in respect of which the Authority considers it will have liability under the terms of the Contract and/or the Parent Body Agreement, for the entire or partial financial effect of that claim, in accordance with the claims handling provisions set out in Clause 1.27 (Claims Handling) of the Contract and/or clause 8 (Claims Handling) of the Parent Body Agreement;

7.2.3 review any claim made against the Contractor, and if, acting reasonably, the Authority considers that the Parent Body Organisation will have liability under the terms of the Parent Body Agreement and/or the Contract for the entire financial effect of the claim, the Authority shall notify the Contractor and the Parent Body Organisation, which shall have the right to handle the claim in accordance with the claims handling provisions in Clause 8 (Claims Handling) of the Parent Body Agreement.

7.3 A Request for Arbitration by a Party under the LCIA Arbitration Rules may include a Dispute and a Related Dispute.

7.4 A Party served with a Request for Arbitration may at any time before the Tribunal is appointed, give a Request for Arbitration in respect of any Related Dispute. In that case the arbitration of the Related Dispute shall be referred to the same Tribunal and consolidated with the arbitration of the Dispute in the original Request for Arbitration.

7.5 After a Tribunal has been appointed, any Party to the arbitration may give a further Request for Arbitration in respect of any Related Dispute referring it to the same Tribunal as that appointed for the arbitration of the Dispute in the original Request for Arbitration. In that case the Tribunal shall have discretion as to whether the Related Dispute is consolidated with the arbitration of the Dispute in the original Request for Arbitration. In exercising its discretion the Tribunal shall consider:

7.5.1 whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun;

7.5.2 whether the Dispute in the original Request for Arbitration has already been finally determined as to liability; and

7.5.3 any written representations made in accordance with Paragraph 7.6.

7.6 Any Party to the Related Dispute or to the Dispute in the original Request for Arbitration, shall be entitled to make a written representation to the Tribunal as to whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun and/or as to whether the Dispute in the original Request for Arbitration has already been finally determined as to liability, within seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal.

7.7 If following seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal, the Tribunal considers in its absolute discretion that:

7.7.1 any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has not begun; and/or

7.7.2 the Dispute in the original Request for Arbitration has not already been finally determined as to liability,

it shall order the consolidation of the Related Dispute with the arbitration of the Dispute in the original Request for Arbitration.

7.8 A Party that receives more than one Request for Arbitration for Disputes which constitute Related Disputes may give notice requiring that they be referred to the same Tribunal and consolidated in accordance with Paragraph 7. The Contractor shall exercise this right if requested to do so by the Authority following service by the Authority of a Request for Arbitration where the Contractor has also received a Request for Arbitration in a Subcontract Dispute or a Customer Dispute (as applicable) in accordance with this Dispute Resolution Procedure.

7.9 Notwithstanding the provisions of Paragraphs 7.1 to 7.8 above, if a dispute arises between the Contractor and a Customer in relation to a Customer Contract which does not incorporate this Dispute Resolution Procedure the following provisions shall apply:

7.9.1 the Contractor shall forthwith notify the Authority and the Parent Body Organisation of the dispute and provide the Authority and the Parent Body Organisation with details as to the nature and value of the claim and copies of any relevant documentation;

7.9.2 the Contractor shall forthwith thereafter use all reasonable endeavours to obtain the Customer's agreement to vary the relevant Customer Contract to incorporate this Dispute Resolution Procedure. If the Customer so agrees, the relevant Customer Contract shall then fall within the definition of "Agreement" in Paragraph 1.1 and the Parties shall comply with the provisions of the Dispute Resolution Procedure to resolve any Dispute or Related Dispute; and

7.9.3 if the Contractor fails to obtain the agreement of the Customer referred to in Paragraph 7.9.2 the Authority shall:

(A) be entitled (but not so obliged), to take over and conduct any claim brought by the Contractor against a Customer in relation to a Customer Contract in the name of the Contractor;

(B) be entitled (but not obliged), to handle any claim made against the Contractor by a Customer in relation to a Customer Contract, in respect of which the Authority considers it will have liability under the terms of the Contract and/or the Parent Body Agreement, for the entire or partial financial effect of that claim, in accordance with the claims handling provisions in Clause 1.27 (Claims Handling) of the Contract and/or clause 8 (Claims Handling) of the Parent Body Agreement; and

(C) review any claim made against the Contractor and if, acting reasonably, the Authority considers that the Parent Body Organisation will have liability under the terms of the Parent Body Agreement and/or the Contract for the entire financial effect of the claim, the Authority shall

notify the Contractor and the Parent Body Organisation, which shall have the right to handle the claim in accordance with the claims handling provisions in clause 8 (Claims Handling) of the Parent Body Agreement.

