

**PARENT BODY AGREEMENT**

relating to the restoration of the Dounreay nuclear licensed site

THE NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

DOUNREAY SITE RESTORATION LIMITED (2)

and

BABCOCK DOUNREAY PARTNERSHIP LIMITED (3)

Contract Ref: PBA-10-12

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- (E) this Agreement is intended to operate alongside and should be read in conjunction with the SLC Agreement between the Authority and the SLC, entered into on or about the date of this Agreement;
- (F) the Parties have agreed that this Agreement should be executed as a Deed,

**NOW THIS DEED WITNESSES** as follows:

**Part 1: Interpretation**

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

**“Accounting Policies and Procedures”** has the meaning given to such term in the SLC Agreement;

**“Accounting Standards”** has the meaning given to such term in the SLC Agreement;

**"Additional Support Day"** means a minimum of (6) six hours of work provided by a member of personnel, supplied to the SLC by the Parent Body Organisation or an Affiliate pursuant to Schedule 7 (*Provision of Support to the SLC*), within a twenty-four (24) hour period;

**"Additional Support Month"** means a period that is nominally ninety five per cent (95%) of a full time equivalent (calculated after subtracting pro rata thirty five (35) Working Days of annual leave plus all public holidays in Scotland) working in support of the activities of the SLC or otherwise in support of the activities required to deliver the Client Specification, undertaken by an assignee within a Month;

**“Advance Agreement”** has the meaning given to such term in the SLC Agreement;

**“Affiliate”** means:

(a) the Parent Body Organisation (in respect of the SLC only);

(b) shareholders in the Parent Body Organisation ("**PBO Shareholders**") or in any holding company or subsidiary of any PBO Shareholder ("holding company" and "subsidiary" having the same meanings as in section 1159 of the Companies Act 2006), together "**Related Companies**";

(c) any subsidiary or holding company of a Related Company;

(d) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty (30) % in the Parent Body Organisation or any Related Company;

(e) wholly owned subsidiaries of the Contractor or Parent Body Organisation;

(f) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty (30) % of the issued shares;

(g) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;

(h) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty (30) % economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or

(i) a company owned or controlled, directly or indirectly, to the extent of thirty (30) % or more of the

outstanding equities, securities or assets by any of the companies described in (b), (c), (d) or (e) above,

but shall exclude the SLC or any subsidiary of the SLC;

<b>“Agreed Directors”</b>	means Roger Hardy, Dyan Foss, Phillip Colville, Alan Scullion, Simon Middlemas, Elizabeth Grey, Charles Curtis and Les Mitchell or such other directors of the SLC as are agreed by the Authority from time to time in accordance with Clause 4 ( <i>Governance</i> );
<b>“Allowable Cost”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Alternative Payment Mechanism”</b>	means the alternative payment mechanism referred to in Clause 10 ( <i>Alternative Payment Mechanism</i> );
<b>“Approved Working Capital Facilities”</b>	has the meaning given to such term in the SLC Agreement;
<b>"A Share"</b>	has the meaning given to such term in the SLC Agreement;
<b>"A Shareholder"</b>	has the meaning given to such term in the SLC Agreement;
<b>“Asset Purchase”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Authority Assets”</b>	has the meaning given to such term in the SLC Agreement;
<b>"Authority Customer Contracts"</b>	has the meaning given in the SLC Agreement;
<b>“Authority Default”</b>	means any of the events of default by the Authority set out in Clause 20.9 ( <i>Authority Default</i> );
<b>“Authority Field of Use”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Authority Insurances”</b>	has the meaning given to such term in the SLC



	Agreement;
<b>“Authority’s Termination Notice”</b>	has the meaning given in Clause 20.5.1.1 ( <i>Termination or Remedy for PBO Default</i> );
<b>“Background IP”</b>	has the meaning given to it in Clause 17.2.10 ( <i>Licence of Background IP from Subcontractor to Authority</i> );
<b>“Benchmark”</b>	has the meaning given to such term in the SLC Agreement;
<b>"B Share"</b>	has the meaning given to such term in the SLC Agreement;
<b>"B Share Dividend"</b>	has the meaning given to such term in the SLC Agreement;
<b>"B Shareholder"</b>	has the meaning given to such term in the SLC Agreement;
<b>“Calendar Day”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Category I Revenue”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Category II Revenue”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Change in Control”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Client Specification”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Commencement Date”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Commercial Operations Tasks”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Competition”</b>	has the meaning given to it in Clause 21.1 ( <i>Transition Out</i> );
<b>“Continuing Nominated</b>	has the meaning given in Clause 7.11.1 ( <i>Continuing</i>

<b>Staff</b>	<i>Nominated Staff</i> );
<b>“Contract Change Note” or “CCN”</b>	has the meaning given in Paragraph 1.2 ( <i>Principles</i> ) of Schedule 6 ( <i>Contract Change Control Procedures</i> );
<b>“Contract Price”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contract Term Longstop Date”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contract Year”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contracts Manager”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contractor”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contractor Customer Contract”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contractor Default”</b>	means any of the events of default set out in the definition of Contractor Default in the SLC Agreement;
<b>“Contractor's Fee Account”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Contractor's Receipt Account”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Control”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Cost”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Currency Hedging Strategy”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Customer”</b>	has the meaning given to such term in the SLC Agreement;

<b>"Customer Contract"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Date of Termination"</b>	means the date of expiry of the Authority's Termination Notice or the PBO's Termination Notice, as appropriate;
<b>"Defective Performance"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Defective Performance Obligation"</b>	has the meaning given to it in Clause 5.1.1.3 ( <i>Parent Body Organisation Guarantees and Indemnities</i> );
<b>"Delivered Parent IP"</b>	<i>has the meaning given in Clause 17.1.1.1 (Licence to Authority and SLC);</i>
<b>"Delivery Plan"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Demand"</b>	means any written demand for payment served in accordance with Clause 27 ( <i>Notices</i> );
<b>"Dependency Event"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Designated Sites"</b>	has the meaning give to such term in the SLC Agreement;
<b>"Detailed Project Plans"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Developed IP"</b>	has the meaning given in Clause 17.2 ( <i>Authority's Rights to IP developed by or on behalf of the SLC and/or Subcontractors</i> );
<b>"Disallowable Cost"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Dispute Resolution Procedure"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Dividend Payment Policy"</b>	has the meaning given to such term in Clause 16.10.5.5.3 ( <i>Payments to Parent</i> ) of the SLC Agreement;
<b>"EA"</b>	has the meaning given to such term in the SLC

	Agreement;
<b>“EIR”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Employee Liability Information”</b>	means the employee liability information specified and required by regulations 11 and 12 of TUPE;
<b>“Employees”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Energy Act”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Environment”</b>	has the meaning given to such term in the SLC Agreement;
<b>“EU Procurement Rules”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Expiry Date”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Final Performance Warning Notice”</b>	has the meaning given in Clause 20.3.2 ( <i>Termination for Failure to Remedy</i> );
<b>“Force Majeure Event”</b>	has the meaning given to it in the SLC Agreement;
<b>“Foreign Exchange Accounts”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Full Title Guarantee”</b>	means the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee;
<b>“Good Industry Practice”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Guaranteed Obligations”</b>	has the meaning given to it in Clause 5.1.1.1 ( <i>Parent Body Organisation Guarantees and Indemnities</i> );
<b>“Home Location”</b>	means the location at which a member of personnel ordinarily works, determined by reference to their contract

	of employment where applicable;
<b>"HR Internal Procedures"</b>	has the meaning given to such term in the SLC Agreement;
<b>"HSE"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Incentive Fee"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Incoming Parent"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Index"</b>	has the meaning given to such term in the SLC Agreement unless otherwise agreed or specified herein;
<b>"Indexation Adjustment Date"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Information"</b>	has the meaning given in Clause 14.3 ( <i>Disclosure by the Authority</i> );
<b>"Insolvency Event"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Insurance Schedule"</b>	means the Insurance Schedule attached as Schedule 10 ( <i>Insurance Schedule</i> ) to the SLC Agreement;
<b>"Internal Procedures"</b>	has the meaning given to such term in the SLC Agreement;
<b>"IP"</b>	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;

<b>"IP Schedule"</b>	has the meaning given to such term in the SLC Agreement;
<b>"IT System"</b>	has the meaning given to such term in the SLC Agreement;
<b>"LC 35"</b>	means standard condition 35 of the Nuclear Site Licence;
<b>"Legal Proceedings"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Legislation"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Liability Cap"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Lifetime Plan" or "LTP Performance Plan"</b>	has the meaning given to such term in the SLC Agreement;
<b>"M68 Deed of Variation"</b>	means a deed of variation in the form set out in Schedule 12 ( <i>M68 Deed of Variation</i> );
<b>"Mandatory Services"</b>	has the meaning given to such term in the SLC Agreement;
<b>"PBO Minimum Performance Standards"</b>	means the minimum performance standards set out in Schedule 5 ( <i>PBO Minimum Performance Standards</i> );
<b>"Mobilised Location"</b>	means the location, away from their Home Location, at which a member of personnel is required to be based at for the purposes of providing additional support services pursuant to Schedule 7 ( <i>Provision of Support to the SLC</i> );
<b>"Month"</b>	has the meaning given to such term in the SLC Agreement
<b>"National Insurance Contributions"</b>	has the meaning given to such term in the SLC Agreement;
<b>"New Assets"</b>	has the meaning given to such term in the SLC Agreement;
<b>"NISR"</b>	has the meaning given to such term in the SLC

	Agreement;
<b>"Nominated Staff"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Notice"</b>	has the meaning given in Clause 27.1 ( <i>Notices</i> );
<b>"Nuclear Decommissioning Authority"</b>	has the meaning given to such term in the SLC Agreement
<b>"Nuclear Indemnity"</b>	means the indemnity granted by the Authority in favour of the Parent Body Organisation, the SLC and the other Indemnified Parties as defined therein dated on the date hereof in the form attached at Schedule 8 ( <i>Nuclear Indemnity</i> );
<b>"Nuclear Site Licence"</b>	has the meaning given to such term in the SLC Agreement
<b>"ONR"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Parent Company Guarantee"</b>	means the guarantee to be given pursuant to Clause 25.1 ( <i>Parent Company Guarantee</i> ) of this Agreement;
<b>"Parent IP"</b>	has the meaning given in Clause 17.1.1 ( <i>Licence to Authority and SLC</i> );
<b>"Payment Milestones"</b>	has the meaning given to such term in the SLC Agreement;
<b>"PBI Payment Milestones"</b>	has the meaning given to such term in the SLC Agreement;
<b>"PBO Default"</b>	means any of the events of default set out in Clause 20.2 ( <i>PBO Default</i> );
<b>"PBO Guarantee"</b>	means the guarantees and indemnities given by the Parent Body Organisation pursuant to Clause 5.1.1 ( <i>Parent Body Organisation Guarantees and Indemnities</i> );
<b>"PBO Insurances"</b>	has the meaning given in Clause 6.1 ( <i>Insurance</i> );
<b>"PBO Payment"</b>	has the meaning given in Clause 10.1 ( <i>Alternative</i>

*Payment Mechanism*);

<b>“PBO’s Termination Notice”</b>	has the meaning given in Clause 20.10.1 ( <i>Termination or Remedy for Authority Default</i> );
<b>“Performance Based Incentives” or “PBI”</b>	means in respect of each Contract Year those indicators of performance and milestones as such are more fully described in Part 4 ( <i>PBI and Target Fee</i> ) of Schedule 6 ( <i>Finance Schedule</i> ) of the SLC Agreement;
<b>“Performance Based Incentive Fee” or “PBI Fee”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Performance Warning Notice”</b>	has the meaning given in Clause 20.3.1 ( <i>Termination for Failure to Remedy</i> );
<b>“Permitted Activities”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Project”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Proposed Change Paper”</b>	has the meaning given in Paragraph 2.1 ( <i>Procedure</i> ) of Schedule 6 ( <i>Contract Change Control Procedures</i> );
<b>“Regulators”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Regulatory Breach Compensation”</b>	has the meaning given in Clause 12.1 ( <i>Compensation for Reduced Dividend due to Pre-Commencement Breaches</i> );
<b>“Regulatory Breach Compensation Claim”</b>	means any claim by the Parent Body Organisation for Regulatory Breach Compensation;
<b>“Relevant Date”</b>	has the meaning given in Clause 7.8.1 ( <i>Non-Solicitation</i> );
<b>“Relevant Loss”</b>	has the meaning given in Clause 12.2 ( <i>Compensation for Reduced Dividend due to Pre-Commencement Breaches</i> );
<b>“Relevant Partnering Arrangement”</b>	means any agreement other than one which in the Authority’s reasonable opinion is entered into in the ordinary course of the SLC’s business, under which any person would, in the reasonable opinion of the Authority,



acquire significant influence over either the SLC's or the Parent Body Organisation's performance of its obligations under this Agreement and/or the SLC Agreement;

<b>"Remediation Programme"</b>	has the meaning given in Clause 20.5.3.1.2 ( <i>Remediable Breach</i> );
<b>"Remediation Works"</b>	means works required to remedy a material breach of this Agreement;
<b>"Required Parent IP"</b>	has the meaning given in Clause 17.1.1.2 ( <i>IP Contributed by Parent Body Organisation</i> );
<b>"Report"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Seconding Employer"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Secondment Agreement"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Security Interest"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Security Plan"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Security Requirements"</b>	has the meaning given to such term in the SLC Agreement;
<b>"SEPA"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Shareline"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Shares"</b>	means all the share capital in the SLC;
<b>"Site"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Site IT Systems"</b>	has the meaning given to such term in the SLC Agreement;

<b>"SLC"</b>	has the meaning given to such term in the preamble to this Agreement;
<b>"Site Licence Company"</b>	means a contractor to whom the HSE has granted a Nuclear Site Licence;
<b>"SLCA Contractor's Fee Account"</b>	has the meaning given to such term in the SLC Agreement;
<b>"SLC Agreement"</b>	means the agreement of that name of even date herewith between the Authority and the SLC in respect of the management and operation of the Site;
<b>"Socio-Economic Development Plan"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Software"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Source Code"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Strategic Interest"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Subcontract"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Subcontractor"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Sub-Subcontract"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Sub-Subcontractor"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Target Fee"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Tasks"</b>	has the meaning given to such term in the SLC Agreement;
<b>"Term"</b>	means the period between: (a) the date of this Agreement; and (b) the Expiry Date or the date on which any earlier

	termination of this Agreement or the SLC Agreement takes effect;
<b>“Termination for Convenience”</b>	has the meaning given in Clause 20.8 ( <i>Termination for Convenience</i> );
<b>“Third Party”</b>	means any person other than the Parties and Affiliates;
<b>“Third Party Claim”</b>	has the meaning given in Clause 13.1 ( <i>Third Party Claims</i> );
<b>“Third Party IP”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Threatened Insolvency”</b>	means that the Authority, acting reasonably, has good reason (including supporting evidence) to consider that an Insolvency Event is likely to occur within the succeeding thirty (30) Calendar Days in relation to the Parent Body Organisation and/or any shareholder (direct or indirect) in the Parent Body Organisation up to the level of the Ultimate Parents, provided that where the Parent Body Organisation disputes that such an Insolvency Event is likely, the Parent Body Organisation and the Authority will within two (2) Working Days of the Authority's notice of Threatened Insolvency jointly appoint an independent expert (being a firm of recognised international accountants which is not auditor or adviser to any of the Authority, the Parent Body Organisation or any other Affiliate) to determine whether such an Insolvency Event is likely to occur, and the determination of the independent expert shall be final and binding on the Parties;
<b>“Transfer Date”</b>	means the date on which the Incoming Parent replaces the Parent Body Organisation;
<b>“Transition In Plan”</b>	has the meaning given to such term in the SLC Agreement;
<b>“Treaty”</b>	has the meaning given to such term in the SLC Agreement;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of

Employment) Regulations 2006;

**"UK GAAP"**

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

**"Ultimate Parents"**

means:

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

**"Value for Money"**

has the meaning given to such term in the SLC Agreement;

**"Work Activity"**

has the meaning given to such term in the SLC Agreement;

**"Working Day"**

has the meaning given to such term in the SLC Agreement; and

**"Year End Sum"**

has the meaning given to such term in the SLC Agreement.

## 1.2 Interpretation

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

- 1.2.1 in the event of any conflict between the Clauses contained in this Agreement and the Schedules, the Clauses shall take precedence over the Schedules, and if there is any further conflict, this Agreement shall first be read and construed as a whole and any conflict then remaining shall be dealt with under Clause 24 (*Dispute Resolution*);
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.3 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Paragraphs and Parts are references to paragraphs and parts contained in the Schedules;
- 1.2.4 the Schedules (including any appendices to such schedule) are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.5 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.6 any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation, instrument or other subordinate legislation made under it (or under such an amendment, consolidation or re-enactment);
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 “**person**” includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- 1.2.10 any reference to a public sector organisation shall be deemed to include a reference to any successor to such public sector organisation or any organisation or entity which has taken over the functions or responsibilities of such public sector organisation;

- 1.2.11 references to "**Party**" and "**Parties**" means a party or the parties to this Agreement as applicable;
- 1.2.12 all monetary amounts are expressed in pounds sterling;
- 1.2.13 references in this Agreement to amounts expressed to be Indexed are references to such amounts as they stood at the previous Indexation Adjustment Date (following Indexation pursuant to this Clause), multiplied on each Indexation Adjustment Date by:

Index at date B

Index at date A

where Index at date A is the value of the Index published for the September before the previous Indexation Adjustment Date or for the first indexation review, the Index published for the September before the Commencement Date; and

Index at date B is the value of the Index published for the September before the current Indexation Adjustment Date;

- 1.2.14 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 as of the date hereof;
- 1.2.17 any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.18 a reference to the "**Site**" shall include any part of the Site;
- 1.2.19 all references to a time of day are references to UK time; and
- 1.2.20 save where otherwise stated, for the purposes of this Agreement, references to the SLC Agreement and any terms defined in it shall be treated as reference to the SLC Agreement and such defined terms in the form applicable at the relevant time during the Term, and in the case of any liability arising after the Term, in the form applicable immediately prior to the Transfer Date.

- 1.3 The Parent Body Organisation acknowledge the provision of Paragraph 6 (*Non-Indexation Items*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*) of the SLC Agreement and agrees to be bound by those provisions to the extent that they pertain to items that are used within or are otherwise relevant to this Agreement.

## **Part 2: Term and Transition**

### **2 COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the Commencement Date and shall (subject to any clauses of this Agreement which survive such termination pursuant to Clause 31 (*Continuing Obligations*)) remain in full force and effect until the Expiry Date.

## **Part 3: Core Obligations**

### **3 WARRANTIES**

#### **3.1 Parent Body Organisation and Authority Warranties**

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

- 3.1.1 [not used];
- 3.1.2 it has the legal right and the requisite power and authority to enter into and perform its obligations under this Agreement and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and
- 3.1.3 it has taken all necessary action to authorise the execution and the performance of its obligations under this Agreement and any other related documents (including authority for the transfer of the share capital of the SLC to the Parent Body Organisation in accordance with this Agreement).

#### **3.2 Each of the Parties confirms to the other that:**

- 3.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the Transition Agreement; and
- 3.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, its only rights or remedies in relation to any

breach, representation, warranty, assurance, covenant, indemnity, guarantee undertaking or commitment given or action taken, omission or default arising under or in connection with, or termination of, this Agreement together with the SLC Agreement and the Transition Agreement are those contained or referred to in this Agreement, the SLC Agreement or the Transition Agreement and for the avoidance of doubt and without limitation, each Party has no other right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or otherwise howsoever, provided that the foregoing provisions of Clauses 3.2.1 and 3.2.2 do not apply in relation to any right or remedy the Authority may have in connection with any misrepresentation made by or on behalf of the Parent Body Organisation, PBO Shareholders or the Ultimate Parents in their responses to the Dounreay PBO competition pre-qualification questionnaire dated March 2010 and the ITSFT and provided further that the foregoing provisions of this Clause 3.2.2 do not apply in relation to any right or remedy the Parent Body Organisation may have in connection with any failure of the Authority to perform its obligations under Clauses 21.12.2, 21.12.2A, 21.12.5, 21.12.6, 23.5 and/or 23.6 of this Agreement;

- 3.2.3 without prejudice to any liability the Parent Body Organisation may have to the Authority, save in the case of fraud on the part of the Parent Body Organisation, the Parent Body Organisation shall have no liability to the SLC after the Term, any and all such liability being replaced by liability to the Authority subject to and on the terms set out in this Agreement.
- 3.3 Subject to any Authority Assumptions and Contractor Exclusions, on entering into this Agreement, the Parent Body Organisation shall be deemed to have:
  - 3.3.1 satisfied itself as to the assets to which (subject to Clause 6.4 (*Use of Authority Assets*) of the SLC Agreement) the Contractor will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
  - 3.3.2 gathered all information necessary to understand the extent and nature of its obligations under this Agreement.
- 3.4 Subject to Clause 3.5 (*Parent Body Organisation and Authority Warranties*) below, the Parent Body Organisation shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including



information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

3.5 [Not Used]

## 4 GOVERNANCE

### 4.1 Restrictions on Parent Body Organisation

4.1.1 The Parent Body Organisation hereby undertakes that it will not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

4.1.1.1 make any amendment to the agreed memorandum and articles of association of the SLC;

4.1.1.2 make any alteration to the share capital of the SLC;

4.1.1.3 appoint any directors to the board of the SLC;

4.1.1.4 remove or cause the removal of any of the Agreed Directors from the board of the SLC other than as permitted by section 168 of the Companies Act 2006;

4.1.1.5 make any change to the nature of the SLC's business;

4.1.1.6 cause or permit the SLC to undertake any activity otherwise than in fulfilment of its obligations under the SLC Agreement or in relation to any Customer Contract;

4.1.1.7 cause or permit the SLC to use the Site (or part thereof) other than in fulfilment of its obligations under the SLC Agreement;

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

4.1.1.9 make any change to the SLC's accounting reference date;

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

- 4.1.1.11 cause or permit the SLC to give any form of guarantee or other security;
- 4.1.1.12 cause or permit the SLC to create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by the SLC Agreement;
- 4.1.1.13 save for borrowings under an Approved Working Capital Facility, cause or permit the SLC to borrow (including intra-group) or make any payment under any intra-group borrowings;
- 4.1.1.14 cause or permit the SLC to create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of funds with a bank as permitted by the SLC Agreement;
- 4.1.1.15 cause or permit the SLC to commence any litigation or arbitration other than:
  - 4.1.1.15.1 for the purposes of satisfying Clause 6 (*Asset Management*), Clause 29 (*Intellectual Property*) or Clause 17 (*Claims Handling*) of the SLC Agreement;
  - 4.1.1.15.2 in accordance with the Dispute Resolution Procedure;
  - 4.1.1.15.3 in any attempt to commence judicial review proceedings against the Authority in connection with the SLC Agreement;
  - 4.1.1.15.4 to challenge any threatened or actual refusal to grant, non-renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the SLC's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Legislation; or
  - 4.1.1.15.5 to the extent that the SLC, acting reasonably, considers such commencement is urgent and

necessary to the SLC's performance of its obligations to the Authority,

and provided always that the SLC shall notify the Authority as soon as reasonably practicable, and in any event prior to any such litigation or arbitration being commenced against a Regulator(s);

- 4.1.1.16 save in respect of borrowings under an Approved Working Capital Facility, cause or permit the SLC to incur any liability or financial indebtedness or except as expressly permitted by the SLC Agreement;
- 4.1.1.17 cause or permit the SLC to make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of funds with a financial institution or office of the Paymaster General as permitted by the SLC Agreement);
- 4.1.1.18 cause or permit the SLC to enter into any finance or operating leases;
- 4.1.1.19 notwithstanding the Permitted Activities, cause or permit the SLC to enter into any Customer Contract or Subcontract where a material liability or Cost is likely to crystallise after the expiry of this Agreement;
- 4.1.1.20 save as set out in Clause 16.10.5 (*Payments to Parent*) of the SLC Agreement, cause or permit the SLC to make any payments to the Parent Body Organisation or to any of its Affiliates which:
  - 4.1.1.20.1 are not provided for and made in accordance with Subcontracts specifically approved by the Authority pursuant to Clause 22 (*Subcontracting/Procurement*) of the SLC Agreement;
  - 4.1.1.20.2 have not been agreed to under an Advance Agreement; or
  - 4.1.1.20.3 are not made in accordance with the provisions of Clause 8 (*Provision of Support to the SLC*) and Schedule 7 (*Provision of Support to the SLC*);
- 4.1.1.21 cause or permit the SLC to undertake hedging activities (except in accordance with the Currency Hedging Strategy);

- 4.1.1.22 cause or permit the SLC to enter into any contract, agreement or arrangement the terms of which are not on arm's length terms or which gives rise to less value for money for the SLC and/or the Authority than would have been the case were it not for any direct or indirect benefit or advantage which accrues to any Affiliate or to any Subcontractor;
  - 4.1.1.23 cause or permit the SLC to make any change to or waive any rights under any Approved Working Capital Facilities where such change or waiver is prejudicial to the interests of the Authority and/or outside the usual course of administering a working capital facility; nor
  - 4.1.1.24 cause or permit the SLC to open any bank, building society or similar account.
- 4.1.2 For the purposes of Clause 4.1.1 (*Restrictions on Parent Body Organisation*), other than where the Authority has expressly withheld its consent in writing, the SLC and the Parent Body Organisation shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 4.1.1.1 (*Restrictions on Parent Body Organisation*) to 4.1.1.24 (*Restrictions on Parent Body Organisation*) to the extent the relevant activity is expressly:
- 4.1.2.1 necessary for (or necessarily ancillary to) delivery of the Client Specification;
  - 4.1.2.2 contained in a Subcontract or Customer Contract which is specifically approved by the Authority. For the avoidance of doubt and notwithstanding any other provision of this Agreement, any Subcontract or Customer Contract which enables the SLC to do any of the matters set out in Clause 16.3 (*Financial Restrictions*) of the SLC Agreement requires the approval of the Authority notwithstanding the Permitted Activities;
  - 4.1.2.3 contained in an Internal Procedure approved by the Authority in accordance with Clause 8.5 (*Integrated Management System*) of the SLC Agreement and as defined in the SLC Agreement;
  - 4.1.2.4 save in the case of this Clause 4.1 (*Restrictions on Parent Body Organisation*), a Permitted Activity or otherwise approved by the Authority following the SLC's compliance with Clause 20.2 (*Obligation to consult the Authority*) of the SLC Agreement;

- 4.1.2.5 in the case of this Clause 4.1 (*Restrictions on Parent Body Organisation*), permitted by Clause 6.1 (*Right to Deal with Authority Assets*) of the SLC Agreement;
- 4.1.2.6 expressly permitted pursuant to Schedule 6 (*Finance*) of the SLC Agreement; or
- 4.1.2.7 required as a term of an Approved Working Capital Facility.

## 4.2 Change in Control and Relevant Partnering Arrangements

- 4.2.1 The Parent Body Organisation shall notify the Authority immediately of:
  - 4.2.1.1 any proposed Change in Control of the Parent Body Organisation;  
or
  - 4.2.1.2 any proposed Relevant Partnering Arrangement,

and the Authority shall be entitled to terminate this Agreement pursuant to Clause 20 (*Termination*) if the Parent Body Organisation is subject to a Change in Control or enters into a proposed Relevant Partnering Arrangement without first obtaining the written consent of the Authority, such consent not to be unreasonably withheld or delayed.

## 4.3 Parent Body Organisation Undertaking

The Parent Body Organisation undertakes:

- 4.3.1 save as otherwise provided in this Agreement, not to transfer, dispose of, charge or otherwise encumber all or any part of the Shares or any interest therein;
- 4.3.2 not to exert or attempt to exert any direct influence over the SLC's activities or obligations arising under or relating to the Nuclear Installations Act 1965 or the SLC's nuclear site licence conditions other than through the provision of the Nominated Staff, whose influence is designed to improve the SLC's performance of and compliance with the terms of the SLC Agreement;
- 4.3.3 not to do or omit to do anything which may adversely affect the SLC's ability to comply with the obligations of its nuclear site licence or any other licence, authorisation, permit or consent or fulfil any Regulatory Requirement; and
- 4.3.4 to procure declaration and payment by the Contractor of dividend to the B Shareholder subject to and in accordance with Clause 16.10A (*Payment to B Shareholder following Commencement Date*) of the SLC Agreement.

