

SITE LICENCE COMPANY AGREEMENT

relating to the restoration of the Dounreay nuclear licensed site by
Dounreay Site Restoration Limited

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

DOUNREAY SITE RESTORATION LIMITED (2)

[Drafting Note: NDA is reviewing the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme and will incorporate any requirements into this document prior to commencement of dialogue – wording to follow]

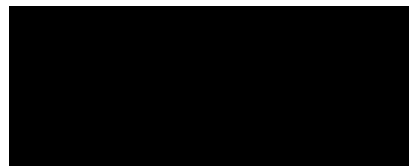
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CONTENTS

Clause	Heading	Page
	PART 1: Interpretation	2
1	INTERPRETATION	2
	PART 2: Term and Transition	56
2	COMMENCEMENT AND DURATION	56
	PART 3: Core Obligations	56
3	WARRANTIES	56
4	CONTRACTOR'S OBLIGATIONS	57
5	RIGHTS AND OBLIGATIONS OF AUTHORITY	60
	PART 4: Ancillary Obligations	62
6	ASSET MANAGEMENT	62
7	SECURITY	65
8	INTEGRATED MANAGEMENT SYSTEM	66
9	SOCIO ECONOMIC DEVELOPMENT	68
10	CDM REGULATIONS	69
	PART 5: Performance and Monitoring	69
11	DEFECTIVE PERFORMANCE	69
12	DEPENDENCY EVENTS	75
13	FORCE MAJEURE	76
14	PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS	79
15	INSPECTION AND AUDIT	86

PART 6: Financial Matters and Liability	91
16 FINANCE	92
17 CLAIMS HANDLING	115
18 INSURANCE	116
19 CONTRACTOR'S INDEMNITY	124
PART 7: Contracting and Inter SLC Activities.....	124
20 AUTHORITY RIGHTS IN RESPECT OF CUSTOMER CONTRACTS.....	124
21 PERMITTED ACTIVITIES.....	125
22 SUBCONTRACTING / PROCUREMENT.....	127
23 INTER SLC SERVICE CONTRACTS	128
24 CROSS SLC INITIATIVES.....	131
PART 8: Information.....	132
25 CONFIDENTIALITY AND COMPLIANCE WITH LEGISLATION.....	132
26 FREEDOM OF INFORMATION	138
27 DATA PROTECTION.....	139
28 KNOWLEDGE MANAGEMENT	140
PART 9: Intellectual Property and IT	141
29 INTELLECTUAL PROPERTY	141
30 INFORMATION TECHNOLOGY.....	152
PART 10: Personnel Matters	155
31 EMPLOYEES	155
32 PENSIONS	163

PART 11: Termination	166
33 TERMINATION	166
34 TRANSITION OUT	169
35 TRANSITION ON EXPIRY OR TERMINATION	173
36 DISPUTES.....	175
PART 13: Contract Administration and Miscellaneous Provisions	176
37 MISCELLANEOUS.....	176
Schedule 1 - Client Specification	191
Schedule 2 - Programme Management and Change Procedure.....	192
Schedule 3 - Commercial Schedule (Customer Contracts)	193
Schedule 4 - Employment and Pensions.....	194
Schedule 5 - Subcontracting and Procurement.....	195
Schedule 6 - Finance	196
Schedule 7 - Property	197
Schedule 8 - Intellectual Property	198
Schedule 9 - Information Technology.....	199
Schedule 10 - Insurance.....	200
Schedule 11 - Authority Deliverables	201
Schedule 12 - Dispute Resolution Procedure	202
Schedule 13 - Reporting.....	203
Schedule 14 - European State Aid	204
Schedule 15 - Freedom of Information.....	205

Schedule 16 - Knowledge Management..... 206

Schedule 17 - Minimum Performance Standards..... 207

THIS AGREEMENT is made on this [●] day of [●] 201[●]

BETWEEN:

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY**, a Non-Departmental Public Body whose head office is at Herdus House, West Lakes Science and Technology Park, Moor Row, Cumbria (the "**Authority**"); and
- (2) **DOUNREAY SITE RESTORATION LIMITED**, whose registered office is at Building D2003, Dounreay, Thurso, Caithness KW14 7TZ, a company incorporated under the laws of Scotland with registered number SC307493 (the "**Contractor**"),

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

WHEREAS:

- (A) by an advertisement in the Supplement to the Official Journal of the European Union dated 5 March 2010, the Authority invited expressions of interest from economic operators wishing to be appointed to acquire and hold the share capital of the Contractor and to provide Nominated Staff and other services to the Contractor as the parent body organisation of the Contractor, with a view to promoting and supporting the delivery of improved value for money in the Contractor's operations without compromising health, safety, security or the protection of the environment;
- (B) the Parent Body Organisation submitted an expression of interest and was selected to act as the parent body organisation of the Contractor.
- (C) the Authority, the Contractor and the Parent Body Organisation have entered into the Parent Body Agreement and, as of the Commencement Date, the Parent Body Organisation holds all of the issued share capital in the Contractor;
- (D) the Contractor and all relevant individuals hold the relevant licences, authorisations, registrations, permits and consents required by Legislation or Regulatory Requirements,

IT IS AGREED AS FOLLOWS:

PART 1: Interpretation

1 INTERPRETATION

1.1 Definitions

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

"Accounting Policies and Procedures"	means the Contractor's accounting policies and procedures used by the Contractor in the production of financial statements on the Commencement Date as the same may be amended and updated with the agreement of the Authority from time to time;
"Accounting Month"	means the four or five week accounting month used by the Contractor for the purposes of its reporting requirements (and "Accounting Monthly" shall be construed accordingly);
"Accounting Standards"	means the rules and conventions according to which financial statements have to be prepared either by the Contractor for the production of its statutory accounts or by the Contractor and Authority for the production of the Authority statutory accounts, the latter to be advised by the Authority to the Contractor from time to time;
"Achievement"	means completion of the scope of work entailed by a Sub-Milestone or Major Work Package, or the Interim End State, as evidenced in accordance with the relevant Performance Agreement Form in respect of the same, provided that no Achievement of a Major Work Package shall be valid unless and until the Sub-Milestones comprising such Major Work Package are Achieved (and "Achieved" shall be construed accordingly);
"Actual Cost of Work Performed" or "ACWP"	means the aggregate of all Allowable Costs incurred in undertaking activities pursuant to this Agreement;
"Advance Agreement"	means any agreement between the Authority and the Contractor entered into in accordance with Paragraph 3 of Part 2 (<i>Allowable and Disallowable Costs</i>) of Schedule 6 (<i>Finance Schedule</i>);