- 7.10 If a Dispute arises between the Contractor and the Authority, whether or not commenced by the Authority, and the Contractor is of the opinion that a Related Dispute exists between the Authority and another SLC, the Contractor shall be entitled to request that the Authority procure (subject to any discretion of the Tribunal and to the right of the Parties to make representations to the Tribunal as to how that discretion should be exercised), that the Related Dispute be referred to the same Tribunal and that the Related Dispute be consolidated with the arbitration of the Dispute in the original Request for Arbitration. If such a request is made, the Authority shall not unreasonably withhold its agreement to make the referral to the Tribunal, upon notice to the Contractor.

8. ADJUDICATION FOR NON-CONSTRUCTION ACT DISPUTES

- 8.1 Notwithstanding that a Dispute is not a Construction Act Dispute, a Party may refer the Dispute to adjudication in accordance with Paragraph 4 as varied by this Paragraph 8.
- 8.2 A Party may not refer a Dispute which is not a Construction Act Dispute to adjudication, unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Paragraph 3.
- 8.3 Within fourteen (14) Calendar Days of service of the Notice of Intention to seek Adjudication, the Claimant shall send a submission to the Adjudicator which shall include the following:
- 8.3.1 the subject matter of the Dispute and the issues to be resolved;
 - 8.3.2 the position the Claimant believes is correct and the Claimant's reasons for that position;
 - 8.3.3 copies of all the documents which the Claimant considers to be important and relevant; and
 - 8.3.4 a statement of the determination, remedy or recourse which the Claimant seeks.
- 8.4 The Respondent(s) shall be entitled (but not obliged) to submit a written response to the Adjudicator and copies of any documents the Respondent(s) intend(s) to rely on within twenty (20) Calendar Days of service of the Notice of Intention to seek Adjudication or such further period of up to seven (7) Calendar Days as the Adjudicator may allow.
- 8.5 The Adjudicator shall reach a decision within forty-two (42) Calendar Days of the Date of Referral. This period of forty-two (42) days may be extended by up to fourteen (14) Calendar Days by the Adjudicator, with the consent of the Claimant, or longer if agreed by all Parties to the adjudication.

SCHEDULE 13
Reporting Schedule

1. No later than five (5) Working Days after the commencement of each Quarter (being 1 April, 1 July, 1 October, 1 January of each year), the PBO shall:
 - 1.1 provide the Authority with management accounts in relation to the PBO's finances for the previous Quarter and comparisons to budgets and latest forecasts, including a profit and loss account, a balance sheet and a cashflow statement; and
 - 1.2 provide the Authority with a rolling 12-month cashflow forecast for the PBO in the format required from time to time by the Authority.
2. The PBO shall provide to the Authority as soon as they come publicly available and, in any event, not later than ninety (90) Calendar Days after the close of the relevant statutory accounting period:
 - 2.1 a copy of the audited financial statements of the PBO prepared in accordance with UK GAAP (or another accounting framework as agreed by the Authority prior to the commencement of the relevant statutory account period) including (but not limited to) a balance sheet prepared at the end of such accounting period, a profit and loss account and cashflow statement in respect of such accounting period;
 - 2.2 a copy of the audited financial statements of each of the PBO's direct shareholders including a balance sheet prepared at the end of such accounting period, a profit and loss account and cashflow statement in respect of such accounting period.
3. The PBO shall also provide to the Authority copies of:
 - 3.1 quarterly management accounts for each of the Ultimate Parents whose registered office is in the UK;
 - 3.2 the quarterly accounts required to be produced for regulatory purposes for each of the Ultimate Parents whose registered office is in the USA;
 - 3.3 the statutory, regulatory or management accounts (as applicable) that are required to be produced quarterly for each of the Ultimate Parents as applicable in the jurisdiction of any Ultimate Parent whose registered office is not in the UK or the USA.