- 4.4 The Parent Body Organisation hereby agrees to comply with any reasonable requests of the Authority to amend or procure the amendment of the articles of association of the SLC, or any of the SLC's wholly-owned subsidiaries, so that such articles reflect and are consistent with this Clause 4 (*Governance*) and with any Regulatory Requirements.
- 4.5 The Parent Body Organisation hereby agrees to use all reasonable endeavours to assist the SLC in complying with its obligations under Clause 16 (*Finance*) of the SLC Agreement to include, without limitation, the provision of a full guarantee of the SLC's obligations under any Approved Working Capital Facility for so long as the Parent Body Organisation holds the A Share. The amount of capital guaranteed by any such guarantee taken together with the amount of any Approved Working Capital Facility provided by the Parent Body Organisation shall not exceed a sum equal to s.43

s.43

4.6 **Consortium Arrangements**

Without prejudice to Clause 4.2 (*Change in Control and Relevant Partnering Arrangements*), neither the Parent Body Organisation nor the SLC shall make any change to the joint venture agreement attached at Schedule 3 (*Consortium Arrangements*) without first obtaining the written consent of the Authority such consent not to be unreasonably withheld or delayed (and the Parent Body Organisation and the SLC shall have due regard to and act reasonably in respect of any comments raised by the Authority in connection with such change).

5 **PARENT BODY ORGANISATION GUARANTEES AND INDEMNITIES**

5.1 **Parent Body Organisation Guarantees and Indemnities**

5.1.1 Subject to Clauses 5.5 to 5.11 (*Obligations In Respect of SLC Liability*), the Parent Body Organisation irrevocably and unconditionally:

5.1.1.1 guarantees to the Authority the due and punctual payment and discharge by the SLC of all sums, liabilities, awards, losses, damages, charges and expenses that may be or become due, owing or payable to the Authority under or arising out of the SLC Agreement pursuant to its terms, or by reason of or as a consequence of any breach by the SLC thereof (including legal fees, losses and any other costs, on a full indemnity basis, incurred by the Authority in connection with or arising out of the Authority validly and justifiably seeking to enforce any of the above) which accrue during the Term including any amounts payable by the SLC pursuant to Schedule 6 (*Finance*) of the SLC Agreement which are

owing in respect of the period from the Commencement Date to the end of the Term (the “**Guaranteed Obligations**”) and the Parent Body Organisation undertakes to the Authority that, if and whenever the SLC fails to pay any amount due to the Authority under the Guaranteed Obligations, the Parent Body Organisation shall pay that amount as if it were the principal obligor under the SLC Agreement (provided that the Parent Body Organisation shall be entitled to the same rights of defence that the SLC has under the SLC Agreement);

5.1.1.2 agrees with the Authority, as a separate, independent, primary and additional obligation (and without prejudice to Clauses 5.1.1.1 (*Parent Body Organisation Guarantees and Indemnities*) and 5.1.1.3 (*Parent Body Organisation Guarantees and Indemnities*)), to indemnify the Authority (subject to Clause 25.4.2 (*Waiver*)) for a period of six (6) years from the end of the Term (or until such time as a claim under the indemnity which was commenced before six (6) years from the end of the Term has been settled or withdrawn) and on an after-tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising from the SLC failing to pay, perform and/or discharge and/or being otherwise in default of any of the Guaranteed Obligations provided that such losses, damages, costs, claims, liabilities, demands and expenses would otherwise have been recoverable by the Authority from the SLC under the SLC Agreement; and

5.1.1.3 guarantees to the Authority the due and punctual payment of all costs, fees and expenses which the Authority reasonably and properly incurs or is required to pay as a direct result of the SLC, the Authority or the Incoming Parent remediating, after the end of the Term, any Defective Performance that occurred during the Term and prior to the Transfer of Responsibility Date, save to the extent that such costs, fees and expenses are limited always to the maximum amount the SLC or the Parent Body Organisation would have been liable for if this Agreement had not terminated or expired and that after the end of the Term (to the extent that the SLC is remediating) all reasonable mitigation has taken place and maintenance has been performed in accordance with Good Industry Practice, and provided further that such costs, fees and expenses either:

5.1.1.3.1 would have comprised Disallowable Costs had they been incurred by the SLC in carrying out such remedial work under the SLC Agreement; or

5.1.1.3.2 comprise a reasonable level of Fee payable to the SLC in connection with Remediation Works carried out after the end of the Term,

(such guarantee being the “**Defective Performance Obligation**”).

5.1.2 If, following expiry of the Term or termination of this Agreement, the Parent Body Organisation makes any payment to the Authority pursuant to any of the provisions of this Clause 5 (*Parent Body Organisation Guarantees and Indemnities*) in respect of any amounts payable by the SLC under the terms of Schedule 6 (*Finance*) of the SLC Agreement, the Parent Body Organisation will not be entitled to exercise any rights of recovery which it might otherwise have against the SLC in respect thereof and the SLC will be under no obligation to repay such amount to the Parent Body Organisation.

5.1.3 Subject to Clause 5.5 to 5.11 (*Obligations In Respect of SLC Liability*) and Clause 7 (*Provision of Staff to the SLC*), the obligations of the Parent Body Organisation under the PBO Guarantee will not be reduced, discharged, impaired or otherwise affected by (and the intention of the Parent Body Organisation is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 5.1.3 (*Parent Body Organisation Guarantees and Indemnities*), would reduce, release or prejudice any of its obligations under the PBO Guarantee (without limitation and whether or not known to it or the Authority) including:

5.1.3.1 any termination, alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to this Agreement (other than to any part of the PBO Guarantee) or of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to this Agreement (with the exception of the PBO Guarantee) or the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of this Agreement or the SLC Agreement) or novation of this Agreement (in whole or in part), except for any such alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to the SLC Agreement (including without limitation, the nature, extent



- timing and method of performance of the SLC Agreement) that occurs after the Transfer Date;
- 5.1.3.2 the granting by the Authority of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with, the Parent Body Organisation or any other person (including the SLC), whether expressly or by conduct;
  - 5.1.3.3 any legal limitation on the capacity of, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the Parent Body Organisation, the Authority or any other person;
  - 5.1.3.4 the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations and/or the Defective Performance Obligation;
  - 5.1.3.5 the enforcement, delay or failure in enforcement, release or waiver of any such bond, security or guarantee referred to in Clause 5.1.3.4 (*Parent Body Organisation Guarantees and Indemnities*) or any amendment, addition, omission or extension to or variation thereto;
  - 5.1.3.6 any un-discharged claim or attempted enforcement of payment from the SLC or any other person;
  - 5.1.3.7 any act or omission which would not have discharged or affected the liability of the Parent Body Organisation had it been a principal debtor instead of a guarantor;
  - 5.1.3.8 any delay or forbearance by the Authority in exercising its rights or remedies under the PBO Guarantee, or the enforcement or absence of enforcement of the PBO Guarantee;
  - 5.1.3.9 the invalidity or unenforceability of any Guaranteed Obligation(s) or the Defective Performance Obligation for any reason, or any defect in any provision of this Agreement or the SLC Agreement or any other security given in relation to the Guaranteed Obligations or the Defective Performance Obligation;
  - 5.1.3.10 anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or

extinguish the liability of the Parent Body Organisation under the PBO Guarantee (other than a written express exoneration, discharge reduction or extinguishment of such liability by the Authority); and

- 5.1.3.11 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with creditors of the SLC or any other person or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the SLC.

#### 5.1.4 **Continuing Security**

- 5.1.4.1 Subject to Clauses 5.1.4.3 (*Continuing Security*) and 25.4.2 (*Waiver*), the PBO Guarantee in respect of the Guaranteed Obligations is a continuing security which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any of the Guaranteed Obligations (in whole or in part) for six (6) years from the end of the Term (or until such time as a claim under the PBO Guarantee which was commenced before six (6) years from the end of the Term has been settled or withdrawn).
- 5.1.4.2 Subject to Clauses 5.1.4.3 (*Continuing Security*) and 25.4.2 (*Waiver*), the PBO Guarantee in respect of the Defective Performance Obligation is a continuing security which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any Defective Performance Obligation (in whole or in part) for six (6) years from the end of the Term (or until such time as a claim under the PBO Guarantee which was commenced before six (6) years from the end of the Term has been settled or withdrawn).
- 5.1.4.3 The time limits specified in Clauses 5.1.4.1 (*Continuing Security*) and 5.1.4.2 (*Continuing Security*) shall not apply to any payment by the Parent Body Organisation under any of the provisions of this Clause 5 (Parent Body Organisation Guarantees and Indemnities) in respect of any amounts payable by the SLC under the terms of Schedule 6 (*Finance*) of the SLC Agreement to the extent that a longer or shorter time limit is specified in the relevant provision of Schedule 6 (*Finance*) of the SLC Agreement and in such case the

time limit in the relevant provision of Schedule 6 (*Finance*) of the SLC Agreement shall replace the time limit in Clause 5.1.4.1 (*Continuing Security*) and/or 5.1.4.2 (*Continuing Security*).

5.1.4.4 The PBO Guarantee is in addition to, without prejudice to and is not to merge with any other security, right of action, bond, other guarantee or indemnity or other right or remedy which the Authority may at any time hold in respect of the Guaranteed Obligations or the Defective Performance Obligation.

5.1.4.5 No single exercise of any right, power or privilege conferred by the PBO Guarantee shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege, nor shall any failure or delay by the Authority in exercising any right, power or privilege under the PBO Guarantee or this Agreement operate as a waiver thereof.

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

#### 5.1.5 **Deferral of Parent Body Organisation's Rights**

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

5.1.5.1.1 to be indemnified by the SLC or to make or enforce any claim or right against the SLC;

5.1.5.1.2 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority against the SLC under the SLC Agreement or of any other guarantee or security taken pursuant to, or in connection with, the SLC Agreement by the Authority;

5.1.5.1.3 to prove or claim in competition with the Authority in the insolvency or administration of the SLC or otherwise have or exercise any rights of subrogation or as surety in competition with the Authority; or

5.1.5.1.4 to call on the Authority to commence Legal Proceedings against the SLC or raise a defence, set-off or counterclaim of the SLC against the Authority,

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

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

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

5.1.6.1.1 the Parent Body Organisation under the PBO Guarantee; or

5.1.6.1.2 any Guarantor pursuant to any Parent Company Guarantee,

in respect of any liability or obligation of the SLC (regardless of whether the obligations of the Parent Body Organisation or such Guarantor (as the case may be) are expressed as primary obligations) without first having claimed payment from the SLC (in the case of a claim under the PBO Guarantee) or the SLC and the Parent Body Organisation (in the case of the Parent Company Guarantee). Prior to making any claim under the PBO Guarantee the Authority must have issued a demand for payment to the SLC requiring settlement within

ten (10) Working Days, and the SLC must have failed to so pay. The Authority must then issue a demand for payment to the Parent Body Organisation requiring settlement of the sum within ten (10) Working Days and the Parent Body Organisation must then also fail to so pay before the Authority can claim under the Parent Company Guarantee.

- 5.1.7 For the avoidance of doubt, after the Term Clause 5.1.6 (*Deferral of Parent Body Organisation's Rights*) above shall not apply to the extent that it provides that any claim that the Authority may have against the Parent Body Organisation under the PBO Guarantee shall be made in the first instance against the Parent Body Organisation and not the SLC.

### **Parent Body Organisation Indemnities**

- 5.2 Subject to Clauses 5.5 to 5.11 (*Obligations In Respect of SLC Liability*), the Parent Body Organisation hereby indemnifies the Authority against all liabilities, losses, costs and expenses to the extent they arise directly or indirectly as a result of the termination of the employment of any of the Nominated Staff.
- 5.2A [Not Used]:
- 5.2A.1 [Not Used];
- 5.2A.2 [Not Used]
- 5.3 The Parent Body Organisation hereby agrees that within ten (10) Calendar Days of receipt of a Demand from the Authority (setting out an amount properly due to the Authority under the PBO Guarantee and claimed by the Authority and the basis of such claim pursuant to Clause 5 (*Parent Body Organisation Guarantees and Indemnities*) 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 Parent Body Organisation will pay the amount properly due as aforesaid and forming the subject of such Demand (or the other amount determined in accordance with the Dispute Resolution Procedure, if relevant) to the Authority.
- 5.4 Subject to Clause 25.4.2 (*Waiver*), the indemnities given under Clause 5.2 (*Parent Body Organisation Indemnities*) shall remain in force until the date six (6) years from the end of the Term (or until such time as a claim under the indemnities given in Clause 5.2 (*Parent Body Organisation Indemnities*) which were commenced before six (6) years from the end of the Term have been settled or withdrawn).

## 5.5 Obligations In Respect of SLC Liability

5.5.1 The Parent Body Organisation shall ensure that the SLC will, at all times during the Term:

5.5.1.1 have an Approved Working Capital Facility not exceeding s.43 and s.43

5.5.1.2 (subject always to Clause 5.6 (*Obligations In Respect of SLC Liability*)) have sufficient funds to meet Disallowable Costs incurred during the Term.

5.6 Subject always to Clauses 5.8 (*Obligations In Respect of SLC Liability*), 5.13 (*Return of Excess Distribution*), and 25.4.2 (*Waiver*), the Parent Body Organisation's aggregate liability to the Authority arising under or in connection with this Agreement whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise howsoever:

5.6.1 for any Contract Year shall not exceed the remaining balance of the Liability Cap applicable to the period concerned when taken together with and after deduction of any liability discharged by the SLC to the Authority falling within the scope of liabilities subject to the Liability Cap for the same period; and

5.6.2 shall never be any greater than the liability of the SLC to the Authority under the SLC Agreement and for the avoidance of doubt, in the event that the Authority recovers monies from the SLC under the SLC Agreement, which accordingly reduces the SLC's aggregate liability to the Authority under the SLC Agreement, then the Parent Body Organisation's aggregate liability to the Authority under this Agreement shall reduce likewise.

5.7 For the purposes of Clause 5.6 (*Obligations In Respect of SLC Liability*) (but subject to Clause 6.5 (*Insurance*) below) reference to the "Liability Cap" is to the Liability Cap as adjusted from time to time in accordance with Clause 18.3 (*Liability Cap*) of the SLC Agreement or varied by agreement in accordance with Clause 18.5 (*Review of Limit on General Liability*) of the SLC Agreement.

5.8 The limits on liability in Clause 5.6 (*Obligations In Respect of SLC Liability*) shall not apply in respect of:

5.8.1 any liability of the Parent Body Organisation to the Authority under this Agreement for costs incurred by the Authority in enforcing the PBO Guarantee;

- 5.8.2 interest payable by the Parent Body Organisation under this Agreement on any monies owed by the Parent Body Organisation pursuant to the PBO Guarantee; and
  - 5.8.3 fraud or wilful default of the Nominated Staff or of any other person who is provided to the SLC in accordance with Clause 8 (*Provision of Support to the SLC*) of this Agreement.
- 5.9 Where the PBO Guarantee relates to any obligation or liability of the SLC, the Parent Body Organisation shall be entitled to the benefit of any defence, limitation period, set-off, exclusion or limitation of liability that the SLC would have been entitled to raise against the Authority in respect of such obligation or liability.
- 5.10 Without prejudice to Clause 5.1.1.3 (*Parent Body Organisation Guarantees and Indemnities*), the PBO Guarantee shall not apply in respect of any act or omission of the SLC or in respect of any obligation or liability arising out of or in connection with the SLC Agreement that arises at any time after the earlier to occur of:
- 5.10.1 the termination or expiry of this Agreement;
  - 5.10.2 the Transfer Date; and
  - 5.10.3 the date on which the legal or beneficial ownership of the A Share is transferred from the Parent Body Organisation under Clauses 22 (*Retransfer of Shares in SLC under Energy Act*) or 23 (*Retransfer of Shares in SLC on Termination or Expiry*),
- (in each case the "**Transfer of Responsibility Date**").
- 5.11 No Party shall be liable to any other Party for:
- 5.11.1 any indirect special or consequential loss or damage; or
  - 5.11.2 any loss of profits, turnover, business opportunities, damage to goodwill (whether direct or indirect) or anticipated savings,
- arising out of or in connection with this Agreement whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.
- 5.12 **Meeting Allowable Costs and Disallowable Costs**
- 5.12.1 Where the SLC is legally obliged to pay any sum of money other than to the Authority, the SLC will pay that sum in full regardless of whether that sum is Allowable or Disallowable under the SLC Agreement and regardless of any

joint liability with the SLC of the Parent Body Organisation or any of its Affiliates (other than any liability of any Affiliate incurred in its capacity as a Subcontractor).

5.12.2 For the avoidance of doubt, the provision of Clause 5.12.1 above shall have no effect on the Parent Body Organisation's obligations to the Authority under this Agreement or the obligations of the Guarantor to the Authority under any Parent Company Guarantee.

#### 5.13 **Return of Excess Distributions**

If at any time during the Term it is determined that dividends have been paid by the SLC in breach of Clause 16.10.5.2 (*Payments to Parent*) of the SLC Agreement, then the Parent Body Organisation will repay any dividends paid in breach to the Authority or SLC (as the Authority may direct). Any payment will be on the basis that the tax effect of the payment does not put the Authority and/or SLC in any worse position than it would have been in if the excess dividends had never been paid.

#### 5.14 **Nuclear Indemnity**

The Nuclear Indemnity shall be in the form set out at Schedule 8 (*Nuclear Indemnity*)

#### 5.15 **M68 Deed of Variation**

The Contractor shall if so directed by the Parent Body Organisation, elect that Schedule 6 (Finance) Part 4b (Target Fee) Paragraph 8A.7 shall apply. The Parent Body Organisation shall then, and shall procure that each of the Ultimate Parents shall execute the deed of variation set out at Schedule 12 (*M68 Deed of Variation*)

### 6 **INSURANCE**

6.1 Without prejudice to the Authority's obligations and liabilities to the Parent Body Organisation under this Agreement, the Parent Body Organisation shall take out and maintain for the Term the following insurances (the "**PBO Insurances**"):

6.1.1 public liability insurance in respect of all activities of the Parent Body Organisation in the sum of not less than ten million pounds sterling (£10,000,000) per claim, or such other amount as may be determined by the Parent Body Organisation, acting reasonably, on an annual basis as being an appropriate sum; and

6.1.2 employer's liability insurance as required by all applicable Legislation in respect of all activities of the Parent Body Organisation.



6.2 The Parent Body Organisation shall ensure that the PBO Insurances shall at all times for the duration of the Term:

6.2.1 be maintained with an insurer whose security rating is not less than BBB+; and

6.2.2 include an indemnity in favour of the Authority in respect of any claims made against the Authority arising from the activities of the Parent Body Organisation.

6.3 Within fourteen (14) Calendar Days of the Commencement Date and thereafter as and when reasonably required by the Authority, the Parent Body Organisation shall provide evidence to the Authority's reasonable satisfaction that the relevant insurances are in force and are being maintained in accordance with Clauses 6.1 (*Insurance*) and 6.2 (*Insurance*).

6.4 The Authority shall provide to the Parent Body Organisation policy terms and requirements of the insurers with whom the Authority Insurances are placed and the Parent Body Organisation shall comply with such requirements insofar as such requirements relate to the Parent Body Organisation. The Parent Body Organisation will notify the Authority of any act, occurrence or failure which may:

6.4.1 lead to any claim being made under the Authority Insurances; or

6.4.2 render any of the Authority Insurances void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

6.5 The Parent Body Organisation shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact) as a result of which any of the Authority Insurances may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

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

6.6.1 the Authority Insurances; or

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

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

6.7 If:

6.7.1 the benefit of the Authority Insurances become unavailable including where rendered void, voidable, unenforceable, suspended or impaired in whole or in part or protection or cover available to the Parent Body Organisation under the Authority Insurances diminishes in cover, scope or amount save where such unavailability or diminution in cover, scope or amount is caused by a breach of Clause 6.5 (*Insurance*) by the Parent Body Organisation; or

6.7.2 the Authority decides, in its sole discretion, to seek, provide and maintain alternative funding for the risks which would have been covered by the Authority Insurances,

then the Authority shall ensure that the Parent Body Organisation has no greater financial exposure due to the unavailability or diminution in cover, scope or amount of the Authority Insurances than as at the date immediately prior to such unavailability or diminution in cover, scope or amount.

## 7 PROVISION OF STAFF TO THE SLC

### 7.1 Nominated Staff

7.1.1 The Parent Body Organisation shall provide or procure the provision of the Nominated Staff in accordance with this Agreement and the SLC Agreement. Notwithstanding any other provision of this Agreement, the Parent Body Organisation shall procure that the Nominated Staff hold all relevant security clearances and the Nominated Staff identified in Part 1 (Nominated Staff) of Schedule 4 (*Employment and Pensions Schedule*) are available to be seconded to the SLC as at the Commencement Date and shall enter into and procure that each person who is a member of Nominated Staff and, if relevant, the Seconding Employer, enters into and complies with a Secondment Agreement.

- 7.1.2 The SLC shall use all reasonable endeavours to facilitate the performance by the Nominated Staff of their obligations under the Secondment Agreements including but not limited to:
- 7.1.2.1 providing a Site induction programme for the Nominated Staff; and
  - 7.1.2.2 providing information which the Parent Body Organisation may reasonably require in relation to the provision of the Nominated Staff.
- 7.2 The Parent Body Organisation shall at all times during the Term notify the SLC and the Authority of any intention to withdraw any individual member of the Nominated Staff from full time employment on the Site and shall not withdraw any such person from full time employment without first obtaining the prior written agreement of the SLC and the prior written consent of the Authority, such consent not to be unreasonably withheld.
- 7.3 If any individual member of the Nominated Staff is proposed to be withdrawn and replaced by the Parent Body Organisation (or the Seconding Employer) from full time employment on the Site for any reason, (with the exception of withdrawal on the grounds of redundancy) the Parent Body Organisation shall ensure that s/he is replaced by an individual with a level of skills and experience broadly comparable to that of the Nominated Staff member being withdrawn, or if more appropriate depending on the relevant job position, is otherwise suitably qualified and experienced for the proposed job position.
- 7.4 The Parent Body Organisation shall submit the curriculum vitae of each proposed replacement individual to the Authority for its review. The Authority will either approve the replacement within thirty (30) Calendar Days or will notify the Parent Body Organisation in writing of its reasons for the rejection of the proposed replacement. The Parent Body Organisation shall not, and if the Seconding Employer is not the Parent Body Organisation, the Parent Body Organisation shall procure that the Seconding Employer shall not, withdraw the relevant individual member of Nominated Staff until the Authority has approved a replacement. The Authority will not unreasonably withhold its approval of any replacement.
- 7.5 Reference to "withdrawal" of Nominated Staff or to any such persons being "withdrawn" in this Clause 7 (*Provision of Staff to the SLC*) shall not include withdrawal of any individual member of the Nominated Staff by reason of their retirement on their normal retirement age (i.e. on achieving the age at which they would normally be expected to retire from the Parent Body Organisation or Seconding Employer), long-term illness or voluntary resignation from the employment of the

Parent Body Organisation or Seconding Employer and (for the avoidance of doubt) withdrawal in such circumstances shall not constitute a breach of this Agreement.

### **Non-Contract Activities**

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

7.6.1 that the relevant period of time is finite;

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

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

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

### **Key Personnel**

7.8 The Parent Body Organisation shall at all times during the Term procure that the SLC complies with the provisions of Clause 31.2 (*Key Personnel*) of the SLC Agreement and the Parent Body Organisation shall not take any action with the effect of causing the SLC to breach Clause 31.2 (*Key Personnel*) of the SLC Agreement.

### **Non-Solicitation**

7.8.1 The Parent Body Organisation covenants with the SLC and the Authority that until the expiration of two (2) years from the earlier of: (i) the date of transfer of the A Share pursuant to Clause 22.1 (*Retransfer of Shares in SLC under Energy Act*); and (ii) the date of transfer of the A Share pursuant to Clause 23 (*Retransfer of Shares in SLC on Termination or Expiry*) (in each case the "**Relevant Date**"), it shall not, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit

or entice away or cause to be solicited or enticed away from the SLC any person (other than a member of Nominated Staff) who is, and was at the Relevant Date, directly or indirectly employed or engaged by the SLC in an executive, sales, marketing, research or technical capacity or whose departure from the SLC would have a material adverse effect on the SLC's standard of performance of the SLC Agreement, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his contract of employment or engagement by reason of leaving).

7.8.2 Notwithstanding Clause 7.8.1 (*Non-Solicitation*), any recruitment of any person by the Parent Body Organisation as a result of that person independently responding to any Parent Body Organisation's general recruitment advertisement in general or specialist publications shall not constitute a breach of this Agreement.

7.9 Subject to Clause 7.11 (*Continuing Nominated Staff*), the Parent Body Organisation shall procure that all of the Nominated Staff are removed from their secondment to the SLC and undertakes to the Authority to offer to all of the Nominated Staff continuity of employment rights and to offer them a right to return to work for the Parent Body Organisation (or other Seconding Employer) on the later of:

7.9.1.1 the date of transfer of the A Share pursuant to Clause 22.1 (*Retransfer of Shares in SLC under Energy Act*) and the date of transfer of the Shares pursuant to Clause 23 (*Retransfer of Shares in SLC on Termination or Expiry*); and

7.9.1.2 the agreement of the HSE to the replacement of such Nominated Staff pursuant to Licence Condition 36.

7.10 The Parent Body Organisation shall subject to the terms of this Clause 7 (*Provision of Staff to the SLC*), any relevant Secondment Agreement (and Clause 31 (*Employees*) of the SLC Agreement) procure that each member of Nominated Staff continues to work for the SLC from the Commencement Date for the period specified in column 3 of Part 1 (Nominated Staff) of Schedule 4 (*Employment and Pensions*) to the SLC Agreement relevant to each member.

#### 7.11 **Continuing Nominated Staff**

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

- 7.11.1 as soon as reasonably practicable after the Authority or Parent Body Organisation (as applicable) has given notice to the other to terminate this Agreement in accordance with Clause 20 (*Termination*), or within the last Month of the Term, the Authority shall specify (acting reasonably) which of the Nominated Staff it requires to remain seconded (and whether such Nominated Staff are to be seconded on a full time or other basis) to the SLC following expiry or termination of this Agreement (the “**Continuing Nominated Staff**”);
- 7.11.2 the Authority shall use its reasonable endeavours to replace the Continuing Nominated Staff as soon as practicable;
- 7.11.3 with the exception of Continuing Nominated Staff who retire or are absent due to long-term illness or who voluntarily resign from the employment of the Parent Body Organisation or Seconding Employer, the Parent Body Organisation shall procure that the Continuing Nominated Staff remain seconded to the SLC on the required basis until such time as the Authority notifies the Parent Body Organisation that such staff are no longer required, such period to be no longer than six (6) Months from the Date of Termination or Expiry Date (as applicable);
- 7.11.4 for such time as the Continuing Nominated Staff remain seconded to the SLC the Authority shall make such arrangements as are reasonably necessary to ensure the Continuing Nominated Staff are remunerated for their services on the same rates and on the same terms as at the expiry or termination of this Agreement;
- 7.11.5 the payment arrangements for Continuing Nominated Staff shall continue to be as set out in Appendix H (*Nominated Staff Recoverable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement and shall be no different to the arrangements prevailing as at the date of expiry or termination of this Agreement;
- 7.11.6 prior to the replacement of Continuing Nominated Staff, the Authority shall give notice of termination in accordance with the terms of the relevant secondment agreement or contract of employment; and
- 7.11.7 the Parent Body Organisation shall have no liability for any losses, damages, costs, claims, demands or expenses for or in connection with any act or omission of any member of the Continuing Nominated Staff, except where such liability arises as a result of fraud on the part of the Parent Body Organisation.

## 8 PROVISION OF SUPPORT TO THE SLC

- 8.1 If during the Term the SLC requires additional support of the type referred to in Schedule 7 (*Provision of Support to the SLC*) from the Parent Body Organisation or an Affiliate in order for it to fulfil its obligations under the SLC Agreement, it may invoke the provisions of Schedule 7 (*Provision of Support to the SLC*) subject always to the SLC continuing to comply with its obligations under the SLC Agreement and the SLC and the Parent Body Organisation continuing to comply with their respective obligations under this Agreement.

## 9 SOCIO-ECONOMIC COMMITMENTS

- 9.1 The Parent Body Organisation shall comply with the provisions of Schedule 9 (*Socio-Economic Commitments*).
- 9.2 The Parent Body Organisation shall use best endeavours to ensure that the SLC complies with the socio-economic commitments contained within the Client Specification.