- "AEAT" means [AEAT][●] Limited of [];
- "Affected Party" has the meaning given in Clause 13.1 (*Force Majeure*);
- "Affiliate" means:
- (a) the Parent Body Organisation;
 - (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;
 - (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;
- "Agreed Cash Flow Requirement" has the meaning given in Paragraph 2.1(c) (*Invoicing and Payment Process*) Part 2b (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Agreed Payment Profile"	has the meaning given to it in Paragraph 2.1(b) (<i>Invoicing and Payment Process</i>) Part 2b (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);
"AiP"	means Approval in Principle;
"AiP 1" and "AiP 1 Submission"	means the approval in principle (Part 1) procedure as set out in the Change Control Procedure and PCP-17;
"AiP 2" and "AiP 2 Submission"	means the approval in principle (Part 2) procedure as set out in the Change Control Procedure and PCP-17;
"Allocated Target Fee"	means the base amount of Target Fee payable in respect of a Sub-Milestone or Major Work Package, or the Interim End State, as set out in the column headed "Allocated Target Fee" of the table at Paragraph 3.1 of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Allowable Cost"	has the meaning given in Paragraph 2 (<i>Allowable Costs</i>) Part 2 (<i>Allowable and Disallowable Costs</i>) of Schedule 6 (<i>Finance</i>) and " Allowable " and " Allowability " shall be construed accordingly;
"Alternative Remuneration Tasks"	means the services, operations, projects and activities undertaken by the Contractor on the terms agreed between the Authority and the Contractor in respect of the relevant services, operations, Projects and activities;
"Amendment"	has the meaning given in Clause 20.1 (<i>Amendments to Customer Contracts and New Customer Contracts</i>);
"Annual Reconciliation Report"	has the meaning given to it in Paragraph 9.1 of Part 2B (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);
"Annual Site Funding Limit" or "ASFL"	means the annual overall funding limit for the management and operation of the Site as specified in respect of the first Contract Year in Part 7 (<i>Funding Limits</i>) of Schedule 6 (<i>Finance</i>) and as determined in accordance with Clause 16.2 (<i>Determination of Funding Limits and Compliance with Funding Limits</i>) in respect of subsequent Contract Years and as the same may be adjusted (if at all) pursuant to the Change Control Procedure;
"Applicable Schemes"	means the UKAEA Combined Pension Scheme including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan, [the BNFL Group Pension Scheme, the Dounreay Group of the Electricity Supply Pension Scheme], the CNPP and any other pension scheme set up and/or

maintained by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;

"Approval" means that the approval required in relation to the relevant Proposed Change in accordance with the Change Control Procedure has been given by the appropriately authorised individual;

"Approved Working Capital Allowance" means the budget for the Contract Year for the net Costs which the Parties anticipate are likely to arise (after allowing for Authority Entitled Interest) under the Approved Working Capital Facility as such budget is agreed in accordance with Paragraph 2 (*Invoicing and Payment Process*) Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

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

- (a) have been negotiated pursuant to a funding competition approved by the Authority and are on terms that represent the best value for money of the proposals made by the proposed lenders pursuant to such competition or which have otherwise been approved by the Authority;
- (b) have been provided by an Affiliate and are on terms that represent the best value for money and which have been approved by the Authority;
- (c) have been negotiated with lenders with whom the Parent Body Organisation had arrangements with prior to its entering into the Parent Body Agreement, and in relation to which the Authority has given its prior written consent; or
- (d) are on terms not materially worse than the latest Benchmark established in accordance with Clause 16.4 (*Finance*)

and with each being an **"Approved Working Capital Facility"**;

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

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

"Asset Register"	means the asset register to be maintained by the Contractor in accordance with Clause 6.5 (<i>Asset Management</i>) to record all the Authority Assets on the Site;
"Associated Allocable Cost"	means overhead Costs (also known as burden) associated with Tasks, such Costs to be allocated to activities on a cause and effect or resource consumption basis depending on which is most appropriate and reasonable for the relevant Cost concerned;
"Audit Close-Out Meeting"	means a meeting following receipt by the Contractor of the Authority's audit findings to discuss those findings generally together with any areas identified in the findings as requiring Corrective Action;
"Authority"	means the Nuclear Decommissioning Authority;
"Authority Agents"	has the meaning given in Clause 15 (<i>Inspection and Audit</i>);
"Authority Assets"	means all the assets (whether fixed or movable) on or off the Site which are owned by the Authority (whether leased to the Contractor or the Authority or otherwise) and any New Assets acquired by the Contractor on behalf of the Authority in performing the LTP pursuant to Clause 6.7 (<i>Asset Management</i>) but excluding any Subcontracts and Customer Contracts;
"Authority Background Information"	means [●]; <i>[Note – to consist of the information (such as ground conditions) in which the Authority is not expecting the Contractor to take the due diligence risk.]</i>
"Authority Default"	means non-payment by the Authority of any undisputed sums exceeding £[●] in aggregate for a period of sixty (60) Calendar Days beyond the due date for payment of such sums;
"Authority Deliverables"	means those items and services set out in Schedule 11 (<i>Authority Deliverables</i>);
"Authority Direction"	means a direction given by the Authority to the Contractor in accordance with its powers under section 18 of the Energy Act;
"Authority Entitled Interest"	any credit interest which may accrue on credit balances in the Contractor's Payments Account and/or any foreign exchange or other accounts of the Contractor which are used for similar purposes to the Contractor's Payments Account;
"Authority Estate"	means sites, property or organisations which are wholly owned by the