SCHEDULE 14

Regularity, Propriety, Value for Money and Managing Public Money

1. The document entitled "*Managing Public Money*" published by The Stationary Office in October 2007 on behalf of HM Treasury; and
2. The document entitled "*Regularity, Propriety, Value for Money and Managing Public Money*" published by The Stationary Office in November 2004 on behalf of HM Treasury,

in each case, as such documents may be updated, amended or replaced from time to time.

SCHEDULE 15
NOT USED

SCHEDULE 16
NOT USED

SCHEDULE 17
NOT USED

SCHEDULE 18

Contractor's Obligations in Relation to the Site

The Contractor shall at all times:

1. provide the Authority with such information in relation to uniform Business Rates (rating) for the Site in order to ensure that the Authority's rating liability is mitigated as much as reasonably practicable;
2. provide the Authority with copies of any rating demand received by the Contractor in relation to the Site (or any part of it) as soon as reasonably practicable following receipt of the same by the Contractor;
3. if requested to do so by the Authority, attend meetings and tribunals and give such other support to the Authority as the Authority reasonably requires in respect of any actions taken by the Authority in order to ensure that the Authority's rating liability for the Site is mitigated as much as reasonably practicable;
4. provide in respect of the Site such management information to the Authority as the Authority properly requires from time to time in the form and by the dates notified by the Authority from time to time (including but not limited to building costs, demolition costs and running costs of facilities management);
5. notify the Authority of any major changes which the Contractor makes to the Site (for example, but not limited to, the construction or demolition of any building on the Site or business or manufacturing process changes on the Site) as soon as reasonably practicable after the changes have been made;
6. before applying for any necessary Planning Consent for or in relation to the Site, agree with the Authority's Property Manager a strategy for communicating the Contractor's intention to apply for Planning Consent to the local community surrounding the Site and the Site's other stakeholders and prior to the grant of any Planning Consent to consult with the Authority regarding any conditions or restrictions or onerous obligations which may be imposed in any Planning Consent
7. manage the Site in accordance with any best practice guidance produced from time to time in accordance with the principles of good estate management;
8. keep the buildings or other structures on the Site in a state of repair that is consistent with the terms of this Contract;
9. provide the Authority with such information as the Authority from time to time requires in order for the Authority to comply with any performance indicators imposed on the Authority by any government department or body;
10. act in the best interests of the Authority (unless this is inconsistent with the obligations of the Contractor under this Contract) and to act in a manner consistent with the Authority's core values of stakeholder management, dignity, respect, openness and transparency and in ways that will help the Authority to achieve its stated aims;
11. (unless it is inconsistent with the obligations of the Contractor under this Contract) actively seek out and make recommendations to the Authority in respect of the merits of any proposal for a new occupation of any part of the Site by a third party;
12. (unless it is inconsistent with the obligations of the Contractor under this Contract) if requested by the Authority, negotiate (under the Authority's direction and with a view to achieving the maximum rental value reasonably obtainable in the circumstances) the heads of terms to the document a new occupation of any part of the Site by a third party, taking professional advice from a collaboratively procured firm of Chartered Surveyors;

13. support the Authority's solicitors in relation to the documentation of any new occupancy of any part of the Site by a third party and enter into that agreement if directed to by the Authority;
14. attend a quarterly (or such other frequency as the Authority may determine from time to time) property management meeting with the Authority's property manager (or such other person nominated by the Authority from time to time);
15. provide information in relation to valuation(s) of the whole or any part of the Site for insurance purposes in the form and by the dates notified by the Authority from time to time (such information being provided in order to minimise the Authority's insurance liability as much as reasonably practicable);
16. Enter into, and comply with, a lease for the site between the Authority as landlord and Contractor as tenant, as approved by the Office of Nuclear Regulations; and
17. Assist and comply with Licence Condition 3 of the Nuclear Installations Act 1965.

SCHEDULE 19
NOT USED

SCHEDULE 20
NOT USED

SCHEDULE 21

EXTENDED ENVIRONMENTAL SAFETY CASE