### Part 4: Financial Matters

## 10 ALTERNATIVE PAYMENT MECHANISM

- 10.1 If at any time during the Term the Authority agrees (acting reasonably) to make a payment to the Parent Body Organisation which either:

- 10.1.1 the Authority would ordinarily pay to the SLC under the terms of the SLC Agreement; or
- 10.1.2 the SLC would ordinarily pay to the Parent Body Organisation under the terms of this Agreement or the SLC Agreement;

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

- 10.1.2.1 the parties shall at all times comply with the reporting standards adopted by the Authority from time to time;
- 10.1.2.2 the parties shall continue to comply with the provisions of this Agreement and the SLC Agreement in particular Clause 4 (*Governance*) of this Agreement and Schedule 6 (*Finance*) of the SLC Agreement;
- 10.1.2.3 the Authority shall have a right to deduct an amount equal to the PBO Payment from any future sum paid to the SLC and if no future

sum becomes payable, the PBO Payment shall be treated as a Guaranteed Obligation under this Agreement;

- 10.1.2.4 the Parent Body Organisation shall pay such sum to the Authority as is necessary to put the Authority in no worse a tax position than if the PBO Payment had not been made; and
- 10.1.2.5 the Authority shall not be obliged to make any payment to the SLC or the Parent Body Organisation in respect of any tax payable or tax relief lost by the SLC, the Parent Body Organisation, or any of their respective parents (of whatever tier) or other Affiliates as a result of the PBO Payment being made.

## 10.2 Opening Position Protection

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

- 10.2.1.1 any delay to, reduction in the amount of or inability of the SLC to make any Relevant Payment to the Parent Body Organisation; or
- 10.2.1.2 any other circumstance or matter,

to the extent caused by any Adverse Opening Position.

10.2.2 For the purposes of Clause 10.2.1 (*Opening Position Protection*):

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

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

10.2.3 The Parent Body Organisation and the SLC shall co-operate with the Authority to do all that is reasonable and practical (including where appropriate and reasonable undertaking a capital restructuring of the SLC (without any financial contribution from the Parent Body Organisation) to eliminate any shortfall in the



profits available for distribution) to ensure that the liabilities of the Authority under this Clause are minimised so far as reasonably practicable.

## 11 **DEFAULT INTEREST**

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

## 12 **COMPENSATION FOR REDUCED DIVIDEND DUE TO PRE-COMMENCEMENT BREACHES**

12.1 Subject to the provisions of this Clause 12 (*Compensation for reduced dividend due to pre-Commencement breaches*), if the Parent Body Organisation suffers a Relevant Loss the Authority shall pay the amount of the Relevant Loss to the Parent Body Organisation ("**Regulatory Breach Compensation**").

12.2 A "**Relevant Loss**" shall be any reduction in any dividend or other payment payable to the PBO under the SLC Agreement (or, in the case of the Alternative Payment Mechanism, by the Authority), to the extent attributable to the SLC incurring Disallowable Costs in the form of any fine or other financial penalty (including any interest payable on such fines and financial penalties) or any civil damages (provided that in relation to civil damages notwithstanding any other provision of this Agreement or the SLC Agreement neither Party shall be entitled to recover compensation under this Agreement in respect of any Cost that it has incurred to the extent that it has already been compensated in respect of that Cost pursuant to this Agreement or the SLC Agreement) payable to any person (other than the Authority):

12.2.1 in respect of any matter which occurred wholly prior to the Commencement Date but where the fine or other financial penalty or civil damages is not imposed until after the Commencement Date;

12.2.2 in respect of any Specification, improvement notice or other condition imposed specifically on the SLC by any Regulator, where the date on which such condition came into force had passed before the Commencement Date; and/or

12.2.3 due to any failure of the Authority to comply with its obligations under or breach of warranty by the Authority under this Agreement or the SLC Agreement; and/or

12.2.4 due to any defect in the Authority's title to the Site or the existence of any third party interests in the Site, excluding for the avoidance of doubt any fines or

financial penalties arising due to non compliance by the SLC with the terms of any of the agreements specified in the Client Specification or Schedule 7 (*Property*) of the SLC Agreement in circumstances where such non-compliance could reasonably have been avoided by the SLC acting in accordance with Good Industry Practice.

- 12.3 The Relevant Loss shall not in any event exceed the amount of the fine or financial penalty or civil damages the subject of the Regulatory Breach Compensation Claim and the Authority shall not be liable to the Parent Body Organisation or the SLC for any indirect, special or consequential loss or damage or any loss of profits, turnover, business opportunities, damage to goodwill (whether direct or indirect) or anticipated savings arising from any event the subject of or giving rise to a Regulatory Breach Compensation Claim.
- 12.4 Any Regulatory Breach Compensation Claim shall give rise only to an action by the Parent Body Organisation for damages and shall not entitle the Parent Body Organisation to rescind or terminate this Agreement, the SLC Agreement or any other related document, except in the case of fraud.
- 12.5 The Authority shall not be liable in respect of a Regulatory Breach Compensation Claim unless notice in writing of the Regulatory Breach Compensation Claim (setting out reasonable details of the nature and, so far as practicable, the amount of the Regulatory Breach Compensation Claim) has been given to the Authority not later than sixty (60) Working Days after the expiry of or earlier termination of this Agreement.
- 12.6 The Parent Body Organisation shall provide or shall procure that the SLC provides the Authority with all documents and correspondence requested by the Authority applicable to a Regulatory Breach Compensation Claim.
- 12.7 The Parent Body Organisation may make more than one Regulatory Breach Compensation Claim but subject always to the terms of this Clause 12 (*Compensation for reduced dividend due to pre-Commencement breaches*).
- 12.8 The Parent Body Organisation shall not be entitled to make more than one Regulatory Breach Compensation Claim in respect of the same Relevant Loss.
- 12.9 The Authority shall not be liable in respect of any Regulatory Breach Compensation Claim to the extent that the matter giving rise to the Regulatory Breach Compensation Claim is a contingent liability which has not become an actual liability.
- 12.10 Nothing in this Clause 12 (*Compensation for reduced dividend due to pre-Commencement breaches*) shall derogate from the Parent Body Organisation's

obligation to take reasonable steps to mitigate any loss in respect of which it makes a Regulatory Breach Compensation Claim.

## 13 CLAIMS HANDLING

### 13.1 Third Party Claims

13.1.1 For the purposes of this Clause 13 (*Claims Handling*) “**Third Party Claim**” shall mean any claim or any matter which is likely to give rise to a claim against the Authority, the SLC or the Parent Body Organisation by a Third Party or Affiliate.

13.1.2 As soon as reasonably practicable after any of the Authority, the SLC or the Parent Body Organisation becomes aware of a Third Party Claim the Authority, the SLC or the Parent Body Organisation as applicable shall notify each other Party.

### 13.2 Insurance

13.2.1 Where a Third Party Claim is wholly in respect of an insured risk covered by a policy of insurance taken out by the Authority or the Parent Body Organisation the provisions of Clauses 13.3 (*Provision of Information and Assistance*) to 13.6 (*Parent Body Organisation Handling*) shall not apply to the extent that they are inconsistent with the terms of such policy.

13.2.2 Where a Third Party Claim is partly in respect of an insured risk covered by a policy of insurance taken out by the Authority or the Parent Body Organisation or any of them the provisions of Clauses 13.3 (*Provision of Information and Assistance*) to 13.6 (*Parent Body Organisation Handling*) shall apply to the balance of the Third Party Claim only where the Authority, acting reasonably, is satisfied that the operation of those clauses will not have an adverse effect on the defence of the Third Party Claim.

13.2.3 The Parent Body Organisation shall ensure that the Authority is aware of the terms and conditions of any policy of insurance taken out by the Parent Body Organisation which is capable of affecting the application of the provisions of this Clause 13 (*Claims Handling*).

### 13.3 Provision of Information and Assistance

13.3.1 Following notification as set out in Clause 13.1.2 (*Third Party Claims*) each Party will within five (5) Working Days provide each of the other Parties with such information concerning the Third Party Claim as the other Parties shall reasonably request. Notwithstanding this provision any Party, acting

reasonably, may decline to provide such information to one or either of the others in order to protect privileged or confidential information from disclosure to Third Parties.

- 13.3.2 Each of the Parties shall give to the Party with conduct of any Legal Proceedings in respect of a Third Party Claim all such assistance in resisting any such Third Party Claim as the Party with conduct shall reasonably request.

#### 13.4 **SLC's Compliance with Instructions**

- 13.4.1 The PBO shall comply and procure that the SLC complies with all of the instructions of the Authority in relation to any Third Party Claim against the SLC except where the Authority notifies the SLC that the provisions of Clause 13.5 (*Authority's Handling*) or the provisions of Clause 13.6 (*Parent Body Organisation Handling*) apply.

#### 13.5 **Authority's Handling**

If a Third Party Claim is made against the SLC or the Parent Body Organisation in respect of which the Authority reasonably believes that: (a) it will bear a significant proportion of the liability of that Third Party Claim by operation of the terms of this Agreement and/or the SLC Agreement; and/or (b) the Third Party Claim is likely to have an impact on the reputation of the Authority:

- 13.5.1 the Authority shall have the right, upon giving notice to the SLC and the Parent Body Organisation, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim, and the SLC and the Parent Body Organisation shall:

13.5.1.1 give or cause to be given to the Authority all such assistance as the Authority may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings; and

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

- 13.5.2 the Authority shall use reasonable endeavours to keep the SLC and Parent Body Organisation informed of the progress of any Legal Proceedings of which it has conduct and shall give the Parent Body Organisation the opportunity to comment on any matter which may impact on the reputation or business of the

Parent Body Organisation and the Authority shall consider such comments received from the Parent Body Organisation as it is reasonably practicable to consider in the relevant circumstances;

- 13.5.3 where the Authority takes over the conduct of any Legal Proceedings pursuant to this Clause 13.5 (*Authority's Handling*), the Authority shall indemnify and keep the SLC or Parent Body Organisation, as applicable, indemnified in respect of all reasonable claims and all costs arising directly out of its conduct of the Legal Proceedings.

### 13.6 **Parent Body Organisation Handling**

Subject to Clause 13.5 (*Authority's Handling*), if a Third Party Claim is made against the SLC in respect of which the Authority reasonably believes that the Parent Body Organisation will bear the majority of the liability of that Third Party Claim by operation of the terms of this Agreement and/or the SLC Agreement:

- 13.6.1 the Parent Body Organisation, upon notice from the Authority to the Parent Body Organisation and the SLC, shall have the option to take conduct of (or take over the conduct of) all Legal Proceedings in respect of any such Third Party Claim and in that connection:

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

13.6.1.2 the SLC shall instruct such solicitors or other professional advisers as the Parent Body Organisation may nominate to act on behalf of SLC, but in accordance with the instructions of the Parent Body Organisation;

- 13.6.2 the Parent Body Organisation shall use reasonable endeavours to keep the Authority and the SLC fully informed of the progress of any Legal Proceedings of which it has conduct and shall consult the Authority in relation to any material step in the Legal Proceedings and shall take account of all reasonable requirements of the Authority in relation to such step; and

- 13.6.3 the Parent Body Organisation shall not:

- 13.6.3.1 make any admission, settlement or compromise of the Third Party Claim the subject of the Legal Proceedings;
- 13.6.3.2 agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such Third Party Claim; or
- 13.6.3.3 make any representation or statement in relation to such Third Party Claim,

without the prior written approval of the Authority. The Authority will not withhold its approval unless, in its reasonable opinion, the Parent Body Organisation's proposed action would adversely affect any future Legal Proceedings involving the Authority or the SLC or the proposed action is contrary to the public interest or the proposed action would adversely impact on the reputation of the Authority.

- 13.6.4 Where the Parent Body Organisation takes over the conduct of any Legal Proceedings pursuant to this Clause 13.6 (*Parent Body Organisation Handling*), the Parent Body Organisation shall indemnify and keep the SLC and the Authority indemnified in respect of all claims and all costs arising out of its conduct of the Legal Proceedings.
- 13.6.5 This Clause 13.6 (*Parent Body Organisation Handling*) is subject to the proviso that the Authority shall not be obliged to permit the Parent Body Organisation to have conduct of (or take over conduct of) Legal Proceedings where the Authority reasonably considers that it is in the public interest that the Authority should have conduct of the Legal Proceedings or that the Third Party Claim is likely to have an impact on the reputation of the Authority.

### 13.7 Pursuing Claims

- 13.7.1 Where the Authority reasonably believes that the SLC has a claim against a Third Party or Affiliate and that the pursuit of such claim would be beneficial to the Authority for reputational, public policy or financial reasons the Authority shall be entitled to direct the SLC to pursue the relevant claim against the Third Party. The SLC shall pursue the relevant claim against the Third Party in accordance with the Authority's reasonable instructions. The SLC shall retain the right to instruct the solicitors and experts of its choice.
- 13.7.2 Where the Parent Body Organisation reasonably believes that the SLC has a claim against a Third Party or Affiliate and that the pursuit of such claim would be beneficial to the Parent Body Organisation for reputational or financial

reasons the Parent Body Organisation shall be entitled to request the Authority to direct the SLC to pursue the relevant claim against the Third Party in accordance with Clause 13.7.1 (*Pursuing Claims*). Such request shall not be unreasonably refused by the Authority.

## **Part 5: Information**

### **14 CONFIDENTIALITY**

#### **14.1 Confidential Information**

14.1.1 Subject to Clauses 14.3 (*Disclosure by the Authority*) to 14.10 (*National Audit Office*) below, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Parties (including all documents and information supplied in the course of Legal Proceedings commenced in accordance with this Agreement) and all documents, materials and other information of any nature relating to a third party which it may acquire or have access to directly or indirectly as a consequence of negotiating, entering into or operating this Agreement and shall not, except with the written authority of the other Party, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

14.1.2 Neither the Parent Body Organisation nor the SLC shall make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of complying with its obligations under this Agreement and otherwise than as expressly provided for in this Agreement except with the written consent of the Authority.

#### **14.2 Parent Body Organisation Right to Request Confidentiality**

The Parent Body Organisation may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Parent Body Organisation may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 14.3 (*Disclosure by the Authority*), the Authority make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the Parent Body Organisation shall be accompanied by a document setting out in writing

the requested representations. The Authority shall consider whether to make such representations.

#### 14.3 Disclosure by the Authority

The Authority, having considered any request made by the Parent Body Organisation under Clause 14.2 (*Parent Body Organisation Right to Request Confidentiality*) may, save for information which is judged by ONR to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 14.3 (*Disclosure by the Authority*) holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Agreement (the “**Information**”):

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

14.3.2 to the Regulators;

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

14.3.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*) above provided that this shall not apply in relation to commercially sensitive information relating to

14.3.4.1 the Parent Body Organisation, the Parent Body Organisation's shareholders or the Ultimate Parents;

14.3.4.2 Affiliates other than to the extent that such commercially sensitive information relates to any Affiliate acting in the capacity of a Subcontractor or Sub-Subcontractor,;

14.3.4.3 the Target Cost; or

14.3.4.4 the Shareline.

14.3.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*);



- 14.3.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*) for the purpose of:
  - 14.3.6.1 the examination and certification of the Authority's or the Parent Body Organisation's accounts; or
  - 14.3.6.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 14.3.7 to the Authority's legal advisors;
- 14.3.8 to consultees under the Energy Act; and/or
- 14.3.9 to the National Audit Office.
- 14.4 So far as is practicable, the Authority shall give the Parent Body Organisation reasonable notice of any proposed disclosure pursuant to Clause 14.3 (*Disclosure by the Authority*).
- 14.5 Notwithstanding the provisions of Clause 14.1 (*Confidential Information*), the Authority may, with the consent of the Parent Body Organisation such consent not to be unreasonably withheld or delayed, further disclose the Information to persons not referred to in Clause 14.3 (*Disclosure by the Authority*).
- 14.6 Any determination as to whether it is reasonable for the Parent Body Organisation to withhold its consent to disclosure under Clause 14.5 (*Disclosure by the Authority*) shall have regard to:
  - 14.6.1.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;
  - 14.6.1.2 relevant Government policy;
  - 14.6.1.3 the requirement to maintain security;
  - 14.6.1.4 the public interest; and
  - 14.6.1.5 the requirement to maintain openness and transparency.

14.7 **Publication**

The Authority, having considered any request made by the Parent Body Organisation pursuant to Clause 14.2 (*Parent Body Organisation Right to Request Confidentiality*) may publish, in such form and at such times as it sees fit, the following information:

- 14.7.1 the amounts of payments to the SLC and any deductions made from the SLC under the SLC Agreement;
  - 14.7.2 performance statistics;
  - 14.7.3 monitoring reports; and
  - 14.7.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 14.3 (*Disclosure by the Authority*), including information it includes in its annual report.
- 14.8 The Authority shall give the Parent Body Organisation reasonable notice of any proposed publication pursuant to Clause 14.7 (*Publication*).

**14.9 Disclosure by the Parent Body Organisation or the SLC**

For the purposes of performing their obligations under this Agreement or as required by any Parliamentary obligation, applicable Legislation, the Regulators or pursuant to an order of any court of competent jurisdiction and to the extent reasonably required to do so, the Parent Body Organisation or the SLC may disclose without the consent of the Authority, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by ONR to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 14.9 (*Disclosure by Parent Body Organisation or the SLC*) holds all relevant security clearances) to:

- 14.9.1 the Regulators;
- 14.9.2 the extent required by any Parliamentary obligation, applicable Legislation or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 14.9.3 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*);
- 14.9.4 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*);
- 14.9.5 Affiliates or Subcontractors upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*);

14.9.6 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 14.9.1 (*Disclosure by Parent Body Organisation or the SLC*) to 14.9.4 (*Disclosure by Parent Body Organisation or the SLC*) subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 14.1 (*Confidential Information*), to obtaining such an undertaking of confidentiality;

#### 14.10 **National Audit Office**

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

#### 14.11 **Announcements**

14.11.1 Subject to the remaining provisions of this Clause 14.11 (*Announcements*), no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement, unless the form and content of such announcement or circular have been submitted to and agreed by the other Parties.

14.11.2 Nothing in this Clause 14.11 (*Announcements*) shall prohibit any Party from making any announcement or despatching any circular as required by Legislation or the rules of the UK Listing Authority or of the London Stock Exchange or any other regulatory body in which case, to the extent not inconsistent with legal obligations or the rules of the UK Listing Authority or of the London Stock Exchange, the announcement shall only be released or the circular despatched after consultation with the other Parties and after taking into account the reasonable requirements of the other Parties as to the content of such announcement or circular.

#### 14.12 **Delivery Up**

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

#### 14.13 **Damages not the only remedy**

Without prejudice to any other rights or remedies that a Party may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by a Party of this Clause 14 (*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 14 (*Confidentiality*) by such Party are appropriate remedies.

## 15 FREEDOM OF INFORMATION

### 15.1 Freedom of Information Act

15.1.1 This Clause 15 (*Freedom of Information*) is subject to the FOIA and EIR together with any guidance and/or codes of practice issued by the Ministry of Justice, Information Commissioner and the Lord Chancellor's Department. The PBO's attention is drawn specifically to the Lord Chancellor's Code of Practice on Freedom of Information.

15.1.2 The Parent Body Organisation shall assist and cooperate with the Authority to enable the Authority to comply with its disclosure under the FOIA and the EIR. The Parent Body Organisation shall also comply with the Protocol attached at Schedule 15 (*Freedom of Information*) of the SLC Agreement.

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

15.1.4 Where the Parent Body Organisation receives, or the SLC or any of its Subcontractors receive, a Request for Information relating to information held by or on behalf of the Authority, the Parent Body Organisation shall, and shall also procure that the SLC and its Subcontractors shall, transfer to the Authority any such Request for Information received as soon as reasonably practicable.

15.1.5 The Parent Body Organisation shall provide a nominated member of staff with sufficient authority to handle, co-ordinate and be responsible for the supply of information to the Authority for the purposes of compliance with this Clause 15 and the Protocol contained in Schedule 15 (*Freedom of Information*) of the SLC Agreement.

- 15.1.6 The Authority shall have sole responsibility for determining at its absolute discretion whether any information provided to the Authority is exempt from disclosure in accordance with the FOIA or EIR or is to be disclosed in response to a Request for Information.
- 15.1.7 Subject to Clause 15.1.6 (*Freedom of Information Act*), for the avoidance of doubt the Authority shall in determining its response to any Request for Information, give due consideration to any representations made by the SLC and/or the PBO concerning the need to preserve confidentiality of information and the availability of the absolute exemption in section 41 of FOIA and/or the qualifying exemption in section 43 of FOIA.
- 15.1.8 The Parent Body Organisation acknowledges that the Authority may, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA or Regulation 16 of the EIR, be obliged under the FOIA or the EIR to disclose information concerning the Parent Body Organisation, the Site or this Agreement without consulting the Parent Body Organisation, or following consultation with the Parent Body Organisation and having taken its views into account.
- 15.1.9 The Parent Body Organisation acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 15 (*Freedom of Information*).
- 15.1.10 In no event shall the Parent Body Organisation respond to a Request for Information in relation to information that the Parent Body Organisation is holding on the Authority's behalf unless expressly authorised to do so in writing by the Authority.

## **Part 6: Intellectual Property and IT**

### **16 INFORMATION TECHNOLOGY**

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

accordance with the Escrow Terms, the licence referred to in Clause 17.1 (*IP Contributed by Parent Body Organisation*) shall include all IP subsisting in such Source Code.

## 17 INTELLECTUAL PROPERTY

### 17.1 IP Contributed by Parent Body Organisation

#### *Licence to Authority and SLC*

17.1.1 Save for Special Parent IP (as provided in Clause 17.1.5A), in respect of IP that is owned by or licensed (with appropriate sub-licence rights) to the Parent Body Organisation:

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

17.1.1.2 any such IP that is directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP (the "**Required Parent IP**"),

shall be, and is hereby, in consideration of the Authority's obligations under this Agreement, licensed (with the right to sub-licence such right as set out in Clause 17.1.2 and 17.1.4 (*Licence to Authority and SLC*) below) in perpetuity to the Authority (in its application as of the date of commencement of the SLC Agreement where applicable) for utilisation in the Authority Field of Use or, in the case of Required Parent IP, limited to the extent required to enable the Authority or its licensee to use or exploit the relevant Developed IP, without payment of royalty fees (except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation). The Delivered Parent IP and the Required Parent IP shall together be referred to as the "**Parent IP**". The SLC shall implement procedures and systems to record and track Delivered Parent IP and Required Parent IP. The Parent Body Organisation warrants and undertakes that the Parent IP shall be either owned by or licensed to (with appropriate sub-licence rights) the Parent Body Organisation.

- 17.1.2 The Authority shall have the right to sub-license the Parent IP to the SLC in perpetuity who in turn shall be entitled to grant sub-licences to its Subcontractors (with a right to sub-license) to use the Parent IP in the performance of their Subcontracts, in each case without payment of royalty fees. Such sub-licence of Parent IP to the SLC'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 SLC's follow-on licence from the Authority.
- 17.1.3 The Authority shall have the right to sub-license the Delivered Parent IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use on the Authority's designated sites (including the right for such site licensee companies to grant further sub-licences to their subcontractors with a right to sub-license, in each case limited to such purpose) without payment of royalty fees (except as provided in Clause 17.1.5 (*Licence to Authority and SLC*)). The Authority's right to use and sub-license the Delivered Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the SLC Agreement until the Authority reasonably determines that the Delivered Parent IP is no longer needed in relation to any Authority Designated Sites for which the Authority has obtained the rights to use the Delivered Parent IP.
- 17.1.4 Except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation, the Authority shall have the right to use and sub-license to Third Parties, including other site licensee companies, the Required Parent IP where this is necessary to use or exploit any Developed IP without payment of royalty fees (except as provided in Clause 17.1.5 (*Licence to Authority and SLC*)) and who shall themselves be entitled to grant sub-licences to their subcontractors (with a right to sub-license) to use the Required Parent IP where necessary to enable the use or exploitation of Developed IP, without payment of royalty fees. The Authority's right to use and sub-license the Required Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the SLC Agreement until the Authority reasonably determines that the Required Parent IP is no longer needed to enable the use of any Developed IP.
- 17.1.5 Any Parent IP that is of particular value to the Parent Body Organisation is detailed in Schedule 8 (*Intellectual Property*) of the SLC Agreement (the "**Reserved Parent IP**"). Any licence granted by the Authority pursuant to

Clauses 17.1.3 and 17.1.4 (*Licence to Authority and SLC*) of Reserved Parent IP shall be subject to the payment of such reasonable royalty as the Authority and the Parent Body Organisation shall agree.

17.1.5A The Parent Body Organisation and/or its Affiliates have now or may in the future have ownership of or licences to use further IP that the Parent Body Organisation may, with the Authority's agreement, wish to introduce to the Site on terms different to those set out in this Clause 17 (*Intellectual Property*). Such IP is referred to in this Agreement as "**Special Parent IP**".

17.1.5A.1 Before the Parent Body Organisation or an Affiliate allows any Special Parent IP to be introduced to the Site the Authority and the Parent Body Organisation or relevant Affiliate (as the case may be) will agree the terms of a perpetual or time limited royalty or non-royalty-bearing licence allowing the Authority to use (and to sub-license the SLC to use) such Special Parent IP solely in respect of the Site or as may otherwise be agreed and setting out any special provisions relating to confidentiality, which provisions will apply notwithstanding any contrary provisions in this Agreement. Such licence may make special provision for ownership and licensing of any Developed IP developed from such Special Parent IP. For the avoidance of doubt, if after making any Special Parent IP available such Special Parent IP becomes directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP then notwithstanding Clause 17.1.4 such Special Parent IP shall not be treated as Required Parent IP.

17.1.5A.2 With the exception only of this Clause 17.1.5A, the provisions of this Clause 17 (*Intellectual Property*) shall not apply in relation to any Special Parent IP.

17.1.5A.3 Neither the Delivery Plan nor compliance with the SLC's obligations under the SLC Agreement is conditional on introduction of any Special Parent IP and the SLC is not entitled to any adjustment to the Target Cost or any schedule related obligation if the Authority declines to agree to the introduction of any Special Parent IP or terms for such introduction.

17.1.6 Without prejudice to Clause 17.1.1 (*Licence to Authority and SLC*) above, the SLC shall implement such procedures and systems as are required and agreed by the Authority to identify and track any IP that is made available



(whether at the Commencement Date or at any time during the term of this Agreement) by the Parent Body Organisation to which there are limitations on the Authority's ability to exploit, use or license such IP. Where such IP has not been so identified and tracked then the Authority will be deemed to have the ability to use, exploit and license such IP without further restrictions and the Parent Body Organisation shall indemnify the Authority against Third Party Claims arising as a result of such use, exploitation or licensing by the Authority.

17.1.7 [Not Used]

*Infringement of Parent IP by Third Parties*

17.1.8 In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 17.1 (*IP Contributed by Parent Body Organisation*), the SLC, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall, at the Parent Body Organisation's cost and expense, take such reasonable direction as the Parent Body Organisation may provide for the purposes of the Parent Body Organisation's response to such infringement or suspected infringement.

**17.2 Authority's Rights to IP developed by or on behalf of the SLC and/or Subcontractors**

The SLC shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) for the identification, protection, exploitation, management and ownership of IP in accordance with this Agreement and the SLC Agreement (including the IP Schedule) including those needed for IP developed by the SLC or its Subcontractors (whether or not owned by the Authority regardless of the date of creation) (including Developed IP), together with rights secured to Subcontractor IP and Third Party IP (including IP licensed pursuant to Clause 29.6 of the SLC Agreement) whether in the name of the SLC or the Authority and regardless of the date such rights were secured. Subject to Clause 17.1.5A, IP created by or on behalf of the SLC and/or by Subcontractors during the performance of the SLC Agreement ("**Developed IP**") shall be managed in accordance with the IP Schedule and, unless:

- (a) the IP Schedule expressly permits otherwise (including without limitation that written consent of the Authority is given where this is required in accordance with the IP Schedule) and full records are kept of the justification for that permission; or
- (b) otherwise agreed in writing by the Authority,

be owned in accordance with the following provisions.

*Ownership by Authority of Developed IP created by the SLC*

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

17.2.1.1 the Authority shall own any and all Developed IP created by the SLC; and

17.2.1.2 the SLC shall assign to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the date of the SLC Agreement.