	Authority;
"Authority Field of Use"	means use in carrying out the Authority's functions, duties and powers as prescribed in the Energy Act from time to time;
"Authority Insurances"	means the insurance policies specified in Schedule 10 (<i>Insurance</i>) and any further insurances that the Contractor is required by Legislation to maintain;
"Authority IP"	means IP owned by or licensed to the Authority which relates to the activities to be undertaken by the Contractor or the Authority under the terms of this Agreement and includes: (a) Developed IP ownership of which vests in the Authority by virtue of Clause 29.4 (<i>Intellectual Property</i>); (b) Parent IP licensed to the Authority under the provisions of Clause 29.3 (<i>Intellectual Property</i>); and (c) Third Party IP licensed to the Authority under the provisions of Clause 29.6 (<i>Intellectual Property</i>);
"Authority IT Systems"	means all communications and information technology systems which are used by the Authority from time to time including all hardware, networks, software and data comprised therein;
"Authority Owned IP"	has the meaning given in Clause 29.5.1.1 (<i>Intellectual Property</i>);
"Authority Policies and Procedures"	means policies and procedures published on the Authority's website and identified as Authority Policies and Procedures including those listed in the Change Control Procedure;
"Authority Records"	has the meaning given in Clause 14.2.2 (<i>Ownership Records</i>);
"Authority's Representative"	means the person or persons appointed pursuant to Clause 37.3 (<i>Miscellaneous – Representatives and Delegation of Authority to Act</i>);
"Authority's Socio-Economic Policy"	means the Authority policy 'NDA Socio-Economic Policy, 2008' accessed via: https://www.nda.gov.uk/stakeholders/socio-economic/index.cfm ;
"Authority Strategic"	means those individuals within the Authority responsible for defining the

Authority (SA)"	Authority's Strategy;
"Background IP"	has the meaning given to it in Clause 29.4.10 (<i>Intellectual Property</i>);
"Base Shareline"	has the meaning given to it in Paragraph 1.4(b) of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Baseline Change"	means a change to any aspect of the scope, schedule or cost of any Tasks contained in the LTP or the addition of any Tasks to the LTP;
"Baseline Management"	means managing and maintaining the LTP on a continuous basis via Approved multi-year Proposed Change and/or multi-year performance reporting in accordance with the Change Control Procedure PCP-05 (<i>Change Control</i>) and PCP-07 (<i>Baseline Management</i>);
"Baseline Strategy"	means the current Site strategy described in the Site Strategic Specification as [the "baseline strategy" and denoted by green text];
"BCWS"	means the budgeted Cost of work scheduled, contained in the LTP;
"Benchmark"	has the meaning given in Clause 16.4 (<i>Finance</i>);
"Benchmark Assessment"	has the meaning given in Clause 16.4 (<i>Finance</i>);
"Best Practicable Environmental Option (BPEO)"	means a set of procedures adopted with the goal of managing waste and other environmental concerns which emphasise the protection and conservation of the environment across land, air and water. The BPEO procedure establishes for a given set of objectives, the option that provides the most benefits or the least damage to the environment, as a whole, at acceptable cost, in the long term as well as in the short term;
"Best Practicable Means (BPM)"	means the term used by the Environment Agency and Scottish Environment Protection Agency in authorisations issued under the Radioactive Substances Act [1993] which requires operators to take all reasonably practicable measures in the design and operational management of their facilities to minimise waste creation, abating discharges, and monitoring plant discharges and the environment taking account of such factors as the availability and cost of relevant measures, operator safety and the benefits of reduced discharges and disposals;
"Budgeted Cost of Work Performed"	means (for the purposes of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>) only) the aggregate of all Allowable Costs (and Associated

- or "**BCWP**" Allocable Costs) which were, at the time of undertaking the activities to which they relate, provided for in the Budgeted Cost of Work Scheduled (and the amount of such provision shall be as stated at such time), to the extent that such activities have in fact been undertaken as at the time of calculation (as quantified and assessed by the Contractor acting reasonably and in accordance with Good Industry Practice and any applicable Authority Policies and Procedures) [and, where used otherwise than in connection with Part 4b (*Target Fee*) of Schedule 6 (*Finance*), means [●]];
- "Business Case"** means a business case prepared by the Contractor in accordance with public sector good practice and guidance issued by the Authority from time to time;
- "Caithness and North Sunderland Priority Area Plan"** The interpretation of the Authority's Socio- Economic Plan in the areas local to the Site. At the Commencement Date the current version can be found at: <http://www.nda.gov.uk/documents/upload/Socio-Economic-Caithness-and-North-Sutherland-Priority-Area-Plan-June-2009.pdf>;
- "Calendar Day"** means a period of twenty-four (24) hours ending at twelve (12) midnight;
- "Capenhurst"** means the Authority owned site at Capenhurst, near Chester;
- "Capital Budget"** means, in relation to each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which the Contractor is permitted to spend on Capital Costs;
- "Capital Costs"** means expenditure in accordance with the application of the Authority's requirements under FNP-02 for SLC reporting in respect of Owner Books, as amended from time to time and as notified by the Authority to the Contractor;
- "Cardinal Date"** means the Cardinal Date as defined in Schedule 6 (*Finance*);
- "Cardinal Milestone"** means the milestones set out in Section 3.5 of the Client Specification that will be used as indicators of performance and to inform Change Control;
- "Category I Change"** has the meaning given to it in PCP-05;
- "Category II Change"** has the meaning given to it in PCP-05;

**"Category III
Change"**

has the meaning given to it in PCP-05;

**"Category I
Revenue"**

means all monies received and receivable by the Contractor including:

- (a) from the Ministry of Defence;
- (b) from Customers or Third Parties in consideration of the provision by the Contractor of any goods, services, works or products arising from or ancillary to the provision of services in accordance with this Agreement;
- (c) interest (save for interest earned on the Contractor's Fee Account which shall be for the account of the Contractor in accordance with Clause 16.10.1 (*Finance*)), dividends from any subsidiaries of the Contractor and other finance receipts;
- (d) in respect of proceeds from insurance claims or recoveries from Third Parties (other than the Authority) in respect of liabilities of the Contractor which are Allowable Costs;
- (e) from the sale of Authority Assets save for scrap;
- (f) from UKAEA relating to refunds in respect of early retirement pensions paid to the Employees or Nominated Staff under the terms of the UKAEA Combined Pension Scheme;
- (g) in respect of hedging activities carried out pursuant to the Currency Hedging Strategy; and
- (h) other amounts received or receivable by the Contractor other than in respect of the Contract Price and which do not fall within the limbs (a) to (d) of the definition of Category II Revenue,

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

**"Category II
Revenue"**

means all monies received and receivable by the Contractor:

- (a) from another SLC or UKAEA;
- (b) from the Parent Body Organisation or any Affiliate;
- (c) in consideration for minor income generating activities not listed at items (b) to (e) inclusive of the definition of Category I Revenue (including any local authority grants, apprentice training, secondment fees, restaurant receipts, bus receipts and credit interest which accrues on the Contractor's