*Ownership of Developed IP by the Authority*

17.2.2 Without prejudice to Clause 17.2.1 (*Ownership by Authority of Developed IP created by the SLC*) the Authority shall own any Developed IP (whether or not created by the SLC) which the Authority reasonably determines: (i) having regard to any views of ONR, raises or may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site): and/or (ii) is of Strategic Interest to the Authority.

17.2.3 Subject to Clause 17.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*), the Authority shall own any and all IP in all output (including information, results, test data, safety cases and other reports) obtained by and arising from the application and use of any Authority-owned IP (including Authority-owned Developed IP). The Contractor hereby assigns to the Authority all such IP created on or at any time after the date of the SLC Agreement.

*Ownership of Developed IP created by or on behalf of Subcontractors*

17.2.4 Save as expressly set out in this Clause 17.2.4, Developed IP that is created by or on behalf of any Subcontractor under its Subcontract shall be owned by the Authority and the SLC 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 the SLC Agreement. However, the Authority acknowledges that it may be appropriate or preferable

from the Contractor's perspective, in certain circumstances described in the IP Schedule, for an alternative IP solution to be adopted and for such Developed IP that falls outside the provisions of Clause 17.2.2 (*Ownership of Developed IP by the Authority*) above to be owned by the Subcontractor. If permitted under the IP Schedule, the SLC may allow the Subcontractor to retain ownership of such Developed IP, provided that (i) full records are kept, (ii) the written consent of the Authority is given when required by the IP Schedule, and (iii) such Developed IP is licensed to the Authority in accordance with Clause 17.2.9 (*Licence of Developed IP from Subcontractor to Authority*) below.

*Access to and use of information by the Authority*

17.2.5 Subject to the provisions of Clause 14 (*Confidentiality*), and without prejudice to the provisions Clause 14 (*Performance Management, Performance Assurance and Records*) and Clause 15 (*Inspection and Audit*) of the SLC Agreement, the SLC shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the SLC, save to the extent prohibited by applicable Legislation or any obligation of confidence imposed on the SLC by an agreement entered into by the SLC in accordance with the SLC Agreement. Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 14 (*Performance Management, Performance Assurance and Records*) of the SLC Agreement and Clause 15 (*Inspection and Audit*) of the SLC Agreement, the SLC shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by any Subcontractor during the course of carrying out obligations under the relevant Subcontract that is part of the Developed IP created by the Subcontractor, or is reasonably necessary for the purpose of using, exploiting or licensing either Developed IP or any contract deliverable under the Subcontract including products, information, data, results and records ("**Output**"). For the avoidance of doubt information shall not be treated as having been received by the SLC on the basis that it is known to or in the possession of any:

17.2.5.1 Nominated Staff; or

17.2.5.2 personnel provided to the SLC pursuant to Schedule 7 (Provision of Support to the SLC) and Clause 8 (*Provision of Support to the SLC*),

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

*Further Assurance*

17.2.6 In respect of any Developed IP owned by the Authority pursuant to Clauses 17.2.1 (*Ownership by Authority of Developed IP created by the SLC*), 17.2.2 (*Ownership of Developed IP by the Authority*), 17.2.3 (*Ownership of IP Developed by the Authority*) and/or 17.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and Clauses 29.4.1 to 29.4.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*) of the SLC Agreement (and/or pursuant to the IP Schedule), the SLC 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 17 (*Intellectual Property*) and Clause 29.4.6 (*Further Assurance*) of the SLC Agreement and perfect the Authority's title to any such Developed IP.

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

17.2.7 The SLC shall procure that each Subcontractor identifies and declares to the SLC prior to entering into its Subcontract any IP which the Subcontractor owns immediately prior to the commencement of the Subcontract which could be reasonably judged necessary for the Authority, the SLC or any licensee of either the Authority or the SLC to use, exploit or license any Output or Developed IP arising from the Subcontract. This declaration will also serve to ensure that there is no confusion between Developed IP and Background IP, and where this is a potential concern the declaration required should be sufficiently detailed to ensure clarity of rights is maintained. In respect of any such IP, the SLC shall procure that the Subcontractor shall grant to the Authority a licence in accordance with Clause 17.2.10 (*Licence of Background IP from Subcontractor to Authority*) below and Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) of the SLC Agreement.

*Licence to the Authority of IP licensed to the Subcontractor*

17.2.8 A Subcontractor may at any point during the Subcontract have licensed to it IP which could be reasonably judged necessary for the Authority, the SLC or any licensee of the Authority or the SLC to use, exploit or license any Output or Developed IP arising from the Subcontract ("**Subcontractor-licensed Background IP**"). The SLC shall procure that each Subcontractor:

17.2.8.1 identifies and declares to the SLC prior to entering into its Subcontract any Subcontractor-licensed Background IP

that is licensed to that Subcontractor immediately prior to the commencement of the Subcontract. This declaration will also serve to ensure that there is no confusion between Developed IP and Subcontractor-licensed Background IP, and where this is a potential concern the declaration required should be sufficiently detailed to ensure clarity of rights is maintained; and

17.2.8.2 shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use and exploit Subcontractor-licensed Background IP in order to use and exploit the relevant Output or Developed IP. This licence shall include the right to sub-license that Subcontractor-licensed Background IP to any third party (including any SLC)

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

Without prejudice to Clause 29.4.18 (*Register of IP*) of the SLC Agreement and Clause 17.2.15 (*Access to and use of information by the Authority*) below, where such rights cannot be procured, the SLC and the Authority shall determine whether the Subcontract should be entered into and if so its provisions.

*Licence of Developed IP from Subcontractor to Authority*

17.2.9 Subject to Clause 17.2.10 (*Licence of Background IP from Subcontractor to Authority*) in the event that any Developed IP is owned by a Subcontractor, the SLC shall procure that the Subcontractor shall grant to the Authority;

17.2.9.1 a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence to use such Developed IP together with the right to sub-license such Developed IP to any third party including any other

Site Licence Company without the consent of the Subcontractor, and permitting any other Site Licence Company (and its sub-licensees) to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor; and

17.2.9.2 rights for the Authority to:

17.2.9.2.1 contribute to the drafting of any patents owned by the Subcontractor relating to Developed IP, where the Subcontractor should be required to use reasonable endeavours to incorporate changes requested by the Authority into the patent application;

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

17.2.9.2.3 assume ownership of any patent(s) or patent application(s) (or the rights to file such applications) relating to Developed IP which the Subcontractor wishes to abandon (or decides, in respect of particular territories, not to file). (For the avoidance of doubt this includes, without limitation, a decision not to seek grant of a European Patent relating to Developed IP in any of the UK, France or Germany or a Patent Co-operation Treaty patent relating to Developed IP in any of the UK, European Patent, UK, France or Germany).

Without prejudice to Clause 29.4.18 of the SLC Agreement and Clause 17.2.15 (*Access to and Use of Information by the Authority*) below, where such rights cannot be procured or where the Cost of procuring such rights is inconsistent with achievement of Value for Money, the SLC and the Authority shall determine whether the Subcontract should be entered into and if so its provisions. The SLC shall not obtain any lesser rights than outlined in this Clause 17.2.9 without the express prior written consent of the Authority, not to be unreasonably withheld.

*Licence of Background IP from Subcontractor to Authority*

17.2.10 Without prejudice to Clause 29.4.18 (*Register of IP*) of the SLC Agreement and Clause 17.2.15 (*Exclusion of Parent IP from Developed IP*) below, the SLC shall procure that, unless lesser rights have been sought in accordance with

the provisions of the IP Schedule, each Subcontractor shall grant to the Authority a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence to use any IP owned by that Subcontractor that is reasonably needed to use, exploit or license any Output or Developed IP ("**Background IP**") in order to use, exploit and license the relevant Output or Developed IP. This licence shall include the right to sub-license such Background IP to any third party (including any Site Licence Company).

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

*SLC's Notification of Developed IP*

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

*Use of Developed IP by the Subcontractor*

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

*Licence to Parent Body Organisation*

17.2.13 At the Authority's sole discretion and subject to the reasonable terms of the Authority (which may include payment of reasonable royalties or fees), the Authority may grant to the Parent Body Organisation a worldwide licence (which is freely assignable or sub-licensable) to use for purposes other than

activities falling within the Authority Field of Use any Developed IP which vests in the Authority pursuant to Clause 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.3 (*Ownership of Developed IP by the Authority*) and/or 29.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) of the SLC Agreement and/or this Agreement but not, for the avoidance of doubt, 29.4.2 (*Ownership of Developed IP by the Authority*) of the SLC Agreement and/or Clause 17.2.2 (*Ownership of Developed IP by the Authority*) of this Agreement.

*Exclusion of Parent IP from Developed IP*

17.2.14 For the avoidance of doubt, Developed IP created by or on behalf of the SLC (including Subcontractors) and which vests in the Authority pursuant to Clause 17.2.1 (*Ownership by Authority of Developed IP created by the SLC*), 17.2.2 (*Ownership of Developed IP by the Authority*), 17.2.3 (*Ownership of Developed IP by the Authority*) and/or 17.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and Clauses 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.2 (*Ownership of Developed IP by the Authority*), 29.4.3 (*Ownership of Developed IP by the Authority*) and/or 29.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) of the SLC Agreement shall exclude any Parent IP under Clause 17.1 (*IP Contributed by Parent Body Organisation*) or any Third Party IP under Clause 29.6 (*Third Party IP*) of the SLC Agreement that may form the basis or background of such Developed IP.

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

**Part 7: Personnel Matters**

**18 TUPE**

18.1 The Parent Body Organisation shall comply with its obligation to provide Employee Liability Information at such time or times as is required by TUPE (or at such earlier time as reasonably required by the Authority) to the Incoming Parent and shall at the same time provide copies to the Authority. At the time of providing such Employee Liability Information the Parent Body Organisation shall warrant to the Authority and to the Incoming Parent that the Employee Liability Information is complete and accurate at the time it is provided. The Parent Body Organisation shall update such Employee Liability Information to take account of any changes to such information, as required



by TUPE and shall warrant to the Authority and to the Incoming Parent that the updated Employee Liability Information is complete and accurate at the time it is provided.

18.2 The Parent Body Organisation shall indemnify and keep indemnified the Authority and the Incoming Parent against all liabilities, obligations, Legal Proceedings, fines and penalties, damages, expenses, costs (including reasonable legal costs) claims and demands (subject to their duty to mitigate loss) arising out of or in connection with any Legal Proceedings arising or alleged to arise by virtue of the question of TUPE in connection with the termination of this Agreement and brought by or on behalf of any individual who at or before the date of such termination is or was employed or engaged by the Parent Body Organisation, a Seconding Employer or any Affiliate in any activities relating to this Agreement and which relate to circumstances or events arising or occurring at any time (including any dismissal or alleged dismissal of any such individual by the Authority, Incoming Parent or SLC).

18.3 The Authority shall indemnify and keep indemnified the Parent Body Organisation against all liabilities, obligations, Legal Proceedings, fines and penalties, damages, expenses, costs (including reasonable legal costs), claims and demands (subject to their duty to mitigate loss):

18.3.1 brought by or on behalf of any member of the Nominated Staff who before the Commencement Date was employed or engaged by UKAEA Limited, or any individual who was or is employed or engaged by UKAEA Limited; and

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

18.4 The Parent Body Organisation shall take reasonable steps to mitigate any loss in respect of which it makes a claim under the indemnity referred to in Clause 18.3.

## 19 PENSIONS

In the event that any Employees transfer or are deemed to transfer to the Parent Body Organisation, the Parent Body Organisation shall in relation to such Employees comply with all obligations required of the SLC under Clause 32 (*Pensions*) of the SLC Agreement as if the Parent Body Organisation were the SLC. If, as a result of this requirement, the Parent Body Organisation is required to participate in the CNPP (as defined in the SLC Agreement), it shall enter into a deed of participation with the Authority in substantially the same form as the Deed of Participation (as defined in the

SLC Agreement). In the event that such a deed of participation is not executed, the Parent Body Organisation shall nevertheless be bound by its terms in the period until it is executed as though those terms were contained in this Agreement.

## **Part 8: Termination**

### **20 TERMINATION**

#### **20.1 Termination Events**

This Agreement may be terminated prior to the Expiry Date in accordance with this Clause 20 (*Termination*) and Clause 22 (*Retransfer of Shares in SLC under Energy Act*).

#### **20.2 PBO Default**

The following events set out in Clauses 20.2.1 (*Breach of Parent Body Organisation or SLC Obligations*) to 20.2.8 (*Liability Cap Excess*) below shall each constitute a “**PBO Default**” and shall give rise to an Authority right to terminate:

##### **20.2.1 Breach of Parent Body Organisation or SLC Obligations**

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

20.2.1.1 remediable, but has not been remedied in accordance with Clause 20.5.3 (*Remediable Breach*); or

20.2.1.2 is irreparable.

##### **20.2.2 Insolvency**

The occurrence of a Threatened Insolvency notice that is not disputed by the Parent Body Organisation within two (2) Working Days of such notice being served, or an Insolvency Event in respect of the SLC, the Parent Body Organisation or any shareholder of the Parent Body Organisation or any guarantor of the Parent Company Guarantee, provided that in the case of the SLC, any such Threatened Insolvency or Insolvency Event does not arise due to any instruction under or breach of the SLC Agreement by the Authority.

##### **20.2.3 SLC Agreement**

Either:

20.2.3.1 the Authority being entitled to terminate the SLC Agreement for Contractor Default or following any Insolvency Event or Prohibited Act; or

20.2.3.2 termination of the SLC Agreement by the Authority or upon the SLC Agreement ceasing to be valid and binding on the SLC.

**20.2.4 Change in Control**

The Parent Body Organisation undergoing a Change in Control or entering into a Relevant Partnering Arrangement without having obtained the prior written consent of the Authority in accordance with Clause 4.2 (*Change in Control and Relevant Partnering Arrangements*).

**20.2.5 Share Transfer**

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

**20.2.6 Failure to Remedy**

A failure by the Parent Body Organisation to remedy the breach specified in a Final Performance Warning Notice in accordance with Clause 20.3 (*Termination for Failure to Remedy*).

**20.2.7 Parent Company Guarantee**

Any of:

20.2.7.1 any withdrawal of or any breach of the Parent Company Guarantee;

20.2.7.2 the Authority reasonably believing (by reference to similar evidence to that produced by the Parent Body Organisation in its response to the pre-qualification questionnaire of the competition referred to in the Recitals above) that there has been a material deterioration in the corporate financial stability of an Ultimate Parent or Guarantor such that, in the Authority's reasonable opinion, any one Guarantor under the Parent Company Guarantee (as defined therein) would not be able to meet its obligations under the Parent Company Guarantee if called upon, and neither the Parent Body Organisation

nor the Ultimate Parent or Guarantor has been able to demonstrate otherwise; and/or

20.2.7.3 the Authority being entitled to and making a claim in accordance with the provisions of the Parent Company Guarantee, provided that where any such claim relates to a matter that is or has been subject to a dispute under the Parent Body Agreement, the claim giving rise to such entitlement remains outstanding on expiry of five (5) Working Days following determination of such dispute in accordance with the Dispute Resolution Procedure.

For the purposes of this Clause 20.2.7, "Guarantor" means a party identified as such in a Parent Company Guarantee.

#### 20.2.8 **Liability Cap Excess**

At any time the provisions of Clause 5.6 (*Obligations in Respect of SLC Liability*) apply so as to reduce the amount for which the Parent Body Organisation would otherwise have been liable.

### 20.3 **Termination for Failure to Remedy**

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

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

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

20.3.1.3 [Not Used],

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

20.3.1.3.1 specifying that it is a formal warning notice;

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

- 20.3.1.3.3 stating that such breach may become a material breach if it recurs frequently and may result in a termination of this Agreement;
- 20.3.1.3.4 stating that if such anticipated PBO Default occurs it may result in a termination of this Agreement; and
- 20.3.1.3.5 specifying what steps, if any, the Authority requires the Parent Body Organisation to take to remedy the breach or anticipated PBO Default to include a specific deadline.

20.3.2 If, following service of a Performance Warning Notice, the breach specified or a substantially similar breach has continued beyond the specified date set out in the Performance Warning Notice pursuant to Clause 20.3.1.3.5 (*Termination for Failure to Remedy*) or has recurred one or more times within six (6) Months after the date of service, then the Authority may serve another notice on the Parent Body Organisation (the “**Final Performance Warning Notice**”):

- 20.3.2.1 specifying that it is the final warning notice;
- 20.3.2.2 stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice served within six (6) Months prior to the date of service of the Final Performance Warning Notice; and
- 20.3.2.3 stating that if such breach continues or recurs one or more times within three (3) Months after the date of service of the Final Performance Warning Notice, the same shall constitute a PBO Default with the result that this Agreement may be terminated with immediate effect.

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

#### 20.4 **Duty to Notify**

As soon as reasonably practicable after becoming aware of the same, the Parent Body Organisation shall notify the Authority of the occurrence of any event which may give

the Authority the right to terminate this Agreement under Clause 20.2 (*PBO Default*) including all significant information about the event.

## 20.5 Termination or Remedy for PBO Default

### 20.5.1 Authority Termination Notice

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

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

### 20.5.2 Irremediable Breach

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

### 20.5.3 Remediable Breach

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

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

20.5.3.1.2 to propose within thirty (30) Calendar Days of the date of the Authority's Termination Notice a programme to remedy the breach (the "**Remediation Programme**") such programme to be agreed in accordance with Clause 20.6 (*Remediation Programme*).

20.5.3.2 If:

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

20.5.3.2.2 the Parent Body Organisation fails to achieve any element of the Remediation Programme (including any milestones not being met by specified dates) or fails to remedy the breach within the date specified in the Remediation Programme, or the Remediation Programme is rejected by the Authority as not being reasonable pursuant to Clause 20.6.2 and the Dispute Resolution Procedure does not find against that rejection,

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

**20.6 Remediation Programme**

20.6.1 The Remediation Programme shall specify in detail how the Parent Body Organisation proposes to remedy its or the SLC's breach of this Agreement (as applicable), the steps required to remedy the breach (including milestones to be met by specific dates), the anticipated costs associated with the remediation and the latest date by which the Parent Body Organisation anticipates that the breach will be remedied.

20.6.2 Where the Parent Body Organisation proposes a Remediation Programme in accordance with Clause 20.5.3.1.2 (*Remediable Breach*), the Authority shall within thirty (30) Calendar Days from the date of receipt of the proposed Remediation Programme notify the Parent Body Organisation whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld).

20.6.3 Where the Authority notifies the Parent Body Organisation that it does not accept the Remediation Programme, the Authority and the Parent Body Organisation shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is

reasonable may be referred by either Party to be resolved in accordance with the Dispute Resolution Procedure.

## 20.7 Other PBO Defaults

Where a PBO Default:

20.7.1 of the type described at Clause 20.2.2 (*Insolvency*), 20.2.4 (*Change In Control*), 20.2.5 (*Share Transfer*), 20.2.7 (*Parent Company Guarantee*) or 20.2.8 (*Liability Cap Excess*) has occurred, the Authority shall be entitled to terminate this Agreement immediately by written notice to the Parent Body Organisation; or

20.7.2 of the type described at Clause 20.2.3 (*SLC Agreement*) this Agreement shall terminate at the same time as the SLC Agreement.

## 20.8 Termination for Convenience

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

## 20.9 Authority Default

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

20.9.1.1 [Not Used];

20.9.1.2 an Authority Default (as defined in the SLC Agreement);

20.9.1.3 non-payment by the Authority to the Parent Body Organisation of any sums not the subject of a bona fide dispute exceeding one million pounds sterling (£1,000,000) in aggregate for a period of sixty (60) Calendar Days beyond the due date for payment of such sums; or

20.9.1.4 a failure by the Authority to take out and maintain the Authority Insurances in accordance with the SLC Agreement..

## 20.10 Termination or Remedy for Authority Default



- 20.10.1 If an Authority Default has occurred and the Parent Body Organisation wishes to terminate this Agreement, the Parent Body Organisation shall be entitled to serve a termination notice (the “**PBO’s Termination Notice**”) on the Authority within thirty (30) Calendar Days of becoming aware of the Authority Default.
- 20.10.2 The PBO’s Termination Notice shall specify the type of Authority Default that has occurred entitling the Parent Body Organisation to terminate.
- 20.10.3 This Agreement will terminate on the day falling thirty (30) Working Days after the date on which the Authority received the PBO’s Termination Notice, unless the Authority rectifies the Authority Default within twenty-one (21) Calendar Days of receipt of the PBO’s Termination Notice.
- 20.10.4 Where the Parent Body Organisation has terminated this Agreement for Authority Default, the Authority shall provide reasonable assistance to the SLC and/or the Parent Body Organisation in its discussions with HSE regarding Licence Condition 36 and its discussions with the EA regarding any applicable RSA 93 Authorisation Schedule 1 Condition 6 with a view to enabling the SLC to replace the Nominated Staff as soon as is reasonably practicable.

**20.11 Termination for Long Term Force Majeure**

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

**20.12 Reasonable Costs on Termination**

In the event of:

- 20.12.1 Termination for Convenience pursuant to Clause 20.8 (*Termination for Convenience*);
  - 20.12.2 termination for Authority Default pursuant to Clause 20.9 (*Authority Default*); or
  - 20.12.3 termination under Clause 22 (*Retransfer of Shares in SLC under Energy Act*),
- the Authority shall pay the Parent Body Organisation:

- 20.12.3.1 such sum as is specified in Schedule 2 (*Costs on Termination*);

20.12.3.2 [Not used]

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

For the avoidance of doubt, this Clause 20.12 (*Reasonable Costs on Termination*) will apply, and the Parent Body Organisation is entitled to payment of the relevant sum specified in Schedule 2 (*Costs on Termination*), in the event that this Agreement terminates automatically under Clause 20.14 (*Termination of SLC Agreement*) following termination of the SLC Agreement pursuant to Clauses 33.2.1, 33.2.4 or Clause 33.1.5 of the SLC Agreement.

**20.13 Accrued Liabilities**

Termination of this Agreement pursuant to this Clause 20 (*Termination*) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination (including for the avoidance of doubt any Allowable Costs or Fee earned by the SLC properly owed by the Authority to the SLC).

**20.14 Termination of SLC Agreement**

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

**20.15 Return of Working Capital**

20.15.1 Subject to Clause 20.15.3 (*Return of Working Capital*), upon the termination or expiry of this Agreement, the Authority shall procure that the SLC pays:

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

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

to the Parent Body Organisation.

20.15.2 Subject to Clause 20.15.3 (*Return of Working Capital*), if in accordance with this Agreement, the Parent Body Organisation has guaranteed any Approved

Working Capital Facility provided by any third party, upon the termination or expiry of the Term the Authority will procure:

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

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

20.15.3 Nothing in this Clause 20.15 (*Return of Working Capital*) shall apply in relation to any amount drawn down from any Approved Working Capital Facility that is attributable to expenditure other than on Allowable Costs.

#### 20.16 Termination on Reaching Cumulative Liability Sum

20.16.1 For the purposes of this Clause 20.16 (*Termination on Reaching Cumulative Liability Sum*) the following words shall have the following meanings:

**"Cumulative Liability Sum"** means s.43

(Indexed).

**"Cumulative Incurred Liability"** means the Parent Body Organisation's and SLC's combined aggregate liability to the Authority arising under or in connection with this Agreement and/or the SLC Agreement, whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), or otherwise howsoever, plus the aggregate amount of Class A Disallowable Costs paid or incurred by the SLC, Indexed as a whole.

20.16.2 Subject to Clause 20.16.5 (*Termination on Reaching Cumulative Liability Sum*), if the Cumulative Incurred Liability meets or exceeds the Cumulative Liability Sum the Parent Body Organisation shall be entitled to request the Authority to terminate this Agreement by giving written notice to the Authority (a "**Cumulative Liability Termination Request**").

20.16.3 Within thirty (30) Calendar Days after receipt of a valid Cumulative Liability Termination Request the Authority shall notify the Parent Body Organisation in writing setting out the date on which the Agreement will terminate (the "**Termination Date**"). The Authority shall ensure that this date is not more than two (2) years after the date of service of the Cumulative Liability Termination Request.

20.16.4 This Agreement will terminate on the Termination Date and for the purposes of this Clause the period from and including the date of service of the Cumulative Liability Termination Request to and including the Termination Date shall be known as the "**CL Notice Period**".

20.16.5 The Parent Body Organisation shall not be entitled to issue a Cumulative Liability Termination Request unless it issues such notice within six (6) Months of the date on which it becomes (or ought reasonably to have become) aware that the Cumulative Liability Sum has been exceeded. For the purposes of the foregoing, the date on which the Cumulative Liability Sum is exceeded is the date when the total amount of:

20.16.5.1 [Not Used];

20.16.5.2 any payments that are due, owing or payable by the Parent Body Organisation and/or the SLC in respect of any Cumulative Incurred Liability,

exceeds the Cumulative Liability Sum.

20.16.6 If this Agreement is terminated in accordance with this Clause 20.16 (*Termination on Reaching Cumulative Liability Sum*) then:

20.16.6.1 the SLC will not incur any further Contractor's Liabilities under or in connection with the SLC Agreement throughout the CL Notice Period, save to the extent that a Contractor's Liability arises as a result of fraud of the SLC provided that, for the avoidance of doubt, any negative Shareline pursuant to the provisions of Schedule 6 (*Finance*) of the SLC Agreement shall not constitute a Contractor's Liability;

20.16.6.2 the Parent Body Organisation will have no further liability for Class A Disallowable Costs incurred by the SLC;

20.16.6.3 the Authority will be able to claim under the PBO Guarantee and/or Parent Company Guarantee as normal for any liabilities for which the SLC remains liable pursuant to the foregoing during the CL Notice Period; and

20.16.6.4 for the avoidance of doubt, no Party shall have any liability to any other Party by reason of such termination.

20.16.7 For the avoidance of doubt the Cumulative Liability Sum does not comprise a cap on the liability of the Parent Body Organisation under this Agreement and

shall not affect any other liability caps and exclusions described in this Agreement.

## 21 TRANSITION OUT

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

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

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

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

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

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

(the "**Competition**").

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

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

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

### **Transition In of an Incoming Parent**

21.3 Not later than a period of six (6) Months less one day before the Expiry Date or immediately following service of any notice of termination under this Agreement the Authority shall by written notice to the Parent Body Organisation propose a Transition in Plan setting out the Authority's proposals as to the scope of any assistance to be provided by the Parent Body Organisation in connection with the transition in of an Incoming Parent. Such proposals may include establishment of a transition board to oversee and direct transition. The Parties shall discuss and agree the terms of a Transition In Plan, and:

- 21.3.1 the Parties shall comply with the provisions of the agreed Transition In Plan and any reasonable instructions of a transition board established pursuant to such Transition In Plan; and
  - 21.3.2 the Authority shall pay the Parent Body Organisation's reasonable incremental costs incurred under the Transition In Plan (such costs to include a reasonable payment for time committed by personnel pursuant to the Transition In Plan (such payment to be based on payroll costs)) referable to assistance to the Authority in connection with the transition in of an Incoming Parent.
- 21.4 During the final twelve (12) months before the date on which this Agreement is (pursuant to Clause 2 (*Commencement and Duration*)) due to expire, or during any notice period applying to an earlier termination of this Agreement, the Parent Body Organisation shall co-operate fully as directed by the Authority with any transfer of responsibility from the Parent Body Organisation to an Incoming Parent or to the Authority or any such other arrangement as the Authority may reasonably require in respect of the Site (as the case may be), such transfer of responsibility or such other arrangements to take effect on expiry or earlier termination of this Agreement.
- 21.5 For the purposes of this Clause 21 (*Transition Out*) the meaning of the term "co-operate" shall include:
- 21.5.1 liaising with the Authority and/or the Incoming Parent, and providing reasonable assistance and advice concerning the transfer to the Authority or to the Incoming Parent; and
  - 21.5.2 providing to the Authority and/or to the Incoming Parent all and any information which is reasonably required for the efficient transfer of responsibility for performance of the Parent Body Organisation's obligations, but excluding any information which is commercially sensitive to the Contractor and/or the Parent Body Organisation (and for the purpose of this Clause 21.5.2 (*Transition of an Incoming Parent*) "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor and/or the Parent Body Organisation, give that competitor a competitive advantage over the Contractor and/or the Parent Body Organisation and thereby prejudice the business of the Contractor and/or the Parent Body Organisation, but shall not include any information referred to in Clause 31 (*Employees*) of the SLC Agreement).
- 21.6 The Parent Body Organisation shall use all reasonable endeavours to, pursuant to the agreed Transition In Plan and subject to the Authority paying the Parent Body Organisation's reasonable incremental costs under Clause 21.3.2, facilitate the smooth transition in of the Incoming Parent or the transfer of responsibility to the

Authority or any such other arrangement as the Authority may reasonably require (as the case may be), and the Parent Body Organisation shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to:

- 21.6.1 prejudice, frustrate or make more difficult such transfer; and/or
- 21.6.2 prejudice, frustrate or make more difficult the Authority's ability to conduct a fair, open and transparent Competition for the appointment of an Incoming Parent or for any other such arrangement required by the Authority, that is compliant with applicable Legislation.

### **Participation in the Competition**

21.7 The Parent Body Organisation shall not allow any Nominated Staff or personnel providing additional support from the Parent Body Organisation or an Affiliate pursuant to Schedule 7 (*Provision of Support to the SLC*) to participate in any Competition on behalf of the Parent Body Organisation unless such Nominated Staff or personnel providing additional support from the Parent Body Organisation or an Affiliate pursuant to Schedule 7 (*Provision of Support to the SLC*) have, subject to prior written approval of the Authority and the Regulators, been withdrawn at the start of the Competition (in accordance with Clause 31 (*Employees*) of the SLC Agreement) from employment at the Site. For the avoidance of doubt, the Parent Body Organisation shall not allow any Nominated Staff or personnel providing additional support from the Parent Body Organisation or an Affiliate pursuant to Schedule 7 (*Provision of Support to the SLC*) to participate in the competitive process on behalf of the Parent Body Organisation or an Affiliate.

21.8 [Not Used].

21.9 [Not Used]

### **Conduct in respect of the Competition**

21.10 During the Competition the Parent Body Organisation and the SLC shall:

- 21.10.1 provide equality and access to information to all potential bidders and not treat the Parent Body Organisation (or any consortium including its Affiliates) in a preferential way; and
- 21.10.2 procure that all such Nominated Staff shall, so far as they are reasonably able, provide equality and access to information to all potential bidders and not treat the Parent Body Organisation (or any consortium including its Affiliates) in a

preferential way, and comply with Paragraph 3.10 (*Duties of the Secondee*) of Part 3 of the Secondment Agreement.

21.11 Save as where otherwise required by applicable Legislation and Regulatory Requirements, during the twelve (12) Months prior to the planned commencement date for any alternative contractual arrangements proposed by the Authority pursuant to Clause 21.1 (*Transition Out*), the Parent Body Organisation shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld):

21.11.1 vary or purport or promise to vary or terminate a Secondment Agreement;

21.11.2 vary or purport or promise to vary the terms and conditions of employment of the Nominated Staff to the extent which would adversely affect the performance of the persons working at the Site or would materially increase the cost to the Contractor or the Authority of the relevant secondment arrangements;

21.11.3 subject to Clause 7 (*Provision of Staff to the SLC*) above, make any changes to the identity of any Key Personnel or to any of the Nominated Staff.

#### 21.12 **Final Dividend Reconciliation**

21.12.1 Following the termination or expiry of this Agreement, the provisions of Clauses 16.10.1B (*SLCA Contractor's Fee Account*) and 16.10.5 (*Payments to Parent*) of the SLC Agreement shall be applied to determine whether the SLC has distributed to the Parent Body Organisation all of the profits available for distribution (as defined in Section 830 Companies Act 2006) of the SLC earned by the SLC during the period between the Commencement Date and the date on which this Agreement expires or terminates (inclusive) or otherwise comprising Fee or other sums that, in accordance with Clause 16.10.1B (*SLCA Contractor's Fee Account*) of the SLC Agreement are to be received or paid into the SLCA Contractor's Fee Account or interest on any sums standing to the credit of the SLCA Contractor's Fee Account. The outcome of this process shall be the "**Final Reconciliation**".

21.12.2 To the extent that the Final Reconciliation shows that the SLC has not distributed to the Parent Body Organisation all of such profits available for distribution, then the Authority will procure, or (if there is any Incoming Parent) procure that any Incoming Parent shall be required to procure, that the SLC distributes any such undistributed profits to the Parent Body Organisation together with any interest accrued on the SLCA Contractor's Fee Account as a dividend declared in respect of the B Share payable to the Parent Body



Organisation as holder of the B Share. To the extent that the Final Reconciliation shows that the level of profits distributed to the Parent Body Organisation exceeds such profits available for distribution, the Parent Body Organisation shall be required to repay the excess to the Authority or the SLC (as the Authority may direct). Payments under this Clause 21.12.2 (*Final Dividend Reconciliation*) shall be made within five (5) Working Days of the Final Reconciliation being agreed or determined.

21.12.2A Without prejudice to Clause 21.12.2 above, subject to such amounts being available for distribution by the SLC the Authority will procure, or (if there is any Incoming Parent) procure that any Incoming Parent shall be required to procure, that within twenty (20) Working Days following receipt or payment of any sum into the SLCA Contractor's Fee Account, the SLC declares a dividend in respect of the B Share payable to the Parent Body Organisation as holder of the B Share of an amount equal to such sum together with any interest standing to the credit of the SLCA Contractor's Fee Account.

21.12.3 If following the Final Reconciliation, further liabilities of the SLC come to light which would have reduced the level of such profits available for distribution if they had been included within the Final Reconciliation, then subject to Clause 5.1.1.3 (*Parent Body Organisation Guarantees and Indemnities*), the Parent Body Organisation will be required to pay the Authority or the SLC (as the Authority may direct) the amount by which the profits available for distribution would have been reduced. Subject to Clause 5.1.1.3 (*Parent Body Organisation Guarantees and Indemnities*), this obligation shall continue, where it relates to Defective Performance (which, for the avoidance of doubt, is Defective Performance that occurred during the Term) for a period of six (6) years from the end of the Term or for an unlimited period where the liability arises as a result of:

21.12.3.1 fraud on the part of the SLC or the Parent Body Organisation;

21.12.3.2 wilful default on the part of the SLC or the Parent Body Organisation occurring after expiry of 12 months from the Commencement Date, or

21.12.3.3 wilful default on the part of the Parent Body Organisation, Nominated Staff or personnel providing additional support from the Parent Body Organisation or an Affiliate pursuant to Schedule 7 (*Provision of Support to the SLC*) occurring within 12 months from the Commencement Date.

21.12.4 Any payment to the Authority will need to be on the basis that the tax effect of the payment does not put the Authority and/or the SLC in any worse position than it would have been in if the excess dividends had never been paid.

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

21.12.6 The Authority shall not act or omit to act, and shall procure that the neither the SLC (whether acting under a successor contract entered into with the Authority or otherwise) nor any Incoming Parent shall act or omit to act, in any manner that may frustrate or prejudice payment of any amount to the Parent Body Organisation in accordance with this Clause 21.12 or reduce the quantum of any such payment. Without limitation to the foregoing, the Authority shall ensure that there is no change to the articles of association or other constitutional documents of the SLC that would have any such effect.

## **22 RETRANSFER OF SHARES IN SLC UNDER ENERGY ACT**

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

## **22A TRANSFER OF B SHARE TO PARENT BODY ORGANISATION**

22A.1 Within forty (40) Working Days of the final B Share Dividend in relation to the Incentive Fee and/or Year End Sum being paid by the Contractor to the B Shareholder and in any event prior to termination or expiry of this Agreement, the Authority shall procure the transfer of the B Share to the Parent Body Organisation for a consideration of one pound sterling (£1) with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than such rights of the Authority as are expressly set out in this Agreement, if any).

## **23 RETRANSFER OF SHARES IN SLC ON TERMINATION OR EXPIRY**

23.1 On the expiry or termination of this Agreement for whatever reason pursuant to Clause 20 (*Termination*) the Parent Body Organisation shall transfer the A Share to

the Authority (or the Authority's nominee or any person nominated by the Authority) in accordance with this Clause 23 (*Retransfer of Shares in SLC on Termination or Expiry*) for one pound sterling (£1).

23.2 Subject to Clause 23.4 (*Retransfer of Shares in SLC on Termination or Expiry*), on or before the Date of Termination or the Expiry Date (as applicable) the Parent Body Organisation shall execute and deliver to the Authority a share transfer form in favour of the Authority (or its nominee) and deliver to the Authority the share certificate for the A Share, or a letter fully indemnifying the Authority against the consequences of the Parent Body Organisation's failure to deliver such share certificate to the Authority, to be effective from the Date of Termination or the Expiry Date (as applicable).

23.3 On the Date of Termination or the Expiry Date (as applicable) the Parent Body Organisation and the SLC shall procure that:

23.3.1 the SLC holds a board meeting at which the transfer of the A Share is approved and the Agreed Directors resign; and

23.3.2 the SLC delivers to the Authority the statutory registers and minute books of the SLC (written up to the Date of Termination or the Expiry Date (as applicable)), the common seal (if any), certificate of incorporation and any certificates of incorporation on change of name.

23.4 Before the Date of Termination or the Expiry Date (as applicable) the Authority may in its sole discretion require or agree that the Parent Body Organisation transfers the A Share on a date immediately prior to the Date of Termination or the Expiry Date (as applicable).

23.5 Notwithstanding any other provision of this Agreement but subject to Clause 23.6 below, this Agreement does not require and the Authority undertakes that it shall not and it shall procure that any future Incoming Parent or other A Shareholder shall not require transfer by the Parent Body Organisation of the B Share, whether to the A Shareholder, the Authority (or its nominee) or otherwise, until such time as the Parent Body Organisation in its capacity as the B Shareholder following termination or expiry of this Agreement has received all dividends that are or may be due to be paid to it in accordance with this Agreement and/or the SLC Agreement. Furthermore, the Authority shall procure that until such time as the Parent Body Organisation as B Shareholder has received all such dividends, the B Shareholder shall receive dividends out of the profits of the SLC available for distribution in priority to any payment of dividends to the holders of any other class of share in the capital of the SLC.

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

## **Part 9: Disputes**

### **24 DISPUTE RESOLUTION**

#### **24.1 Requirement to Refer Disputes**

- 24.1.1 Save as otherwise expressly provided in this Agreement, any dispute or difference arising out of or in connection with this Agreement, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination shall, if it cannot be resolved between the Parties by agreement, be resolved in accordance with the Dispute Resolution Procedure.
- 24.1.2 No Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.
- 24.1.3 Nothing in this clause 24.1 (*Requirement to Refer Disputes*) shall prevent or restrict the right of any Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

## **Part 10: Contract Administration and Miscellaneous Provisions**

### **25 GENERAL**

#### **25.1 Parent Company Guarantee**

The Parent Body Organisation shall procure that a guarantee in the agreed form of that attached at Schedule 4 (*Parent Company Guarantee*), is provided by the Ultimate Parents with effect from the Commencement Date.

## 25.2 Assignment

25.2.1 The Parent Body Organisation shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

25.2.2 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

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

25.2.2.2 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Parent Body Organisation) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

## 25.3 Entire Agreement

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

## 25.4 Waiver

25.4.1 A failure or delay by any Party at any time to enforce any provision of this Agreement or to require performance by any other Party of any provision of this Agreement or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part thereof or the right of the relevant Party to enforce any provision in

accordance with its terms. Any waiver or release must be specifically granted in writing, expressed to be a waiver, and signed by the Party granting it and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties under this Agreement.

- 25.4.2 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Agreement shall apply even in the event of the fault, negligence, tort, strict liability, breach of contract, or otherwise, of the Party whose liability is waived, disclaimed, released, limited or apportioned by any such provision, or fixed by such exclusive remedy provisions, or who is indemnified or held harmless, and shall extend to the liability (if any) of that Party in respect of the fault, negligence, tort, strict liability, breach of contract or otherwise of such Party's directors, officers, employees and agents, save that such waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations shall not apply to the extent that relevant Party's conduct (limited, in the case of the SLC, to the conduct only of the Nominated Staff or any other person who is provided to the SLC in accordance with Clause 8 (*Provision of Support to the SLC*) of this Agreement) leading to such fault, negligence, tort, strict liability, breach of contract, or otherwise was fraudulent and/or constitutes wilful default (other than in the case of Continuing Nominated Staff).
- 25.4.3 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the Authority shall not bring any claim against any person (including the Nominated Staff or any other person who is provided to the SLC in accordance with Clause 8 (*Provision of Support to the SLC*) of this Agreement) other than the SLC or the Parent Body Organisation in respect of any losses, liabilities, costs, claims or expenses incurred or arising out of or in connection with this Agreement (together "**Losses**") where and to the extent that the Authority:
- 25.4.4 is entitled to seek recovery of such Losses from the SLC or Parent Body Organisation; or
- 25.4.5 would have been so entitled but for any waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, exclusions, indemnities, hold harmless obligations or other reliefs from liability set out or referred to in this Agreement or arising as a result of the acts or omissions of the Authority; or

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

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

25.5 To the extent permitted by law, any waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, exclusions and other reliefs from each Party's liability set out in this Agreement are provided for the benefit of that Party and each of that Party's directors, officers, employees and agents (which in the case of the SLC and Parent Body Organisation shall include the Nominated Staff or any other person who is provided to the SLC in accordance with Clause 8 (*Provision of Support to the SLC*) of this Agreement). For the avoidance of doubt any limit on the liability of a Party shall be treated as a limit on that Party's and its directors', officers', employees', agents' and contractors' liability when taken together in aggregate (and not per person).

#### 25.6 **Severability**

25.6.1 If any condition, clause or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

25.6.2 If the circumstances referred to in Clause 25.6 (*Severability*) arise the Parties shall try to substitute for any invalid or unenforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

#### 25.7 **Further assurance**

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

**25.8 Set off**

25.8.1 The Parent Body Organisation shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Parent Body Organisation or the SLC under this Agreement or the SLC Agreement which has fallen due and payable against any amount due to the Parent Body Organisation under this Agreement.

25.8.2 If the payment or deduction of any amount referred to in Clause 25.8.1 (*Set-Off*) above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

**25.9 Variation**

25.9.1 Any Change Proposal and Change shall be made in accordance with the provisions of Schedule 6 (*Contract Change Control Procedures*).

25.9.2 Subject to and without prejudice to the Authority's rights under Clause 25.9.1 (*Variation*) above, and except where expressly provided otherwise in this Agreement, this Agreement (or any document referred to in it) may only be varied with the written agreement of the Parties.

**25.10 Costs**

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

**26 REPRESENTATIVES AND DELEGATION OF AUTHORITY TO ACT**

26.1 Each of the Authority, the Parent Body Organisation and the SLC shall appoint the person whose name, address and telephone number is set out in Clause 27 (*Notices*) as their respective Representatives in connection with this Agreement.

26.2 Each of the Authority's Representative, the Parent Body Organisation's Representative and the SLC's Representative shall have full authority to act on behalf of the relevant Party for all purposes of this Agreement. Unless notified in writing before any act or instruction is undertaken in respect of this Agreement, each Party shall be entitled to treat such act of the other Party's Representative which is authorised by the Agreement as being expressly authorised by the Authority, the Parent Body Organisation or the SLC and the other Party's Representative shall not be required to determine whether authority has in fact been given.



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

#### **Change in Representative**

- 26.4 Each Party may propose a change in the identity of its Representative by giving the other Party written notification of such change and the Representative's details in Clause 27.3 (*Notices*) shall be updated accordingly.
- 26.5 During any period when a Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, such Representative may, with the other Party's Representative's approval, delegate his functions to another suitable and appropriate person (the "**Delegated Representative**") by giving the other Party's Representative written notice of the identity of the Delegated Representative and the extent of the Delegated Representative's authority to act under this Agreement.

#### **Notices to Representatives**

- 26.6 Subject to Clause 27 (*Notices*), any Notice, information, instructions or public communication given to:
- 26.6.1 the Parent Body Organisation's Representative shall be given in writing and shall be deemed to have been given to the Parent Body Organisation; and
- 26.6.2 the SLC's Representative shall be given in writing and shall be deemed to have been given to the SLC; and
- 26.6.3 Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.
- 26.7 The Authority shall not be responsible for and the Parent Body Organisation nor the SLC shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Parent Body Organisation or SLC act on or fail to act on any Notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person is the Authority's Representative or Delegated Representative.

### **27 NOTICES**

- 27.1 A notice, approval, consent, electronic mail (in the case of Clause 27 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must

be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission marked clearly with the words "Parent Body Agreement Communication" to the relevant Party's Representative at the address or facsimile number specified in Clause 27.3 (*Notices*) below or, for the purposes of Clause 27.3 (*Notices*) below only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

27.2 All Notices must be marked for the attention of the relevant Party's Representative as contained in Clause 27.3 (*Notices*) below.

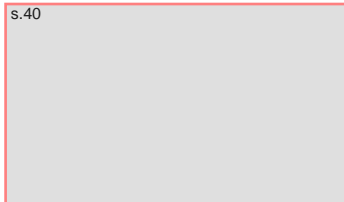
27.3 The relevant details of each Party at the date of this Agreement are:

**Authority's Representative**

Addressee: Head of Programme, DSRL

Address: Nuclear Decommissioning Authority, Freswick House, Forss Business & Technology Park, Thurso, Caithness KW14 7UZ

Telephone:



Facsimile:

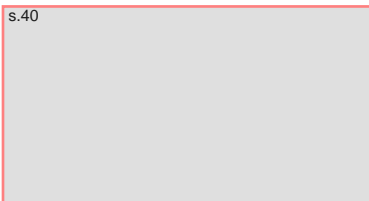
Email:

**Parent Body Organisation**

Addressee:  Programme Director

Address: Babcock Dounreay Partnership Limited, Fleswick Court, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HZ

Telephone:



Facsimile:

Email:

**SLC**

Addressee: Managing Director

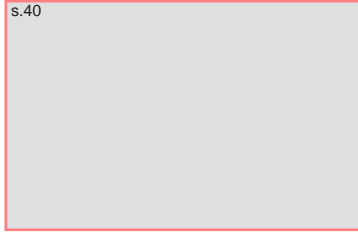
Address: Dounreay Site Restoration Limited,

Building  Dounreay

Thurso, Caithness

KW14 7TZ

Telephone:



Facsimile:

Email:

- 27.4 Any change to the address, telephone number or facsimile number of the Party Representative must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with Clause 26 (*Representatives and Delegation of Authority to Act*). The Parties' respective Representatives' addresses, telephone numbers and facsimile numbers must be within the United Kingdom.
- 27.5 If an electronic mail address has been provided pursuant to Clause 27.1 (*Notices*), the following Notices may be sent by electronic mail:
- 27.5.1 electronic transmittal of a scanned image of an original executed Notice;
  - 27.5.2 day-to-day communication in connection with this Agreement and the documents referred to in it; and
  - 27.5.3 any Authority approval/consent, provided that the Authority's Representative has signed the approval/consent and a scanned copy of the signed approval/consent is attached to the electronic mail.
- 27.6 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 27.7 (*Notices*) below.
- 27.7 Subject to Clause 27.8 (*Notices*), a Notice is deemed to be received:
- 27.7.1 where delivered by hand, upon delivery at the address of the addressee;
  - 27.7.2 where delivered by posted letter, on the third Calendar Day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;
  - 27.7.3 where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

27.7.4 where sent by electronic mail (where applicable) and where an electronic receipt has been received, 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 27.3 (*Notices*) above.

27.8 A Notice received or deemed to be received in accordance with Clause 27.7 (*Notices*) above on a Calendar Day which is not a Working Day or after 5p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.

27.9 The Parent Body Organisation and the SLC shall ensure that all Notices sent from the Parent Body Organisation or the SLC to the Authority in relation to this Agreement shall comply with the Authority's Protective Marking Policy as communicated by the Authority to the Parent Body Organisation and the SLC from time to time.

## 28 **COUNTERPARTS**

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

## 29 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as expressly provided in this Clause 29, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement. Clause 25.4.3 (*Waiver*) shall be enforceable by any person referred to in that Clause.

## 30 **GOVERNING LAW AND JURISDICTION**

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

## 31 **CONTINUING OBLIGATIONS**

31.1.1 Save as otherwise expressly provided in this Agreement:

31.1.1.1 termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

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

- 31.1.1.2.1 Clause 1 (*Definitions and Interpretation*);
- 31.1.1.2.2 Clause 4 (*Governance*);
- 31.1.1.2.3 Clause 5 (*Parent Body Organisation Guarantees and Indemnities*);
- 31.1.1.2.4 Clause 13 (*Claims Handling*);
- 31.1.1.2.5 Clause 14 (*Confidentiality*);
- 31.1.1.2.6 Clause 15 (*Freedom of Information*);
- 31.1.1.2.7 Clause 16 (*Information Technology*);
- 31.1.1.2.8 Clause 17 (*Intellectual Property*);
- 31.1.1.2.9 Clause 18 (*TUPE*);
- 31.1.1.2.10 Clause 21 (*Transition Out*);
- 31.1.1.2.11 Clause 22 (*Retransfer of Shares in SLC under Energy Act*);
- 31.1.1.2.12 Clause 23 (*Retransfer of Shares in SLC on Termination or Expiry*);
- 31.1.1.2.13 Clause 24 (*Dispute Resolution Procedure*) but only insofar as applies to Disputes referred to the Dispute Resolution Procedure prior to termination or the Expiry Date;
- 31.1.1.2.14 Clause 25.3 (*Entire Agreement*);
- 31.1.1.2.15 Clause 25.4 (*Waiver*);
- 31.1.1.2.16 Clause 25.6 (*Severability*);
- 31.1.1.2.17 Clause 26 (*Representatives and Delegation of Authority to Act*);
- 31.1.1.2.18 Clause 29 (*Contracts (Rights of Third Parties) Act 1999*);

31.1.1.2.19 Clause 30 (*Governing Law and Jurisdiction*);

31.1.1.2.20 this Clause 31 (*Continuing Obligations*)

31.1.1.2.21 Clause 32 (*No Agency*);

31.1.1.2.22 Clause 33 (*Capacity of the Authority*); or,

31.1.1.3 any Schedule to this Agreement that is necessary to give full effect to any of the above; or

31.1.1.4 any other provisions of this Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

## 32 **NO AGENCY**

32.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Parent Body Organisation.

32.2 Save as expressly provided otherwise in this Agreement, the Parent Body Organisation shall not be, or be deemed to be, an agent of the Authority and the Parent Body Organisation shall not hold itself out as having authority or power to bind the Authority in any way.

32.3 Neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party

## 33 **CAPACITY OF THE AUTHORITY**

33.1 Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Parent Body Organisation. The Authority represents and warrants and undertakes that it has the legal right and the requisite power and authority to enter into and perform its obligations under this Agreement and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms.

29 March 2012

**IN WITNESS** of which the Parties have executed this Deed on the date first mentioned above.

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

**DECOMMISSIONING AUTHORITY**

was affixed in the presence of: .....

.....

**SIGNED** as a deed by the said **BABCOCK  
DOUNREAY PARTNERSHIP LIMITED**  
acting by a director or duly authorised  
attorney in the presence of:-

Witness .....

Address .....

.....

Occupation .....

29 March 2012

**SIGNED** as a deed by the said  
**DOUNREAY SITE RESTORATION**  
**LIMITED** acting by a director or duly  
authorised attorney in the presence of:-

Witness .....

Address .....

.....

Occupation .....



**Schedule 1**

[Not Used ]

**Schedule 2**

Costs on Termination

- 1 The amount payable by the Authority under Clause 20.12 (*Reasonable Costs on Termination*) shall be the amount specified below (Indexed) in respect of the period in which the Termination for Convenience, termination under Clause 22 (*Retransfer of Shares in SLC under Energy Act*) or (as the case may be) termination for Authority Default occurs:

<b>Contract Year in which Termination Takes Place</b>	<b>Amount Payable</b>
Contract Year 1	s.43
Contract Year 2	
Contract Year 3	
Contract Year 4	
Any time after Contract Year 4	

**Schedule 3**

Consortium Arrangements

**Schedule 4**

**Parent Company Guarantee**

Date: 2012

**Name of Guarantor(s) (1)**

**The Nuclear Decommissioning Authority (2)**

Parent Company Guarantee & Indemnity  
relating to the Parent Body Agreement for  
Dounreay Site Restoration Limited

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29 March 2012

25	Confidentiality	●
26	Variation	●
27	Further Assurance	●
28	Counterparts	●
29	Contracts (Rights of Third Parties) Act	●
30	Notices	●
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**THIS GUARANTEE AND INDEMNITY** is made as a deed on

**BETWEEN**

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

**RECITALS:**

- (A) The Authority has entered an agreement dated with the same date as this Guarantee described as a Parent Body Agreement (the "**PBA**") with Dounreay Site Restoration Limited and Babcock Dounreay Partnership Limited (a company incorporated in England and Wales with registered number 07868218) (the "**Parent Body Organisation**") pursuant to which inter alia the Parent Body Organisation gives certain guarantees and indemnities in favour of the Authority including in respect of the SLC's financial liabilities and, in certain circumstances, Nominated Staff (as defined in the PBA).
- (B) The Guarantor (being a parent company of the Parent Body Organisation) has agreed to guarantee the due and punctual payment and discharge of sums and perform all obligations and discharge all liabilities due from the Parent Body Organisation under the PBA subject to and in accordance with this Parent Company Guarantee.

**NOW THIS DEED WITNESSES** as follows:

**1 DEFINITIONS, CONSTRUCTION AND INTERPRETATION**

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

- 1.2.2 **"Guarantor's Representative"** means [ ]<sup>1</sup>;
- 1.2.3 **"Index"** means the index published monthly by the Office of National Statistics in Table CPI under the title "Consumer Prices Index (all items)", or failing such publication, or in the event of a fundamental change to the nature of the Index, such other index or adjustments to the Index as the parties to this Parent Company Guarantee may, each acting reasonably, agree from time to time (in each case with the intention of putting the parties to this Parent Company Guarantee in no better and no worse a position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made);
- 1.2.4 **"Parent Company"** means any counterparty to any Parent Company Guarantee with the Authority;
- 1.2.5 **"Parent Company Guarantee"** means any agreement under which any person agrees to guarantee to the Authority certain of the obligations of the Parent Body Organisation under the PBA and includes without limitation this Guarantee and any similar guarantees entered into by Affiliates of the Parent Body Organisation with the Authority;
- 1.2.6 **"SLC"** means Dounreay Site Restoration Limited (a company incorporated under the laws of Scotland with registered number SC307493);
- 1.2.7 any legislative provision shall be deemed to include any subordinate legislation made under the relevant statutory provision and is a reference to that legislative provision as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.2.8 any gender includes all genders;
- 1.2.9 the singular includes the plural (and vice versa);
- 1.2.10 persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
- 1.2.11 a Clause shall be a reference to a clause of this Guarantee;
- 1.2.12 "includes" or "including" shall mean "includes without limitation" or "including without limitation";

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<sup>1</sup> To be identified post ITSFT response.



- 1.2.13 “**otherwise**” and words following “**other**” shall not be limited by any foregoing words where a wider construction is possible;
  - 1.2.14 this Guarantee includes this Guarantee as amended or supplemented in accordance with its terms; and
  - 1.2.15 any agreement or document is to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time in accordance with the terms of such agreement or document.
- 1.3 The list of contents and clause headings in this Guarantee are included for convenience only and do not affect interpretation of this Guarantee.
  - 1.4 The parties to this Guarantee intend it to take effect as a deed.

## 2 **GUARANTEE AND INDEMNITY**

2.1 Subject to Clause 11 (*Limit of Liability*), the Guarantor irrevocably and unconditionally:

2.1.1 guarantees to the Authority, as a continuing guarantee the due and punctual payment and discharge by the Parent Body Organisation of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due, owing or payable to the Authority under the PBA in accordance with its terms or by reason of any breach thereof on the part of the Parent Body Organisation (including legal fees, taxes and any other costs, on a full indemnity basis, properly incurred by the Authority in connection with the Authority validly and justifiably seeking to enforce any of the above under the PBA to the extent that the Authority is entitled to recover such amounts), (the “**Guaranteed Obligations**”), and the Guarantor undertakes with the Authority that;

2.1.1.1 if and whenever the Parent Body Organisation fails to pay any amount (the “**Recoverable Amount**”) when due under the PBA; and

2.1.1.2 such Recoverable Amount has been outstanding and not paid for two (2) Working Days following the date of the demand by the Authority under the PBA,

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

2.1.2 agrees with the Authority, as a separate, independent, primary and additional obligation (and without prejudice to Clause 2.1.1 (*Guarantee and Indemnity*))

above and Clause 16 (*Indemnity*)), to indemnify and keep indemnified the Authority on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising:

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

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

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

2.1A The Parties acknowledge and agree that the obligations of the Parent Body Organisation to pay the Guaranteed Obligations under the PBA are conditional upon the occurrence of the Commencement Date (as defined in the PBA) and that this Guarantee shall not take effect until such date.

### 3 **PRINCIPAL OBLIGOR**

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

### 4 **WAIVER OF DEFENCES**

4.1 This Guarantee shall be binding upon the Guarantor and its successors in title and shall inure for the benefit of the Authority and its successors in title, assignees and transferees, as permitted in accordance with the terms of this Guarantee.

4.2 This Guarantee shall remain binding on the Guarantor notwithstanding any change in the constitution of the Authority, its absorption in, or amalgamation with, or the acquisition of all or part of their or its undertaking or assets by, any other person, body or organisation, or any reconstruction or reorganisation of any kind, to the intent that

this Guarantee shall remain valid and effective in all respects in favour of any permitted assignee, transferee or other successor in title of the Authority in accordance with the terms of this Guarantee, in the same manner as if such permitted assignee, transferee or other successor in title had been named in this Guarantee instead of, or in addition to, the Authority.

4.3 Subject to Clause 11 (*Limit of Liability*), the obligations of the Guarantor under this Guarantee will not be reduced, discharged, impaired or otherwise affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 4, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or the Authority) including:

- 4.3.1 any termination, alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to the PBA or of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to the PBA or the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of the PBA or the SLC Agreement) or novation of the PBA (in whole or in part);
- 4.3.2 the granting by the Authority of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with, the Parent Body Organisation or any other person (including the SLC) other than the Guarantor (whether expressly or by conduct);
- 4.3.3 any legal limitation on the capacity of, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the Parent Body Organisation, the Authority or any other person;
- 4.3.4 the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations;
- 4.3.5 the enforcement, delay or failure in enforcement, release or waiver of any such bond, security or guarantee referred to in Clause 4.3.4 (*Waiver of Defences*) above or any amendment, addition, omission or extension to or variation thereto;
- 4.3.6 any undischarged claim or attempted enforcement of payment from the Parent Body Organisation or the SLC or any other person;
- 4.3.7 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor;

- 4.3.8 any delay or forbearance by the Authority in exercising its rights or remedies under this Guarantee, or the enforcement or absence of enforcement of this Guarantee;
- 4.3.9 the invalidity or unenforceability of any Guaranteed Obligation(s) for any reason, or any defect in any provision of the PBA or the SLC Agreement or any other security given in relation to the Guaranteed Obligations;
- 4.3.10 save for any express written exoneration, discharge, reduction or extinguishment by the Authority of the Guarantor's liability under this Guarantee, anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Guarantor under this Guarantee; and
- 4.3.11 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with creditors of the Parent Body Organisation or any other person or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the Parent Body Organisation.

## 5 REPRESENTATIONS AND WARRANTIES

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

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

in circumstances where there is any material impact on the validity of, security provided by or other obligations of the Guarantor under this Guarantee;

5.5 to the best knowledge and belief of the Guarantor there is no litigation, arbitration or administrative proceedings, in each case current or pending, of or before any court, arbitral body or agency of any country threatened against the Guarantor that, if adversely determined, will detract materially from the security provided by this Guarantee;

5.6 the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee; and

5.7 without prejudice to the generality of Clause 5.2 (*Representations and Warranties*) above, its:

5.7.1 irrevocable submission under this Guarantee to the exclusive jurisdiction of the courts of England and Wales;

5.7.2 agreement that this Guarantee is governed by English law; and

5.7.3 agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England and Wales will be recognised and subject to any general principles of law, be enforceable by the courts of its jurisdiction of incorporation.

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

## 6 NOTIFICATION OF FALL IN CREDIT RATING

The Guarantor shall promptly notify the Authority if at any time there is a material deterioration in its corporate financial stability (by reference to similar evidence to that produced by the Parent Body Organisation in its response to the pre-qualification questionnaire relating to the competition referred to in the Recitals in the PBA).

## 7 CONTINUING SECURITY

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

## 8 DEFERRAL OF GUARANTOR'S RIGHTS

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

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

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

## 9 REINSTATEMENT

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

## 10 ENFORCEMENT

Subject to Clause 17.1 (*Prior Demands Against Parent Body Organisation and Contractor*) of this Guarantee, this Guarantee may be enforced without taking any proceedings against or making demand upon or enforcing or exhausting any right or remedy against the Parent Body Organisation or the SLC or any other person, or taking any action to enforce any other security, bond or guarantee held by the Authority or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Parent Body Organisation or any person. This Guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security to be held by the Authority. Subject to Clause 11 (*Limit of Liability*), the Authority's rights hereunder are in addition to and not exclusive of those provided by law (in accordance with Clause 23 (*Rights Cumulative with those at Law*), in the PBA or in any other document, instrument or agreement executed in connection with the PBA.

## 11 LIMIT OF LIABILITY

- 11.1 Subject to Clause 11.2 and Clause 11.5 (*Limit of Liability*) below, but regardless of anything to the contrary in the rest of this Guarantee, the liability of the Guarantor arising under or in connection with this Guarantee and whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise howsoever will when taken together with the liability of each other Parent Company under each of the other Parent Company Guarantees be limited to s.43 in aggregate (and not per Parent Company Guarantee or per claim arising).
- 11.2 The aggregate sum of s.43 referred to in Clause 11.1 (*Limit of Liability*) above shall be increased at the end of each Contract Year by the percentage change in the Index between 1 April at the start of that Contract Year and 31 March at the end of that Contract Year. For these purposes the Index existing on any date shall be the Index figure last published before the relevant date.
- 11.3 Subject to Clause 8.1.3 (*Deferral of Guarantor's Rights*), in respect of its obligations under Clauses 2 (*Guarantee and Indemnity*), 3 (*Principal Obligor*) and 16 (*Indemnity*), the Guarantor shall be entitled to the benefit of any defence (at common law, equity, contract or statute), limitation period, set-off, protection, exclusion or limitation of liability that the Parent Body Organisation would have been entitled to raise against the Authority in respect of the obligation or liability that is guaranteed under Clause 2 (*Guarantee and Indemnity*) or in respect of the original obligation or liability of the Parent Body Organisation in respect of which the Guarantor agrees to become primary obligor under Clause 3 (*Principal Obligor*).



11.4 Subject to Clause 11.5 (*Limit of Liability*) below, the Guarantor shall not be liable to the Authority for:

11.4.1 any indirect special or consequential loss or damage; or

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

arising out of or in connection with this Guarantee.

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

## 12 **DISCHARGE**

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

## 13 **RETENTION AND EXPIRY OF THIS GUARANTEE**

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

## 14 **WITHHOLDINGS AND DEDUCTIONS**

Subject to Clause 11 (*Limit of Liability*) as above, all payments to be made by the Guarantor under this Guarantee shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Authority under this Guarantee or, if any such withholding or deduction is made in respect of any recovery under this Guarantee, the Guarantor shall pay such additional amount as shall

ensure that the net amount received by the Authority shall equal the full amount due to it under the provisions of this Guarantee (had no such withholding or deduction been made).

**15 INTEREST**

15.1 The Guarantor hereby agrees to pay to the Authority, in respect of any amount requested of the Guarantor and due and payable by it in accordance with this Guarantee, interest on such amount at a rate of three per cent (3%) above the base rate of Lloyds TSB Bank plc, provided that the Guarantor's obligation to pay interest (whether as part of the Guaranteed Obligations or otherwise) shall not exceed an amount calculated at such rate by reason of inclusion of interest provisions within both the Parent Body Agreement and this Guarantee.

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

**16 INDEMNITY**

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

**17 PRIOR DEMANDS AGAINST PARENT BODY ORGANISATION AND CONTRACTOR**

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

settlement of the sum within ten (10) Working Days and the Parent Body Organisation must then also fail to pay before the Authority can claim under this Guarantee.

**18 ASSIGNMENT/NOVATION**

18.1 The Authority may at any time assign, transfer or novate without the consent of the Guarantor, the benefit of and/or its rights and/or obligations under this Guarantee (whether or not accrued), to any person to whom the benefit of the PBA is assigned, transferred or, as applicable, to whom the PBA is novated in accordance with and subject to the terms thereof and the Guarantor shall at the Authority's cost execute such documents and do such other things as the Authority may reasonably require in order to facilitate and perfect such assignment, transfer or novation.

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

18.3 Except as otherwise described in this Clause 18 (*Assignment/Novation*), neither party may transfer any of its rights and obligations under this Guarantee without the prior written consent of the other party.

**19 [Not Used]**

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**20 SEVERANCE**

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

**21 NO WAIVER**

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

**22 ENTIRE AGREEMENT**

Each party confirms that this Guarantee and any other documents referred to in this Guarantee 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.

## 23 **RIGHTS CUMULATIVE WITH THOSE AT LAW**

### 23.1 Rights Cumulative

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

### 23.2 Equitable Remedies

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

## 24 **LANGUAGE**

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

## 25 **CURRENCY AND EXCHANGE RATE**

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

## 26 **CONFIDENTIALITY**

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

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

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

## 27 **VARIATION**

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

**28 FURTHER ASSURANCE**

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

**29 COUNTERPARTS**

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

**30 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

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

**31 NOTICES**

31.1 Any notice to be given under this Guarantee shall be in writing and if issued by:

31.1.1 the Authority, shall be signed by the Authority's Representative;

31.1.2 the Guarantor, shall be signed by the Guarantor's Representative; and

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

If to the Authority to:

Addressee: Head of Programme, DSRL

Address: Nuclear Decommissioning Authority, Freswick House, Forss Business & Technology Park, Thurso, Caithness

Facsimile:

s.40

Telephone:

If to the Guarantor to:

Addressee: [TBA]

Address: [TBA]

Facsimile: [TBA]

Telephone: [TBA]

31.2 Any notice given pursuant to this Guarantee will be deemed to have been served as follows:

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

31.2.2 if sent by recorded or special delivery post, on the third Working Day after being delivered into the custody of the postal authorities or if posted from a place outside the United Kingdom, on the seventh (7<sup>th</sup>) Working Day after being delivered into the custody of the postal authorities.

**32 GOVERNING LAW AND JURISDICTION**

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

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

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

**IN WITNESS** of which the parties have executed this Deed on the date first mentioned above.

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

**DECOMMISSIONING AUTHORITY**

was affixed in the presence of: .....

.....

**SIGNED** as a deed by the said ● acting by a

director or duly authorised attorney

in the presence of:-

Witness .....

Address .....

Occupation .....

## **Schedule 5**

### **PBO Minimum Performance Standards**

This Schedule defines the minimum performance standards that the Parent Body Organisation is required to maintain during the Term in relation to the elements listed below (being the "***PBO Minimum Performance Standards***").

#### **1 PBO Minimum Performance Standards**

Subject to Paragraph 2 below, it shall be a PBO Default where at any time during the Term: the PBO materially fails to comply with the socio-economic requirements described at Clause 9 (*Socio-Economic Commitments*) and Schedule 9 (*Socio-Economic Commitments*) of this Agreement.

#### **2 Termination and Remediation**

For the avoidance of doubt;

- 2.1 where a failure to comply with the PBO Minimum Performance Standards is a direct result of a Force Majeure Event or an Authority Default, such failure shall not constitute a PBO Default;
- 2.2 the Parent Body Organisation shall be entitled to remedy a failure to comply with the PBO Minimum Performance Standards in accordance with Clause 20.5.3 (*Remediable Breach*); and
- 2.3 the Authority shall not be entitled to terminate the Parent Body Agreement for the Parent Body Organisation's failure to comply with the PBO Minimum Performance Standards unless such failure has not been remedied in accordance with Clause 20.5.3 (*Remediable Breach*).



## Schedule 6

### Contract Change Control Procedures

#### 1 Principles

- 1.1 The Parties shall conduct discussions relating to any proposed changes to this Agreement in good faith.
- 1.2 Until such time as a formal variation to this Agreement (referred to in this Schedule 6 as a “**Contract Change Note**” or “**CCN**”) has been signed by the Parties in accordance with Paragraph 2.5 (*Procedure*) below, the Parties shall continue to fulfil all of their obligations under this Agreement.
- 1.3 Each Party shall bear its own costs in connection with any work undertaken in relation to any proposed change to this Agreement.
- 1.4 Any discussions, negotiations or other communications which may take place between the Parties in connection with any proposed change to this Agreement, including but not limited to the submission of any written communications, prior to the signing by the Parties of the relevant CCN, shall be without prejudice to the rights of any Party.

#### 2 Procedure

- 2.1 The Authority, the Parent Body Organisation and/or the SLC may request any amendment to this Agreement pursuant to the provisions of this Schedule. In such an event the Parent Body Organisation and/or the SLC shall submit to the Authority, or the Authority shall submit to the Parent Body Organisation a brief written paper (the “**Proposed Change Paper**”) addressing, as a minimum, the following points:
  - 2.1.1 the title of the proposed change;
  - 2.1.2 the originator and date of the proposal for the proposed change;
  - 2.1.3 the reason for the proposed change;
  - 2.1.4 full details of the proposed change;
  - 2.1.5 the effect, if any, of the proposed change on the SLC and the SLC Agreement, including details of any consequential Category 0 Change, Category I Change, Category II Change or Category III Change (as such terms are defined in the SLC Agreement); and

- 2.1.6 details of the likely impact, if any, of the proposed change on other aspects of this Agreement.
- 2.2 Within fourteen (14) Calendar Days of the submission of a Proposed Change Paper (or such other period as may be agreed between the Parties, each acting reasonably and having regard to any relevant timescales contained within the Change Control Procedure where any Change to the SLC Agreement is required as a result of any proposed change to this Agreement) the receiving Party shall respond to the Proposed Change Paper in writing and, if appropriate, the Parties (and/or representatives of the Parties) shall meet to discuss the Proposed Change Paper, having regard to the provisions of Paragraph 2.3.2 (*Procedure*) below (provided that such discussion shall, as far as possible, be undertaken at the same time as (and the Parties shall, in such discussion, have due regard to) any discussion and / or consideration of any Change to the SLC Agreement that is required as a result of any proposed change to this Agreement).
- 2.3 Discussion between the Parties following the submission of a Proposed Change Paper shall result in either:
- 2.3.1 agreement between the Parties on the changes to be made to this Agreement (including agreement on the date upon which the changes are to take effect), such agreement to be expressed in the form of proposed revisions to the text (and/or diagrams, designs etc. as necessary) of the relevant parts of this Agreement; or
- 2.3.2 no further action being taken on that Proposed Change Paper.
- 2.4 A copy of any proposed revisions to this Agreement agreed between the Parties in accordance with Paragraph 2.3.1 (*Procedure*) above, accompanied by a completed pro forma (as reproduced at Paragraph 3 (*CCN Pro-forma*) below), shall constitute a CCN. Each CCN shall be uniquely identified by a sequential number.
- 2.5 A CCN signed by all the Parties shall constitute an amendment to this Agreement pursuant to Clause 25.9 (*Variation*).
- 2.6 A CCN shall constitute an amendment to this Agreement only upon signature by the NDA Dounreay Site Restoration Site Director (or such person's duly authorised signatory) (on behalf of the Authority) and by the Managing Director of the Parent Body Organisation (or such person's duly authorised signatory) (on behalf of the Parent Body Organisation) and by the Managing Director of the SLC (or such person's duly authorised signatory) (on behalf of the SLC) and shall not be binding until each signatory specified in this Paragraph has so authorised the relevant CCN.

**3 CCN Pro-forma**

The format of the pro forma referred to in Paragraph 2.4 (*Procedure*) above shall be as follows:

**Contract Change Note**

**Sequential Number:** .....

**Title:** .....

**Number of pages attached:** .....

WHEREAS the Authority, the SLC and the Parent Body Organisation:

A entered into an agreement (the “**Original Agreement**”) dated ..... 20●; and

B wish to amend the Original Agreement

IT IS AGREED as follows

1 With effect from [date], the Original Agreement (as the same may from time to time have been amended prior to the date of this Contract Change Note) shall be amended as set out below:

*[Drafting Note: Full details of any amendments to the Original Agreement should be inserted here.]*

2 Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect.

Signed for and on behalf of the Nuclear Decommissioning Authority (the Authority)

By .....

Name .....

Title .....

Date .....

Signed for and on behalf of Babcock Dounreay Partnership Limited (the Parent Body Organisation)

By .....

Name .....

Title .....

29 March 2012

Date .....

Signed for and on behalf of Dounreay Site Restoration Limited (the SLC)

By .....

Name .....

Title .....

Date .....

## **Schedule 7**

### **Provision of Support to the SLC**

- 1 Provision of additional support
  - 1.1 The SLC may request additional support (in the form of personnel resource) from the Parent Body Organisation or an Affiliate where:
    - 1.1.1 such support is reasonably required; or
    - 1.1.2 the Parties, acting reasonably, agree that the provision of additional support is desirable,

to carry out an activity that is set out in the LTP Performance Plan or is otherwise reasonably considered by the SLC to be required to enable the SLC to perform in accordance with the requirements of the Client Specification.
  - 1.2 Where, pursuant to Paragraph 1.1 (*Provision of Additional Support*), the SLC requests additional support from the Parent Body Organisation or an Affiliate and the Parent Body Organisation agrees to provide or procure the additional support requested, the Parent Body Organisation shall provide or procure the provision of suitably qualified and experienced personnel and shall procure that those personnel hold all relevant security clearances.
  - 1.3 Provision of support to the SLC provided in accordance with this Schedule shall not be used as a means of satisfying the SLC's long term need for personnel.
  - 1.4 Where the form of personnel resource which it is anticipated may be satisfied by this Schedule is available within the supply chain then such resource should be subject to an appropriate competitive procurement.
- 2 **Relationship between the SLC and additional support personnel**
  - 2.1 Nothing in this Agreement is intended or should be deemed to create a worker or employment relationship between the SLC and any member of additional support personnel provided pursuant to this Schedule 7 (*Provision of Support in the SLC*).
- 3 **Costs arising from the provision of additional support**
  - 3.1 Costs arising from the provision of additional support by the Parent Body Organisation or an Affiliate to the SLC are included within the Target Cost for delivery of the Client Specification and accordingly (but without prejudice to the provisions of Schedule 2 (Part 2) (*Change Control Procedure*) of the SLC Agreement) there shall be no

adjustment of the Target Cost if the levels of additional support provided exceed or fall short of the levels anticipated.

3.2 For the purposes of Paragraph 4.1(ss) (*Disallowable Costs*) in Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement the following principles shall apply:

3.2.1 The SLC shall pay the Parent Body Organisation the amounts set out in the table below (*Cost per Additional Support Day (£) for assignments of up to 6 months*) (Indexed in accordance with Paragraph 3.2.1B below) for each Additional Support Day (for UK assignees and US Ex-pat assignees) for durations of up to six (6) months. The rate shall be reduced on a pro rata basis where less than six (6) hours' work has been undertaken within a 24-hour period.

3.2.1A For the avoidance of doubt, UK and US Ex-pat assignees who are assigned to support the SLC for up to six (6) months in accordance with paragraph 3.2.1 above, are eligible to receive the allowance described in Paragraph 3.2.3 (*Costs arising from the provision of additional support*) below.

<b>Cost per Additional Support Day (£) for assignments of up to 6 months</b>				
Grade	UK assignee	US Ex-pat assignee		
		Grade	No work permit required	Work permit required
Level 1 (UK)	s.43	Level 1 (ExP)	s.43	
Level 2 (UK)		Level 2 (ExP)		
Level 3 (UK)		Level 3 (ExP)		
Level 4 (UK)		Level 4 (ExP)		
Level 5 (UK)		Level 5 (ExP)		
Level 6 (UK)		Level 6 (ExP)		
Level 7 (UK)		Level 7 (ExP)		
Level 8 (UK)		Level 8 (ExP)		
Level 9 (UK)				

Level 10 (UK)	s.43		
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3.2.1B The rates referred to in Paragraphs 3.2.1, 3.2.3 and 3.2.5 (*Costs arising from the provision of additional support*) of this Schedule 7, shall be subject to Indexation by application of an appropriate index on the first anniversary of the Commencement Date (and thereafter at yearly intervals). The appropriate index is to be agreed between the Parties.

3.2.1C For the avoidance of doubt, the Authority recognises that the rates set out in Paragraph 3.2.1 above and 3.2.3 below are fixed and the Authority shall not audit their calculation.

3.2.2 The sum paid for each Additional Support Day shall include:

3.2.2.1 all benefits, including car allowances, bonuses, pensions, severance allowances, medical cover and insurances;

3.2.2.2 administration of payroll burdens;

3.2.2.3 all travel and subsistence, but excluding:

3.2.2.3.1 costs of mobilisation and demobilisation; and

3.2.2.3.2 travel and subsistence costs recoverable under Paragraph 3.2.3 or 3.2.4 below; and

3.2.2.4 all Parent Body Organisation and Affiliate overheads, financing, profit and other burdens,

arising out of the provision of additional support to the SLC.

3.2.3 In addition, the SLC shall pay the Parent Body Organisation a sum of one hundred and twenty pounds sterling (£120) (Indexed) for each Additional Support Day where a member of personnel is required to work at a location that is:

3.2.3.1 a minimum of a one hundred (100) mile round-trip from their Home Location; or

3.2.3.2 a minimum of a two (2) hour round trip from the Home Location,

in each case taking the most direct route that is practical.



3.2.3A In respect of additional support for durations exceeding six (6) Months, the SLC shall pay the Parent Body Organisation the amounts set out in the tables below (*Cost per Additional Support Month (£) – UK assignees and Cost per Additional Support Month (£) – US Ex-pat assignees*) subject to Indexation in accordance with Paragraph 3.2.1C above, for each Additional Support Month.

3.2.3B The "Family" rates in the tables below (*Cost per Additional Support Month (£) – UK assignees and Cost per Additional Support Month - US Ex-pat assignees*) are based on an assumption that the relevant assignee (where applicable) has either:

3.2.1B(i) two (2) children at day school; or

3.2.1B(ii) one (1) child at boarding school.

If an assignee has fewer or more children at day school and/or boarding school, the Parties will agree a fair and reasonable adjustment to the above rates.

3.2.3C For the avoidance of doubt, UK and US Ex-pat assignees who are assigned to support the SLC for more than six (6) months in accordance with paragraph 3.2.3A above, are not eligible to receive the allowance described in Paragraph 3.2.3 (*Costs arising from the provision of additional support*) above.

	<b>Cost per Additional Support Month (£) – UK assignees</b>		
	Unaccompanied	Accompanied	Family
Level 1 (UK)	s.43		
Level 2 (UK)			
Level 3 (UK)			
Level 4 (UK)			
Level 5 (UK)			
Level 6 (UK)			
Level 7 (UK)			
Level 8 (UK)			

	<b>Cost per Additional Support Month (£) – US Ex-pat assignees</b>		
	Unaccompanied	Accompanied	Family
Level 1 (ExP)	s.43		
Level 2 (ExP)			
Level 3 (ExP)			
Level 4 (ExP)			
Level 5 (ExP)			
Level 6 (ExP)			
Level 7 (ExP)			
Level 8 (ExP)			

3.2.4 Subject to the provisions of Paragraph 4.1 (*Disallowable Costs*) in Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance Schedule*) of the SLC Agreement, SLC business-related travel and subsistence Costs incurred as a direct result of providing additional support pursuant to this Schedule 7 (*Provision of Support to the SLC*) shall be an Allowable Cost, provided that there is no double-counting with any other Cost and that such Costs are not otherwise recoverable under Paragraph 3.2.3 (*Costs arising from the provision of additional support*) above.

3.2.5 The SLC shall pay the Parent Body Organisation a one-off sum to cover the costs of both mobilisation and demobilisation. The costs of mobilisation and demobilisation shall be subject to Indexation in accordance with Paragraph 3.2.1C above .

3.2.5A The table below (*Combined Mobilisation and Demobilisation Costs (£) (UK assignees)*) sets out the rates for different categories of UK support to SLC assignees.

	<b>Combined Mobilisation and Demobilisation Costs (£)</b>
<b>Status</b>	<b>(UK assignees)</b>

All	Assignment of less than 6 months	Assignment of over 6 months
	<div style="border: 1px solid red; background-color: #cccccc; padding: 5px; display: inline-block;">s.43</div>	

3.2.5B The table below (*Combined Mobilisation and Demobilisation Costs (£) (US Ex-pat assignees)*) sets out the rates for different categories of US Ex-pat support to SLC assignees.

3.2.5C The "Family" rates in the table below are based on an assumption that the relevant US Ex-pat assignee is accompanied by two (2) children. If a US Ex-pat assignee is accompanied by fewer or more children, the Parties will agree a fair and reasonable adjustment to the rates set out below.

Status	Combined Mobilisation and Demobilisation Costs (£) (US Ex-pat assignees)	
	Assignment of less than 6 months	Assignment of over 6 months
Unaccompanied  Married Accompanied  Family	<div style="border: 1px solid red; background-color: #cccccc; padding: 5px; display: inline-block;">s.43</div>	

3.2.5D Where support to the SLC is provided by a person other than a US Ex-pat assignee or UK assignee, the Parties will agree a fair and reasonable adjustment to the rates.

3.2.6 As between the Parties, the Parent Body Organisation shall be responsible for the payment of all periods of leave (including annual leave, sick leave, maternity leave, paternity leave, parental leave and adoption leave) taken by additional support personnel, and the SLC shall not be responsible for reimbursing the Parent Body Organisation for those payments.

3.2.7 The one-off sum payable by the SLC to the PBO pursuant to Paragraph 3.2.5 (*Costs arising from the provision of additional support*) shall be subject to indexation by application of an appropriate index from the first anniversary of

the Commencement Date (and thereafter at yearly intervals). The appropriate index is to be agreed between the Parties.

**Schedule 8**

**Nuclear Indemnity**

**NUCLEAR INDEMNITY**

The Nuclear Decommissioning Authority	(1)
Babcock Dounreay Partnership Limited	(2)
Dounreay Site Restoration Limited	(3)

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**THIS INDEMNITY** is made as a **DEED** on

2012

**BETWEEN:**

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**"); and
- (2) **BABCOCK DOUNREAY PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 07868218 whose registered office is at 33 Wigmore Street, London, W1U 1QX (the "**Parent Body Organisation**" or "**PBO**"); and
- (3) **DOUNREAY SITE RESTORATION LIMITED** a company incorporated under the laws of Scotland with registered number SC307493 whose registered office is at Building D2003, Dounreay, Thurso, Caithness KW14 7TZ, the company which holds the nuclear site licence(s) (and other regulatory approvals) to operate the Site (the "**SLC**");

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

**WHEREAS**

- (A) The operation of a nuclear site entails certain risks of harm to Third Parties by reason of a Nuclear Incident (as defined below).
- (B) The Act (as defined below), which enacted in the United Kingdom the provisions of the Paris/Brussels Conventions (as defined below), provides that where certain kinds of harm occur by reason of a Nuclear Incident on or relating to a nuclear site, the operator of that site shall be liable for such harm without proof of fault.
- (C) Certain classes of liability, such as economic loss arising without physical damage, liability to reinstate the environment following nuclear contamination and economic loss arising as a result of harm to an economic interest in the environment arising from a Nuclear Incident, whilst recoverable under the Paris/Brussels Conventions, are not covered by the provisions of the Act.
- (D) Further, the Act and the Paris/Brussels Conventions do not apply outside (respectively) the United Kingdom and the territories of the Contracting Parties (as defined in the Paris/Brussels Conventions).
- (E) The Authority has entered into a Parent Body Agreement with the Parent Body Organisation and the SLC.

- (F) The Authority has entered into a SLC Agreement with the SLC.
- (G) The Authority has agreed to indemnify the Parent Body Organisation and certain others, including the SLC, against liabilities to Third Parties which are not covered by the Act on the terms set out herein.

**IT IS AGREED** as follows:

## **DEFINITIONS AND INTERPRETATIONS**

### **1 DEFINITIONS**

1.1 In this deed "**Excepted Matter**", "**Nuclear Matter**", "**Relevant Carriage**", "**Occurrence**", "**Relevant Site**" and "**Relevant Territory**" shall each have the meaning given to them in the Act and the following words shall have the meanings assigned to them:

"**Act**" means the Nuclear Installations Act 1965 (as amended);

"**Affiliate**" means:

- (a) shareholders in the Parent Body Organisation ("**PBO Shareholders**") or in any holding company or subsidiary of any PBO Shareholder ("holding company" and "subsidiary" having the same meanings as in section 1159 of the Companies Act 2006), together "**Related Companies**";
- (b) any subsidiary or holding company of a Related Company;
- (c) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty percent (30%) in the Parent Body Organisation or any Related Company;
- (d) wholly owned subsidiaries of the SLC or Parent Body Organisation;
- (e) a company in which the SLC and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty percent (30%) of the issued shares;
- (f) a company in which the SLC and/or the Parent Body Organisation, either jointly or separately, has less than a thirty percent (30%) economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or



- (g) a company owned or controlled, directly or indirectly, to the extent of thirty percent (30%) or more of the outstanding equities, securities or assets by any of the companies described in (a), (b), (c) or (d) above;

**"Authority Policies and Procedures"** means the policies and procedures identified as such in Schedule 1 (*Client Specification*) of the SLC Agreement;

**"Claims Handling and Insurance Agreement"** means an agreement in the form described in Clause 11.1 (*Claims Handling and Dispute Resolution*) of this deed;

**"Client Specification"** means the Authority's requirements as set out in Schedule 1 (*Client Specification*) of the SLC Agreement;

**"Commencement Date"** means 1 April 2012;

**"Continuing Nominated Staff"** means, in the event of expiry or termination of the Parent Body Agreement for whatever reason, the Nominated Staff that the Authority (acting reasonably) requires to remain seconded (whether on a full time or other basis) to the SLC following expiry or termination of the Parent Body Agreement;

**"Contract Term Longstop Date"** means 31 March 2032;

**"Contract Year"** means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for:

- (a) the first Contract Year of the SLC Agreement which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and
- (b) the last Contract Year of the SLC Agreement which shall commence on 1 April and end at the expiry of the SLC Agreement (or the Parent Body Agreement (as applicable));

**"Dispute Resolution Procedure"** means the dispute resolution procedure set out in Schedule 12 (*Dispute Resolution Procedure*) of the SLC Agreement;

**"Expiry Date"** means, subject to any variation of such date in accordance with the terms of the SLC Agreement and, without prejudice to the validity of any earlier termination of the SLC Agreement in accordance with its terms, the Contract Term Longstop Date or, if earlier, the date on which the Interim End State is achieved in accordance with the provisions of the SLC Agreement;

"**Fee**" means the aggregate of the PBI Fee in respect of the relevant Contract Year, the Target Fee (as adjusted in accordance with the terms of the SLC Agreement) and any further category of fee that may be agreed between the parties to the SLC Agreement in accordance with the SLC Agreement;

"**Indemnified Parties**" means:

- (a) the PBO
- (b) the PBO Shareholders;
- (c) the Ultimate Parents;
- (d) any other Affiliate which, at the time the relevant Nuclear Incident occurred, was providing Nominated Staff or additional support to the SLC for the purposes of Clause 7 (*Provision of Staff to the SLC*) or Clause 8 (*Provision of Support to the SLC*) of the Parent Body Agreement or additional support to the Parent Body Organisation for the purposes of the Parent Body Agreement and any intermediate companies between any such Affiliate and an Ultimate Parent; and
- (e) the SLC;

"**Indemnity**" means the indemnity given in this deed;

"**Index**" means the index published monthly by the Office of National Statistics in Table CPI under the title "Consumer Prices Index (all items)", or failing such publication, or in the event of a fundamental change to the nature of the Index, such other index or adjustments to the Index as the Parties may, each acting reasonably, agree from time to time (in each case with the intention of putting the Parties in no better and no worse a position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"**Indexed**" means that on each Indexation Adjustment Date an amount referred to in this deed shall be increased by the application of the indexation factor set out in Clause 2 (*Interpretation*);

"**Indexation Adjustment Date**" means each anniversary of the Commencement Date;

"**Interim End State**" means the physical state of the Site achieved by delivery of the Client Specification;

"**Liability Cap**" and "**Aggregate Liability Cap**" have the meanings given to such term in the SLC Agreement;

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

"**Nominated Staff**" means the individuals listed in Part 1 (Nominated Staff) of Schedule 4 (*Employment and Pensions*) of the SLC Agreement as amended from time to time;

"**Nuclear Incident**" means:

- (a) any occurrence on or after the Commencement Date or Relevant Event on or in connection with the Site involving Nuclear Matter;
- (b) any occurrence on or after the Commencement Date or Relevant Event elsewhere than on the Site involving Nuclear Matter which is not Excepted Matter and which at the time of the occurrence or (as the case may be) the Relevant Event:
  - (i) is in the course of carriage from or to the SLC as the Nuclear Site Licence Holder for the Site; or
  - (ii) is in the course of carriage to the Site with the agreement of the SLC from a place outside the Relevant Territories; and
  - (iii) in either case, is not on any other Relevant Site in the United Kingdom;
- (c) any occurrence on or after the Commencement Date or Relevant Event elsewhere than on the Site involving Nuclear Matter which is not Excepted Matter and which:
  - (i) having been on the Site at any time during the Term; or
  - (ii) having been in the course of carriage to or from the SLC as the Nuclear Site Licence holder for the Site,  
  
has not subsequently been on any Relevant Site or in the course of any Relevant Carriage,  
  
in each case arising out of or resulting from or connected with the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of Nuclear Matter; or
- (d) any emission of ionising radiations on or after the Commencement Date or Relevant Event:

- (i) from anything caused or suffered by the SLC to be on the Site which is not Nuclear Matter; or
- (ii) from any waste discharged (in whatever form) on or from the Site;

**"Nuclear Indemnity Threshold"** means two million pounds sterling (£2,000,000) (Indexed) as adjusted pursuant to Clause 9.2 (*Nuclear Indemnity Threshold and Indemnified Party Default*) below;

**"Nuclear Liabilities"** means any claim by a Third Party or the Authority, regardless of the jurisdiction in which any such claim arises or is brought, for:

- (a) loss of life or personal injury;
- (b) damage to, or destruction of, property;

and (to the extent that either: (i) a liability is determined by the law of the competent court to exist; or (ii) an amount or other relief is provided for in a settlement, the terms of which have been agreed to by the Authority):

- (c) economic loss arising from the loss or damage referred to in Paragraph (a) or (b) of this definition to the extent not included in those Paragraphs;
- (d) the costs of any measures of reinstatement of impaired environment if such measures have been taken or are to be taken, and to the extent not included in Paragraph (b) of this definition;
- (e) loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and to the extent not included in Paragraph (b) of this definition; and
- (f) the cost of preventative measures, and further loss or damage caused by such measures

incurred by the PBO or Indemnified Party (not being the SLC) arising as a result of a Nuclear Incident but excluding:

- (i) loss of opportunity, loss of revenue, loss of profit or any other consequential loss of the Parent Body Organisation and/or the Indemnified Parties; and
- (ii) any diminution in the value of any shareholding held by the Parent Body Organisation and/or any Indemnified Party,

or, in the case of Nuclear Liabilities incurred by the SLC, arising as a result of an SLC Nuclear Incident but excluding:

- (i) loss of opportunity, loss of revenue, loss of profit or any other consequential loss of the SLC; and
- (ii) any diminution in the value of any shareholding held by the SLC;

**"Nuclear Site Licence"** means a nuclear site licence granted to the SLC pursuant to Section I of the Act;

**"Parent Body Agreement"** means the agreement of that name entered into between the Authority, the SLC and the PBO on the date of this deed;

**"Paris/Brussels Conventions"** means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 as amended and as supplemented by the Brussels Supplementary Convention of 1963 as amended;

**"PBI Fee"** means an amount of performance-based incentive fee set out in Paragraph 3.4, (*Maximum PBI Fee*) of Part 4a (*PBI Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

**"PBO Shareholders"** means the shareholders in the PBO;

**"Relevant Event"** any act, omission, default or other matter during the Term which causes or is connected with (whether in whole or in part), or is cited in any claim for Nuclear Liabilities as so causing or being connected with, any occurrence involving Nuclear Matter or emission of ionising radiation. For the purposes of the definition of 'Relevant Event', the Term includes any period during which any Continuing Nominated Staff are provided by the Parent Body Organisation;

**"Site"** means the areas shown edged red on the plans attached to the lease between the Authority and the Contractor, extract registered 16 October 2009, reference 09/40509 and the areas shown edged red on the plans attached to the lease between the Authority and the Contractor relating to the Low Level Waste Facility;

**"SLC Agreement"** means the agreement of that name of even date herewith between the Authority and the SLC in respect of the management and operation of the Site;

**"SLC Nuclear Incident"** means:

- (a) any occurrence on or in connection with the Site involving Nuclear Matter;

- (b) any occurrence elsewhere than on the Site involving Nuclear Matter which is not Excepted Matter and which at the time of the occurrence or (as the case may be) the SLC Relevant Event:
- (i) is in the course of carriage from or to the SLC as the Nuclear Site Licence holder for the Site; or
  - (ii) is in the course of carriage to the Site with the agreement of the SLC from a place outside the Relevant Territories; and
  - (iii) in either case, is not on any other Relevant Site in the United Kingdom;
- (c) any occurrence elsewhere than on the Site involving Nuclear Matter which is not Excepted Matter and which:
- (i) having been on the Site at any time; or
  - (ii) having been in the course of carriage to or from the SLC as the Nuclear Site Licence Holder for the Site,  
  
has not subsequently been on any Relevant Site or in the course of any Relevant Carriage,
- in each case arising out of or resulting from or connected with the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of Nuclear Matter; or
- (d) any emission of ionising radiations:
- (i) from anything caused or suffered by the SLC to be on the Site which is not Nuclear Matter; or
  - (ii) from any waste discharged (in whatever form) on or from the Site;

**"SLC Relevant Event"** any act, omission, default or other matter which causes or is connected with (whether in whole or in part), or is cited in any claim for Nuclear Liabilities as so causing or being connected with, any occurrence involving Nuclear Matter or emission of ionising radiation;

**"Target Fee"** means an amount of fee payable to the SLC in respect of its successful delivery of the Interim End State as more fully described in Part 4b (*Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

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

**"Third Party"** means any person other than the Parties and Affiliates;

**"Ultimate Parents"** means URS Corporation (Company Number EIN:94-1381538), Babcock International Group PLC (Company Number 2342138) and CH2M Hill Companies, Ltd (Company Number EIN:93-0549963); and

**"Value for Money"** means the optimum combination of quality and whole life costs (which for the purposes of this definition shall be deemed to include re-procurement and replacement costs at the end of any service provision or the end of any asset's useful life), in order to meet:

- (a) the objectives of any applicable Authority Policy and Procedures;
- (b) the Authority's statutory obligations to the extent relevant to the Site; and
- (c) the terms and conditions of the SLC Agreement

but taking into account the entitlement of the SLC to earn Fee and the risks assumed by the SLC pursuant to the SLC Agreement.

## 2 INTERPRETATION

- 2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this deed;
- 2.2 save to the extent that the express provisions of this deed require otherwise, all references to Clauses are references to clauses of this deed;
- 2.3 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 2.4 any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation, instrument or other subordinate legislation made under it (or under such an amendment, consolidation or re-enactment);
- 2.5 words importing the singular include the plural and vice versa;
- 2.6 words importing a particular gender include all genders;

- 2.7 "person" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 2.8 any reference to a public sector organisation shall be deemed to include a reference to any successor to such public sector organisation or any organisation or entity which has taken over the functions or responsibilities of such public sector organisation;
- 2.9 references to "Party" and "Parties" means a Party or the Parties to this deed as applicable;
- 2.10 all monetary amounts are expressed in pounds sterling;
- 2.11 references in this deed to amounts expressed to be Indexed are references to such amounts as they stood at the previous Indexation Adjustment Date (following Indexation pursuant to this Clause), multiplied on each Indexation Adjustment Date by:

Index at date B

Index at date A

where Index at date A is the value of the Index published for the September before the previous Indexation Adjustment Date or for the first indexation review, the Index published for the September before the Commencement Date; and

Index at date B is the value of the Index published for the September before the current Indexation Adjustment Date;

- 2.12 references to the word "includes" or "including" are to be construed without limitation;
- 2.13 references to a document being "in the agreed form" means a copy of such document initialled for the purposes of identification by the Parties as of the date hereof;
- 2.14 any reference in this deed to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 2.15 a reference to the "Site" shall include any part of the Site; and
- 2.16 all references to a time of day are references to UK time.
- 2.17 Save where otherwise stated, for the purposes of this deed, references to the SLC Agreement and any terms defined in it shall be treated as reference to the SLC Agreement and such defined term in the form applicable at the relevant time during the Term, and in the case of any liability arising after the Term, in the form applicable immediately prior to the Transfer Date.



### 3 **WARRANTIES**

3.1 Without prejudice to any warranties or conditions either express or implied by any applicable legislation:

(a) the Parent Body Organisation warrants and undertakes that as at the Commencement Date it is duly incorporated and validly exists under the laws of England and Wales; and

(b) each Party warrants and undertakes to the others that as at the Commencement Date it has the legal right and the requisite power and authority to enter into and perform its obligations under this deed and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms, and it has taken all necessary action to authorise the execution and the performance of its obligations under this deed and any other related documents.

3.2 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, each of the Parties confirms to the others that its only rights or remedies in relation to any breach, representation, warranty, assurance, covenant, indemnity, guarantee undertaking or commitment given or action taken, omission or default arising under or in connection with this deed are those contained or referred to in this deed and for the avoidance of doubt and without limitation, each Party has no other right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this deed) or otherwise howsoever.

### 4 **INDEMNITY TO INDEMNIFIED PARTIES OTHER THAN THE SLC**

4.1 The provisions of this Clause 4 apply to all Indemnified Parties other than the SLC.

4.2 Except to the extent arising under and governed by the Act or prohibited by law, and subject always to the provisions of this deed, the Authority hereby indemnifies the Parent Body Organisation and each Indemnified Party (other than the SLC, to which the provisions of Clause 5 below apply) against all liabilities, losses, costs and expenses incurred by any such party arising in respect of Nuclear Liabilities, including the reasonable legal costs of defending a claim brought by a Third Party in respect thereof or an allegation thereof (such costs to be paid on account as incurred) and any legal costs awarded in favour of any such Third Party.

4.3 Notwithstanding any other provision of this deed, this Indemnity set out in this Clause 4 shall, (subject to compliance by the Parent Body Organisation with any express obligation

upon it contained in this Indemnity and, where relevant, compliance by the relevant Indemnified Party with its Claims Handling and Insurance Agreement) be enforceable:

- (a) by the Parent Body Organisation on behalf of itself and on behalf of any of the Indemnified Parties; and
- (b) following expiry or termination (for whatever reason) of the Parent Body Agreement, by any Indemnified Party pursuant to the Contracts (Rights of Third Parties) Act 1999.

4.4 In the event of enforcement by the Parent Body Organisation on behalf of an Indemnified Party, the Authority waives any defence to such enforcement on the basis that the relevant liabilities, losses, costs and expenses were incurred by such Indemnified Party rather than the Parent Body Organisation.

4.5 The Authority waives any claim it may have against the Parent Body Organisation and/or any Indemnified Party in respect of any Nuclear Liability.

## 5 **SLC INDEMNITY**

5.1 Except to the extent arising under and governed by the Act or prohibited by law, and subject always to the provisions of this deed, the Authority hereby indemnifies the SLC against all liabilities, losses, costs and expenses incurred by it arising in respect of Nuclear Liabilities, including any legal costs awarded in favour of any such Third Party but excluding the legal costs of defending a claim brought by a Third Party in respect thereof or an allegation thereof which shall be recoverable by the SLC under the SLC Agreement..

5.2 Notwithstanding any other provision of this deed, this Indemnity set out in this Clause 5 shall be enforceable:

- (a) by the Parent Body Organisation on behalf of the SLC; and
- (b) following expiry or termination (for whatever reason) of the Parent Body Agreement, by the SLC.

5.3 In the event of enforcement by the Parent Body Organisation on behalf of the SLC, the Authority waives any defence to such enforcement on the basis that the relevant liabilities, losses, costs and expenses were incurred by the SLC rather than the Parent Body Organisation.

5.4 The Authority waives any claim it may have against the SLC in respect of any Nuclear Liability.

## 6 DURATION OF INDEMNITY

This Indemnity shall remain in force until the date thirty (30) years after the last day of the Term. For the purposes of this provision the Term includes any period during which any Continuing Nominated Staff are provided by the Parent Body Organisation.

## 7 CLAIMS THRESHOLD

7.1 Subject to Clause 7.2 (*Claims Threshold*) and Clause 9 (*Nuclear Indemnity Threshold and Indemnified Party Default*), the Authority shall only be liable to the Parent Body Organisation or an Indemnified Party (other than the SLC) in respect of a claim made under this Indemnity during a Contract Year to the extent that such claim, when aggregated with all other claims under this Indemnity for that Contract Year, exceeds the Nuclear Indemnity Threshold.

7.2 The Authority shall be liable to the SLC for any and all claims made by the SLC under this Indemnity. For the avoidance of doubt, the Nuclear Indemnity Threshold does not apply to any claim made by or on behalf of the SLC under this Indemnity.

## 8 MITIGATION OF LOSSES

8.1 The Parent Body Organisation shall, and shall procure that each relevant Indemnified Party shall, use all its reasonable endeavours to mitigate the losses indemnified under this Indemnity. If directed by the Authority and at the Authority's cost pursuant to this Clause 8 (*Mitigation of Losses*), the Parent Body Organisation and relevant Indemnified Parties shall pursue legal remedies (if applicable) against insurers and any relevant Third Parties against whom the Parent Body Organisation or relevant Indemnified Party has any right of recovery (including any such rights which may arise under the Atomic Energy Damages Act (also known as the Price-Anderson Act, a federal law of the United States) and any other legislation in all relevant jurisdictions) in relation to the Nuclear Incident. The Parent Body Organisation and relevant Indemnified Parties shall account to the Authority for the proceeds received pursuant to any such legal remedy up to and in reimbursement of sums paid out by the Authority in relation to the Nuclear Incident under this Indemnity. To the extent that the Parent Body Organisation or relevant Indemnified Party does not comply with its obligations under this Clause 8 (*Mitigation of Losses*), the Parent Body Organisation or relevant Indemnified Party shall not be entitled to the benefit of this Indemnity in respect of the amount of any losses that should properly have been avoided by mitigation or recovered from any Third Party.

8.2 Save in the case of SLC, (where any costs incurred in undertaking mitigation or pursuing legal remedies are recoverable in accordance with the provisions of the SLC Agreement) the Authority shall indemnify the Parent Body Organisation and each relevant Indemnified

Party for any costs incurred in undertaking mitigation or pursuing legal remedies as referred to in this Clause 8 (*Mitigation of Losses*). To the extent the Authority does not indemnify the Parent Body Organisation or relevant Indemnified Party for costs of mitigation or pursuing legal remedies the Parent Body Organisation and relevant Indemnified Parties shall not be obliged to comply with the provisions of this Clause 8 (*Mitigation of Losses*).

## 9 **NUCLEAR INDEMNITY THRESHOLD AND INDEMNIFIED PARTY DEFAULT**

9.1 Subject to Clause 9.2 (*Nuclear Indemnity Threshold and Indemnified Party Default*), to the extent that the aggregate of:

- (a) any and all liabilities of either the SLC or the Parent Body Organisation falling within the Liability Cap in any Contract Year; and
- (b) any and all liabilities of the Indemnified Parties (other than the SLC) incurred in respect of the Nuclear Indemnity Threshold

exceeds the Liability Cap for the relevant Contract Year or the Aggregate Liability Cap, the Nuclear Indemnity Threshold shall for that Contract Year be reduced by deduction of an amount equal to the amount of any such excess, provided that the amount of such reduction shall not exceed the amount of the Nuclear Indemnity Threshold.

9.2 Subject to Clause 9.3 below, the Nuclear Indemnity Threshold may be increased in relation to any claim brought under Clause 4 (Indemnity to Indemnified Parties other than the SLC) of this deed where the Nuclear Incident has arisen as a result of any act of the Parent Body Organisation or any Indemnified Party other than the SLC, or any employee, secondee (including the Nominated Staff) or agent thereof committed with reckless disregard for the consequences of his act or with the intention of causing harm to any person or property then the Nuclear Indemnity Threshold shall be deemed to be increased from two million pounds sterling (£2,000,000) (Indexed) to five million pounds sterling (£5,000,000) (Indexed) for the Contract Year in which the claim is brought, provided always that the total of any and all increases in the Nuclear Indemnity Threshold under this Clause in any Contract Year shall not exceed five million pounds sterling (£5,000,000) (Indexed).

9.3 The Nuclear Indemnity Threshold shall not apply to any claim brought under this Indemnity in relation to an SLC Nuclear Incident.

## 10 **DOUBLE RECOVERY**

10.1 The Parent Body Organisation and/or any Indemnified Party shall not be entitled to recover or otherwise obtain compensation or restitution under this Indemnity to the extent that it

has received compensation or obtained restitution from any other source or as a result of the pursuance of other legal remedies in accordance with Clause 8 (*Mitigation of Losses*) above or otherwise, including under the provisions of the Act in respect of the same loss or damage, provided that the foregoing provisions of this Clause 10 apply to the SLC only to the extent that the Authority irrevocably waives any obligation of the SLC under the SLC Agreement to pay or otherwise account to the Authority for the amount of any such compensation or restitution.

## 11 CLAIMS HANDLING AND DISPUTE RESOLUTION

11.1 The PBO shall procure that prior to pursuit of any claim pursuant to this Indemnity, the relevant Indemnified Party will execute and tender to the Authority for execution and completion a Claims Handling and Insurance Agreement substantially in the form set out in Schedule 10 (*Claims Handling and Insurance Agreement*) of the Parent Body Agreement.

11.2 The Parent Body Organisation shall comply with the claims handling provisions set out in this Clause 11 (*Claims Handling and Dispute Resolution*) in respect of all claims made by the Parent Body Organisation under this Indemnity.

11.3 The Authority shall comply with the claims handling provisions set out in this Clause 11 (*Claims Handling and Dispute Resolution*) in respect of all claims under this Indemnity.

11.4 Subject to Clause 11.5, any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, shall be resolved in accordance with the Dispute Resolution Procedure.

11.5 Without prejudice to Clause 11.4 (*Claims Handling and Dispute Resolution*) above, the Parent Body Organisation shall procure that each relevant Indemnified Party shall seek to resolve any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, in accordance with the dispute resolution provisions set out in the relevant Claims Handling and Insurance Agreement.

11.6 For the purposes of this Clause 11, a relevant Indemnified Party is any Indemnified Party other than the SLC.

## 12 ASSIGNMENT/NOVATION

12.1 The PBO and the SLC 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

deed or any part of it and shall not delegate in any manner whatsoever its performance under this deed.

12.2 The rights and obligations of the Authority under this deed shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this deed being:

- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
- (b) any other public body whose obligations under this deed are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the SLC and PBO) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under this deed.

### 13 CONTINUING OBLIGATIONS

13.1 This deed and all rights, remedies and obligations under this deed shall continue in full force and effect notwithstanding termination or expiry of the Parent Body Agreement and/or the SLC Agreement, whether due to any act omission or default of any Party or for any other reason whatsoever.

### 14 NOTICES

14.1 Any notice or other communication required to be given to a Party under or in connection with this deed must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) to the address specified in this deed or as otherwise notified in writing.

14.2 All notices must be marked for the attention of the addressee.

14.3 Each Party undertakes to notify the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of notices.

14.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall not include e-mail.

## **15 AVAILABILITY OF NUCLEAR INSURANCE**

- 15.1 If the Authority, acting reasonably, considers that insurance is available which will cover some or all of the potential losses under this Indemnity, and that such insurance provides Value for Money, the Parent Body Organisation and the SLC shall and shall procure that each other Indemnified Party will co-operate fully with the Authority's reasonable instructions in relation to the procuring of such insurance, to be procured at the Authority's expense, and will comply with the terms of all such policies as are notified to it.
- 15.2 The Parent Body Organisation shall procure that the Indemnified Parties other than the SLC are notified of all such insurance policies and that they comply with their terms.

## **16 NUCLEAR INSTALLATIONS ACT 1965**

- 16.1 It is acknowledged that the Act and the Paris/Brussels Conventions apply in respect of loss covered by the Act that falls and is claimed within the jurisdictional application of that legislation and the Paris/Brussels Conventions and that any Third Party claimants are subject, where jurisdictionally applicable as aforesaid, to the provisions of that legislation and the Paris/Brussels Conventions which have the effect of channelling liability to the SLC.
- 16.2 Nothing in this deed shall apply to any claim under the provisions of the Act.

## **17 COUNTERPARTS**

- 17.1 This Indemnity may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## **18 VARIATION**

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

## **19 GOVERNING LAW AND JURISDICTION**

- 19.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 19.2 The Parties irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject

matter or formation (including non-contractual disputes or claims). Save in relation to matters of enforcement, such jurisdiction shall be exclusive.

## 20 **GENERAL**

### 20.1 **Entire Agreement**

Without prejudice to the rights and obligations of the Parties under each of the Parent Body Agreement and SLC Agreement, the Parties confirm that this deed 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.

### 20.2 **Waiver**

- (a) A failure or delay by any Party at any time to enforce any provision of this deed or to require performance by any other Party of any provision of this deed or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this deed or any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing, expressed to be a waiver, and signed by the Party granting it and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties or Indemnified Parties under this deed.
- (b) The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this deed shall apply even in the event of the fault, negligence, tort, strict liability, breach of contract, or otherwise, of the Party or Indemnified Party whose liability is waived, disclaimed, released, limited or apportioned by any such provision, or fixed by such exclusive remedy provisions, or who is indemnified or held harmless. Further, such waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity shall apply notwithstanding that the relevant Party's or Indemnified Parties' conduct leading to such fault, negligence, tort, strict liability, breach of contract, or otherwise was fraudulent and/or constitutes wilful default.

### 20.3 **Severability**

- (a) If any condition, clause or provision of this deed 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 deed which shall remain in full force and effect.



- (b) If the circumstances referred to in Clause 0 (Severability) arise the Parties shall try to substitute for any invalid or unenforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Signatories**

The **COMMON SEAL of THE** )  
**NUCLEAR DECOMMISSIONING** )  
**AUTHORITY** was hereto affixed in the )  
presence of: )

.....  
Director

.....  
Director

Executed as a deed by **Babcock Dounreay**  
**Partnership Limited** acting by [NAME OF  
DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF  
DIRECTOR]

.....

Director

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF  
WITNESS]

Executed as a deed by **DOUNREAY SITE RESTORATION LIMITED** acting by [NAME OF DIRECTOR], a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

.....

Director

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

## **Schedule 9**

### **Socio-Economic Commitments**

#### **The Parent Body Organisation (referred to as the PBO within this schedule) Socio-Economic Commitments**

The PBO Socio-Economic commitments include the programme of activities that the stakeholders expect the PBO to contribute to Caithness and North Sutherland (the "**PBO Socio-Economic Commitments**"). These activities include:

##### **1 Socio-Economic Experience and ongoing engagement with community stakeholders**

The PBO is to demonstrate that it has the corporate experience to work with regeneration agencies, economic development agencies and other stakeholders in the Caithness and North Sutherland area and that this experience will be embedded through the PBO's involvement in the Caithness and North Sutherland community.

The PBO is to work collaboratively with such organisations and agencies accountable for the delivery of social regeneration and economic development across the areas of Caithness and North Sutherland including, but not limited to, The Highland Council, UK and Scottish Government, Highlands and Islands Enterprise, the Chamber of Commerce and other community organisations (as brought together by the Caithness & North Sutherland Regeneration Partnership or its successor).

##### **2 Forecasting**

The SLC is to provide accurate and timely information to the organisations and agencies accountable for economic regeneration on the resource levels required to deliver the decommissioning and clean-up mission at the Site. This information needs to be presented in ways which the economic regeneration agencies are able to identify the types of skills which will become available from the Site over the period of decommissioning. The timely production of this information and the clear and inclusive way it is shared with local stakeholders is key to the success of socio economic activity. The PBO is to ensure that the SLC provides such information appropriately and in a timely manner.

##### **3 Encouraging local businesses**

The PBO is to work in partnership with the organisations and agencies (including those identified above) accountable for economic regeneration in Caithness and North Sutherland and is to take a proactive role in encouraging local business development

opportunities by applying its corporate capability and leverage to assist in the generation of new business opportunities in the area. Where possible the PBO is to encourage and enable other companies to become involved in such local business development opportunities too.

#### **4 Business development arising from the SLC**

Where a viable business position can be established, the PBO is to pro-actively encourage and support the spin-out from SLC of parts of their existing portfolio of services, whilst ensuring sufficient capability remains available to service the needs of the SLC.

#### **5 Office support and remote services provision**

Whilst working in partnership with stakeholder partners, (and where a viable business case can be established that does not impact on the delivery of the IES), the PBO is to assist, encourage, support and facilitate commercial arrangements enabling the creation of general "back-office" industry in the Caithness and North Sutherland region for NDA and for the wider interests of the SLC. In addition, the requirement of local stakeholders for town centre relocation of personnel is to be facilitated (where possible).

#### **6 Workforce transitioning**

The PBO will ensure that the SLC assists the regeneration agencies, economic development agencies and other stakeholders in the transitioning of the Site work-force into alternative industries. This will include the PBO ensuring that the SLC manages the retention of appropriate skills so that the SLC mission can be carried through to the Site IES.

#### **7 SLC Socio-Economic Activities**

The PBO will ensure that the SLC continues to comply with the SLC socio-economic commitments as detailed in the Client Specification, the Socio-Economic Development Plan and the LTP Performance Plan in accordance with the SLC's obligations under the SLC Agreement.

#### **8 PBO Minimum Performance Standards**

The PBO shall fulfil the PBO Minimum Performance Standards set out at Schedule 9 (*PBO Minimum Performance Standards*) of this Agreement.

The PBO shall procure that the SLC fulfils the Minimum Performance Standards as set out at Schedule 17 (*Minimum Performance Standards*) of the SLC Agreement. The PBO recognises that the achievement by the SLC of its socio-economic commitments (as

detailed in the Client Specification) will assist the SLC in meeting its Minimum Performance Standards as set out at Schedule 17 (*Minimum Performance Standards*) of the SLC Agreement.

- 9 In accordance with Schedule 13 (Reporting) of the SLC Agreement, the PBO shall provide an annual Report to the Authority in respect of the PBO Minimum Performance Standards.

**Schedule 10**

**Claims Handling Agreement**

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201[●]

**THE NUCLEAR DECOMMISSIONING AUTHORITY**

and

**[INDEMNIFIED PARTY]**

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**CLAIMS HANDLING AND INSURANCE  
AGREEMENT**

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**THIS AGREEMENT** is made on

20[ ]

**BETWEEN:**

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**"); and
- (2) **[Name and details of Party wishing to be indemnified]** (**[name]**);

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

**WHEREAS**

- (A) The Authority has entered a Parent Body Agreement with the PBO and Dounreay Site Restoration Limited (the "**SLC**").
- (B) Under the terms of the Nuclear Indemnity, the Authority has agreed to indemnify **[name]** (the "Indemnified Party") in respect of certain costs, losses, liabilities, claims and expenses.
- (C) **[name]** agrees to comply with the terms of this Agreement in respect of all claims made by or on its behalf pursuant to the Nuclear Indemnity.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Parent Body Agreement except to the extent that such defined terms are given a different meaning below. Defined terms used in this Agreement which are not defined in the Parent Body Agreement shall have the meaning specified below.

In this Agreement (including the Recitals, Schedules and Table of Contents), the following term shall, unless the context requires otherwise, have the following meaning:

**"Indemnified Party"** has the meaning given in Recital B.

**1.2 Interpretation**

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses and Schedules are references to clauses of and the schedules to this Agreement and all references to Paragraphs and Parts are references to parts and paragraphs contained in the Schedules;
- 1.2.3 the Schedules (including any appendices to such Schedules) are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.4 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;
- 1.2.5 any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation, instrument or other subordinate legislation made under it (or under such an amendment, consolidation or re-enactment);
- 1.2.6 words importing the singular include the plural and vice versa;
- 1.2.7 words importing a particular gender include all genders;
- 1.2.8 "person" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.9 any reference to a public sector organisation shall be deemed to include a reference to any successor to such public sector organisation or any organisation or entity which has taken over the functions or responsibilities of such public sector organisation;
- 1.2.10 references to "Party" and "Parties" means a Party or the Parties to this Agreement as applicable;
- 1.2.11 all monetary amounts are expressed in pounds sterling;
- 1.2.12 references in this Agreement to amounts expressed to be Indexed are references to such amounts as they stood at the previous Indexation Adjustment Date (following Indexation pursuant to this Clause), multiplied on each Indexation Adjustment Date by:

Index at date B

Index at date A

where Index at date A is the value of the Index published for the September before the previous Indexation Adjustment Date or for the first indexation review, the Index published for the September before the Commencement Date; and

Index at date B is the value of the Index published for the September before the current Indexation Adjustment Date;

- 1.2.13 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.14 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.15 references to a document being "in the agreed form" means a copy of such document initialled for the purposes of identification by the Parties as of the date hereof;
- 1.2.16 any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.17 a reference to the "Site" shall include any part of the Site; and
- 1.2.18 all references to a time of day are references to UK time.

**2 TERM**

- 2.1 This Agreement shall take effect on the Commencement Date of the Parent Body Agreement and shall remain in full force and effect for as long as Clause 5 (*PBO Guarantee and Indemnities*) and Clause 13 (*Claims Handling*) of the Parent Body Agreement remain in force.

**3 THIRD PARTY CLAIMS**

- 3.1 As soon as reasonably practicable after the Indemnified Party becomes aware of a claim by a Third Party (or any matter likely to give rise to any claims by Third Parties) pursuant to which the Authority may become liable under the Nuclear Indemnity in respect of the Indemnified Party ("**Third Party Claim**"), the Indemnified Party shall notify the Authority and the PBO.

- 3.2 Each Indemnified Party will provide to the Authority and the PBO such information concerning the claim or potential claim as the Authority and the PBO may reasonably request, within the time frame reasonably requested by the Authority and the PBO. So far as possible, such information shall be provided in such a manner as to maintain any applicable legal privilege in relation to such information.
- 3.3 The Parties will consult each other about which of them may, potentially, have liability in relation to the claim or potential claim and, subject to Paragraph 4 below (*Authority's Handling*), will seek to agree which Party shall handle the claim or potential claim.

#### 4 **AUTHORITY'S HANDLING**

- 4.1 If a Third Party Claim is made against any or all of the Indemnified Party, the Authority and the PBO, in respect of which the Authority reasonably believes that the Authority will have liability under the Nuclear Indemnity for the entire financial effect of that Third Party Claim:
- 4.1.1 the Authority shall have the right, upon notice to the Indemnified Party, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim and the Indemnified Party shall:
- 4.1.1.1 give or cause to be given to the Authority all such assistance as the Authority may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings; and
- 4.1.1.2 instruct such solicitors or other professional advisers as the Authority may nominate to act on behalf of the Indemnified Party as applicable, but in accordance with the instructions of the Authority,
- provided that the Authority shall, if required by the Indemnified Party, notify the Third Parties engaged in the Legal Proceedings that the Authority has conduct of the Legal Proceedings on behalf of the Indemnified Party as applicable; and
- 4.1.2 the Authority shall use reasonable endeavours to keep the Indemnified Party notified of the progress of any Legal Proceedings of which it has conduct in accordance with this Paragraph 4 (*Authority's Handling*) and, subject to any overriding public policy considerations, and any urgent timing requirements, shall take account of all reasonable requests of the PBO or relevant Indemnified Party in relation to any matter which may involve loss of reputation or impact on the business of the PBO or relevant Indemnified Party.

- 4.2 The Indemnified Party shall, at the Authority's cost, comply with all of the instructions of the Authority in relation to such claim or potential claim and with the requirements set out in any insurance policies benefiting the Authority in relation to Nuclear Indemnity of which it is notified by the Authority or the PBO.

**5 INDEMNIFIED PARTY RIGHTS TO DEFEND LEGAL PROCEEDINGS**

Where the Indemnified Party has made representations to the Authority pursuant to Paragraph 4.1.2 (*Authority's Handling*) and the Authority chooses not to defend a Third Party Claim which the Indemnified Party wishes to defend for reputational reasons or because it may impact on the Indemnified Party's business, the Authority, in its sole discretion (which shall not be capable of challenge by the Indemnified Party), may agree that the Indemnified Party may have control of the Legal Proceedings at its sole risk and the provisions of Clause 13.5 (*Authority's Handling*) of the Parent Body Agreement shall apply.

**6 CHANGE IN CIRCUMSTANCES**

If the Authority, acting reasonably, believes that the circumstances relating to the Third Party Claim have changed or are not what the Authority initially believed the relevant circumstances to be, the Authority shall review the Third Party Claim in the light of the changed circumstances and shall determine, acting reasonably, whether the Authority should continue to handle such Third Party Claim as appropriate under Paragraph 4 (*Authority's Handling*).

**7 [NOT USED]**

**8 [NOT USED]**

**9 CONFIDENTIALITY**

The confidentiality provisions set out in Clause 14 of the Parent Body Agreement relating to the PBO shall apply mutatis mutandis and the Indemnified Party, and the confidentiality provisions set out in Clause 14 of the Parent Body Agreement relating to the Authority shall apply mutatis mutandis to the Authority in relation to this Agreement.

**10 ASSIGNMENT**

**10.1 Assignment by the Indemnified Party**

The Indemnified Party shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer,

mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

#### 10.2 **Assignment by Authority**

The Authority shall not, without the prior written consent of the Indemnified Party, assign, transfer or otherwise dispose of the Agreement or any part thereof or any benefit or interest therein or thereunder unless to the Crown or another manifestation or agency of the Crown or unless the obligations of the person to whom and in whose favour any such interest is assigned, transferred or otherwise disposed of are fully and unconditionally guaranteed by the Crown.

### 11 **ENTIRE AGREEMENT**

11.1 The Authority and the Indemnified Party confirm that this Agreement, together with the Nuclear Indemnity represents the entire understanding, and constitutes the whole agreement between them, in relation to its subject matter and supersedes any previous agreement between each of them with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Law or by custom.

11.2 Each Party confirms that:

11.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity (other than the Nuclear Indemnity), undertaking or commitment which is not expressly set out in this Agreement;

11.2.2 [Not Used]

### 12 **SEVERABILITY**

12.1 If any condition, clause or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

12.2 If the circumstances referred to in Clause 12.1 (*Severability*) above arise the Parties shall try to substitute for any invalid or unenforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

**13 FURTHER ASSURANCE**

Each Party shall, at its own cost after the Commencement Date of this Agreement execute all such deeds and documents and do all such things as the Indemnified Party or the Authority may reasonably require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for giving the each Party the full benefit of the provisions of this Agreement.

**14 WAIVER**

14.1 A failure or delay by either Party at any time to enforce any provision of this Agreement or to require performance by the other Party of any provision of this Agreement or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing, expressed to be a waiver, and signed by the Party granting it and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties under this Agreement.

14.2 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Agreement shall apply even in the event of the fault, negligence, tort, strict liability, breach of Agreement, or otherwise, of the Party whose liability is waived, disclaimed, released, limited or apportioned by any such provision, or fixed by such exclusive remedy provisions, or who is indemnified or held harmless, and shall extend to the liability (if any) of that Party in respect of the fault, negligence, tort, strict liability, breach of Agreement or otherwise of such Party's directors, officers, employees and agents, save that (with the exception of the indemnity set out in the Nuclear Indemnity, which shall continue in full force and effect) such waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations shall not apply to the extent that the relevant Party's conduct leading to such fault, negligence, tort, strict liability, breach of Agreement, or otherwise was fraudulent.

**15 VARIATION**

No variation of this Agreement (or any document referred to in it) shall be effective unless it is in writing (which for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "variation" includes supplement, deletion or replacement, however effected.

16 **[NOT USED]**

17 **NOTICES**

17.1 A notice, approval, consent, electronic mail (in the case of Paragraph 17.4 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Paragraph 17.3 (*Notices*) below or, for the purposes of Paragraph 17.4 (*Notices*) below only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

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

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

**Authority**

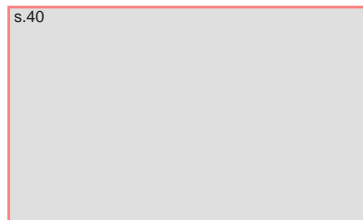
Addressee: Head of Programme - DSRL

Address: Nuclear Decommissioning Authority, Freswick House, Forss Business & Technology Park, Thurso, Caithness, KW14 7UZ

Facsimile:

Telephone:

Email:



Copied to: Head of Legal, Nuclear Decommissioning Authority, Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria CA24 3HU

**Indemnified Party**

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]



Copied to: s.40 Programme Director, Babcock Dounreay Partnership Limited, Fleswick Court, Westlakes Science & Technology Park, Moor Row, Cumbria CA24 3HZ

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 Paragraph 17 (*Notices*).

17.4 If an electronic mail address has been provided pursuant to Paragraph 17.1 (*Notices*) above, the following Notices may be sent by electronic mail:

17.4.1 electronic transmittal of a scanned image of an original executed Notice; and

17.4.2 day-to-day communication in connection with this Agreement and the documents referred to in it.

17.5 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Paragraph 17.6 (*Notices*) below.

17.6 Subject to Paragraph 17.7 (*Notices*) below, a Notice is deemed to be received:

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

17.6.2 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;

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

17.6.4 where sent by electronic mail (where applicable), on the second (2nd) 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, Paragraph 17.3 (*Notices*) above.

17.7 A Notice received or deemed to be received in accordance with Paragraph 17.6 (*Notices*) 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.

17.8 [Not Used]

17.9 Each Party undertakes to notify the other Party by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of Notices.

17.10 Notwithstanding Paragraphs 17.1 (*Notices*) and 17.3 (*Notices*) above, if the Authority determines, in its absolute discretion, that any Notice is to be protectively marked and should be delivered in a secure manner, it shall inform the Indemnified Party and shall instruct the Indemnified Party as to whom to deliver such Notice and how such Notice should be delivered.

17.11 [Not Used]

## 18 COUNTERPARTS

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

## 19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

## 20 GOVERNING LAW AND JURISDICTION

20.1 This Agreement shall be governed by, and construed in accordance with, English law.

20.2 Where the Indemnified Party is the PBO but not otherwise, the following provisions are subject to Clause 24 (*Dispute Resolution*) of the Parent Body Agreement, if any claim, legal action or proceedings arise out of or in connection with a dispute concerning this Agreement and any matter arising therefrom, each Party irrevocably:

20.2.1 agrees to submit to the exclusive jurisdiction of the courts of England; and

20.2.2 waives any right that it may have to object to an action being brought in the courts of England on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

**IN WITNESS** whereof this **DEED** has been executed by the Parties hereto and it is intended to be and is hereby delivered on the date first written above.

The **COMMON SEAL** of the **NUCLEAR** )

**DECOMMISSIONING AUTHORITY** was )

hereunto affixed in the presence of )

) .....  
)

) Director

)

)

)

) .....  
)

Director

**EXECUTED AS A DEED** by )

**[INDEMNIFIED PARTY]**

acting by )

[•], Director )

.....  
)

Director

)

)

)

)

[•], Director/Secretary )

.....  
)

[Director/Secretary]

**Appendix 1**

**Indemnified Parties Required Insurances**

**[Not Used]**

**Schedule 11**

**List of Indemnified Parties**

**[Not used]**

**Schedule 12**

**M68 Deed of Variation**

Date: 20[ ]

**Name of Guarantor(s) (1)**

[Insert relevant name of Ultimate Parent]

**Babcock Dounreay Partnership Limited (2)**

AND

**The Nuclear Decommissioning Authority (3)**

Deed of variation to the Parent Body Agreement and associated  
Parent Company Guarantee for Dounreay Site Restoration Limited

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**THIS DEED OF VARIATION** is made as a deed on

**BETWEEN**

- (1) *[Insert name of Ultimate Parent]* (company number●) whose registered office is at ● (the “**Guarantor**”);
- (2) **BABCOCK DOUNREAY PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 07868218 whose registered office is at 33 Wigmore Street, London, WIU 1QX (the “**Parent Body Organisation**”); and
- (2) **NUCLEAR DECOMMISSIONING AUTHORITY**, a non departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the “**Authority**”).

**RECITALS:**

- (A) The Authority entered an agreement dated [ ] described as a Parent Body Agreement (the “**PBA**”) with Dounreay Site Restoration Limited and Babcock Dounreay Partnership Limited (a company incorporated in England and Wales with registered number 07868218) (the “**Parent Body Organisation**”) pursuant to which inter alia the Parent Body Organisation gives certain guarantees and indemnities in favour of the Authority including in respect of the SLC’s financial liabilities and, in certain circumstances, Nominated Staff (as defined in the PBA).
- (B) The Guarantor (being an Ultimate Parent as defined in the Parent Body Agreement) entered into a guarantee in the form set out in Schedule 4 to the PBA (the “**Guarantee**”);
- (C) The Parent Body Organisation has agreed to amend and vary the terms of the PBA as set out hereunder.
- (D) The Guarantor has agreed to amend and vary the terms of the Guarantee as set out hereunder.

**NOW THIS DEED WITNESSES** as follows:

## **1 DEFINITIONS, CONSTRUCTION AND INTERPRETATION**

- 1.1 Terms defined in the PBA shall, unless otherwise defined in this Deed of Variation or unless a contrary intention appears, bear the same meanings when used in this Deed of

Variation and the definitions given in the recitals to this Deed of Variation and in the Deed of Variation itself apply to the whole of this Deed of Variation.

1.2 Unless a contrary intention appears, any reference in this Deed of Variation to:

- (a) the terms "**Achieved**", "**Contractor**", "**Environmental Safety Case**", "**Interim End State**", and "**Regulators**", shall have the respective meanings given to those terms in the SLC Agreement;
- (b) "**M68 Amount**" means the amount paid by the Authority to the Contractor pursuant to Paragraph 8A.7 (b) (*Deemed Approval of the Environmental Safety Case*) of Part4b (*Target Fee*) of Schedule 6 (*Finance*) in respect of Target Fee for completion of the Interim End State (Target Fee Payment/Cardinal Milestone 68) including, where the Parent Body Organisation chooses or is required by a Guarantor in accordance with this Deed of Variation or any other M68 Deed of Variation to retain such amount in an interest bearing account, interest if any received on such amount by the Parent Body Organisation;
- (c) "**M68 Deed of Variation**" means any deed of variation to the Parent Body Agreement and any Parent Company Guarantee, including without limitation this Deed of Variation and any similar Deed(s) of Variation entered into by the Authority, the Parent Body Organisation and any party to any Parent Company Guarantee.
- (d) any legislative provision shall be deemed to include any subordinate legislation made under the relevant statutory provision and is a reference to that legislative provision as from time to time amended, consolidated, modified, re-enacted or replaced;
- (e) any gender includes all genders;
- (f) the singular includes the plural (and vice versa);
- (g) persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
- (h) a Clause shall be a reference to a clause of this Deed of Variation;
- (i) "includes" or "including" shall mean "includes without limitation" or "including without limitation";

- (j) “**otherwise**” and words following “**other**” shall not be limited by any foregoing words where a wider construction is possible;
- (k) this Deed of Variation includes this Deed of Variation as amended or supplemented in accordance with its terms; and
- (l) any agreement or document is to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time in accordance with the terms of such agreement or document.

1.3 The list of contents and clause headings in this Deed of Variation are included for convenience only and do not affect interpretation of this Deed of Variation.

1.4 The parties to this Deed of Variation intend it to take effect as a deed.

## **2 AMENDMENT AND VARIATION**

2.1 The Parent Body Organisation acknowledges and agrees that any amounts that the Authority would otherwise have been entitled to deduct from the relevant Target Fee pursuant to Paragraph 8A.4 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement but for the Contractor electing pursuant to Paragraph 8A.7 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement to procure this Deed of Variation) constitute the cost of remediating, after the end of the Term, Defective Performance that occurred during the Term and prior to the Transfer of Responsibility Date as referred to in Clause 5.1.1.3 (Parent Body Organisation Guarantees and Indemnities) of the Parent Body Agreement.

2.2 Without prejudice to the Guaranteed Obligations as set out in the Guarantee (including any liability that the Guarantor may have pursuant to such Guaranteed Obligations in respect of the Achievement of Cardinal Milestone 68), the Parties agree that with effect from the date of this Deed of Variation, the Guarantee shall be varied on the terms set out in this Deed of Variation.

## **3 M68 GUARANTEED OBLIGATIONS**

3.1 Notwithstanding any of the provisions of the Guarantee, the Guarantor hereby undertakes as a separate, independent and primary obligation upon the Guarantor to irrevocably and unconditionally on demand to pay to the Authority any amount that the Authority would otherwise have been entitled to deduct from the relevant Target Fee pursuant to Paragraph 8A.4 (*Deemed Approval of the Environmental Safety Case*) of

Schedule 6 (*Finance*) of the SLC Agreement up to the M68 Amount but for the Contractor electing pursuant to Paragraph 8A.7 (*Deemed Approval of the Environmental Safety Case*) of Schedule 6 (*Finance*) of the SLC Agreement to procure this Deed of Variation (the *M68 Guaranteed Obligations*).

#### **4 RETENTION OF M68 AMOUNT BY PARENT BODY ORGANISATION**

4.1 Without prejudice to any obligation the Guarantor has to the Authority under this Deed of Variation, the Authority acknowledges and the Parent Body Organisation agrees that the Guarantor may, by serving notice upon the Parent Body Organisation, require it to pay any amounts received by it in respect of the M68 Amount (whether by way of dividend from the Contractor or otherwise) into a designated interest bearing account and not to distribute or otherwise release or distribute any amount from such account other than:

- (a) in satisfaction of any liability the Parent Body Organisation may have to the Authority in respect of amounts that the Authority would otherwise have been entitled to deduct from the relevant Target Fee pursuant to Paragraph 8A.4 (*Deemed Approval of the Environmental Safety Case*) of Schedule 6 (*Finance*) of the SLC Agreement but for the Contractor electing pursuant to Paragraph 8A.7 (*Deemed Approval of the Environmental Safety Case*) of Schedule 6 (*Finance*) of the SLC Agreement to procure this Deed of Variation; or
- (b) following receipt of the Guarantor's written consent to such release or distribution.

#### **5 REPRESENTATIONS AND WARRANTIES**

On the date of this Deed of Variation, the Guarantor shall be deemed to represent and warrant to the Authority in the terms set out at Clause 4 of the Guarantee.

#### **6 LIMIT OF LIABILITY**

6.1 Any amounts paid by the Guarantor pursuant to the M68 Guaranteed Obligations shall not attrite the Guarantor's limits of liability set out at Clause 11 (*Limit of Liability*) of the Guarantee until such time as the any such amounts when taken together with amounts paid by:

- (a) each other Parent Company (as defined in the Guarantee) pursuant to the M68 Guaranteed Obligations under similar Deeds of Variation to their respective Parent Company Guarantees; or

- (b) the Parent Body Organisation pursuant to the Defective Performance Obligation or otherwise pursuant to the Parent Body Agreement in respect of any amount forming the subject of the M68 Guaranteed Obligations (being any amount that the Authority would otherwise have been entitled to deduct from the relevant Target Fee pursuant to Paragraph 8A.4 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement but for the Contractor electing pursuant to Paragraph 8A.7 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement to procure this Deed of Variation);

exceeds the M68 Amount. For the avoidance of doubt, any further liabilities the Guarantor may have in connection with any matter forming the subject of the M68 Guaranteed Obligations shall attrite the Guarantor's limits of liability set out as Clause 11 (Limit of Liability) of the Guarantee.

- 6.2 For the avoidance of doubt, nothing in this Deed of Variation shall operate to exclude or limit the liability of any party for the fraud (including fraudulent misrepresentation) of that party or where and to the extent that it is otherwise not lawful for that party to exclude or limited the liability concerned.

## **7 RETENTION AND EXPIRY OF THIS DEED OF VARIATION**

- 7.1 The Authority agrees that the provisions of this Deed of Variation shall expire on the later of:

- (a) approval by the Regulator of the Environmental Safety Case; and
- (b) satisfaction by the Parent Body Organisation, the Guarantor and/or any other Parent Company (as defined in the Guarantee) of any liabilities up to the M68 Amount in respect of costs incurred prior to approval by the Regulator of the Environmental Safety Case that the Authority would have been entitled to deduct from the relevant Target Fee pursuant to Paragraph 8A.4 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement but for the Contractor electing pursuant to Paragraph 8A.7 (Deemed Approval of the Environmental Safety Case) of Schedule 6 (Finance) of the SLC Agreement to procure this Deed of Variation).

For the avoidance of doubt, on expiry of this Deed of Variation, the Guarantee shall continue to be in full force and effect in accordance with its terms and the liability of the Guarantor shall not be effected by any of the terms of this Deed of Variation.

7.2 The Authority shall be entitled to retain the original or a copy of this Deed of Variation after as well as before the expiry of this Deed of Variation. The Authority shall upon request from the Parent Body Organisation or the Guarantor confirm whether or not this Deed of Variation has expired. Provision of such confirmation to the Parent Body Organisation and the Guarantor shall not be unduly withheld or delayed by the Authority.

7.3 Without prejudice to the terms of the Guarantee and any continuing obligation contained therein, the Authority agrees and confirms that following approval of the Environmental Safety Case, the Parent Body Organisation and the Guarantor shall have no further liability to pay the Authority any amount in respect of the M68 Guaranteed Obligations pursuant to this Deed of Variation.

## **8 PRIOR DEMANDS AGAINST PARENT BODY ORGANISATION AND CONTRACTOR**

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

## **9 SEVERANCE**

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

## **10 NO WAIVER**

The rights and remedies of the parties to this Deed of Variation shall not be affected by any failure to exercise or delay or forbearance in exercising any right or remedy or by the giving of any indulgence by one party to this Deed of Variation or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the parties to this Deed of

Variation. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

## **11 ENTIRE AGREEMENT**

Each party confirms that notwithstanding Clause 22 (*Entire Agreement*) of the Guarantee, the parties do intend that this Deed of Variation shall vary the terms of the Guarantee, provided that with the exception of Clauses 7 (*Retention and Expiry of this Deed of Variation*) and 15 (*Confidentiality*) of this Deed of Variation, such variation shall cease to operate on expiry pursuant to Clause 7.1 of this Deed of Variation.

## **12 RIGHTS CUMULATIVE WITH THOSE AT LAW**

### **12.1 Rights Cumulative**

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

### **12.2 Equitable Remedies**

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

## **13 LANGUAGE**

This Deed of Variation is executed in English and all communications under this Deed of Variation shall be made in English.

## **14 CURRENCY AND EXCHANGE RATE**

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



## **15 CONFIDENTIALITY**

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

- 15.1 references to "Parent Body Organisation" shall be replaced by "Guarantor" and references to "Agreement" shall be replaced by "Deed of Variation"; and
- 15.2 references to the "SLC" and/or its "Subcontractors" shall be disregarded.

## **16 VARIATION**

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

## **17 FURTHER ASSURANCE**

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

## **18 COUNTERPARTS**

This Deed of Variation 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.

## **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

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

## **20 NOTICES**


- 20.1 Any notice to be given under this Deed of Variation shall be in writing and if issued by:
  - (a) the Authority, shall be signed by the Authority's Representative;
  - (b) the Guarantor, shall be signed by the Guarantor's Representative; and

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

If to the Authority to:

Addressee: Head of Programme, DSRL

Address: Nuclear Decommissioning Authority, Freswick House, Forss Business & Technology Park, Thurso, Caithness

Facsimile:  s.40

Telephone: 

If to the Guarantor to:

Addressee: [TBA]

Address: [TBA]

Facsimile: [TBA]

Telephone: [TBA]

20.2 Any notice given pursuant to this Deed of Variation will be deemed to have been served as follows:

- (a) if delivered personally, at the time of delivery, and
- (b) if sent by recorded or special delivery post, on the third Working Day after being delivered into the custody of the postal authorities or if posted from a place outside the United Kingdom, on the seventh (7<sup>th</sup>) Working Day after being delivered into the custody of the postal authorities.

## 21 GOVERNING LAW AND JURISDICTION

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

21.2 Any dispute or difference arising out of or in connection with this Deed of Variation, including but not limited to, any question regarding its existence, interpretation,

validity, construction or termination shall, if it cannot be resolved between the Parent Body Organisation, the Guarantor and the Authority by agreement, be resolved in accordance with the Dispute Resolution Procedure.

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

**IN WITNESS** of which the parties have executed this Deed on the date first mentioned above.

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

was affixed in the presence of: .....

.....

**SIGNED** as a deed by the said ● acting by a  
director or duly authorised attorney

in the presence of:-

Witness .....

Address .....

Occupation .....