Receipts Account or any Foreign Exchange Accounts); and

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

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

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

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

"Change" means a Proposed Change which is approved (or deemed to be approved) pursuant to the provisions contained in the Change Control Procedure;

"Change Control Procedure" means the procedure outlined in Schedule 2 (*Change Control*) and PCP-05 (*Change Control*);

"Change Control Log" means the log to record Changes maintained by the Contractor under the Change Control Procedure and in accordance with PCP-05 (*Change Control*);

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

(a) such company; or

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

"Change in Law" means the coming into effect after the Commencement Date of:

(a) Legislation, other than any Legislation which on the Commencement Date has been published:

(i) in a draft Bill as part of a Government Departmental Consultation Paper;

(ii) in a Bill;

(iii) in a draft statutory instrument; or

(iv) as a proposal in the Official Journal of

the European Union; or

- (b) any applicable judgement of a relevant court of law which changes a binding precedent;

"Characterisation Plan" means the Contractor plan of how it proposes to characterises the Site, prior to and after remediation activities (forming part of the Performance LTP);

"CIL Change" means any change to this Agreement as a result of a Change in Law pursuant to Clause 37.1 (*Change in Law*);

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

"Class B Disallowable Costs" has the meaning given to that term in Clause 18.3.5 (*Liability Cap*);

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

"Collaborative Procurement" means the procurement of goods and services for benefit across the Authority's estate, whether by:

- (a) one SLC on behalf of more than one SLC, and/or including a member of the Authority's estate, and/or an agreed external member forming part of a Collaborative Procurement initiative; or
- (b) a centralised function within the Authority's estate; or
- (c) a Third Party;

"Commencement Date" means [●];

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

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

"Conditioning" means a facility which exists for the purpose of changing the chemical or

"Facility"	physical form of a material to make it suitable for a specific purpose;
"Conditions for Acceptance (CFA)"	means the requirements of the receiving body on the parameters which the material must comply with in order for the material to be accepted into the receiving body's facility;
"Consolidation Phase"	means the 9 month period from the Commencement Date during which the Contractor executes the Consolidation Plan;
"Consolidation Plan"	means the plan that the Contractor submits as part of its Response to Final Tender which describe the activities, in addition to those in the LTP that exists at the Commencement Date, that it plans to undertake, prior to the production of the Performance LTP;
"Construction Industry Scheme Regulations" or "CISR"	means the Income Tax (Construction Industry Scheme) Regulations 2005 (as amended);
"Contamination"	means the presence of substances in areas other than originally intended or the presence of residue resulting from the historic presence of materials which have subsequently been removed and "Uncontaminated" shall be construed accordingly;
"Contract Price"	has the meaning given in Paragraph 1 (<i>Total Remuneration</i>) Part 1 (<i>General</i>) Schedule 6 (<i>Finance</i>);
"Contract Term Longstop Date"	means [●];
"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 this Agreement which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and (b) the last Contract Year of this Agreement which shall commence on 1 April and end at the expiry of this Agreement (or the Parent Body Agreement (as applicable));
"Contractor"	means Dounreay Site Restoration Limited (Company Number SC307493);

**"Contractor
Default"**

means any of:

- (a) the events described at Clauses 11.13.2, 11.14 (*Defective Performance*) and 18.3.7 (*Liability Cap*);
- (b) the Authority being entitled to terminate the Parent Body Agreement for the default of the Contractor and / or the Parent Body Organisation;
- (c) a failure by the Contractor to comply with applicable Legislation or Regulatory Requirements;
- (d) a material breach by the Contractor of Security Requirements;
- (f) a material breach by the Contractor of its supply obligations under the Customer Agreements;
- (g) either:
 - (i) any revocation of all or part of any of a Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other Necessary Consent or material licence or permit held by the Contractor the possession of which is necessary to enable the Contractor to operate the Site; or
 - (ii) upon receipt of notice by the Contractor of the HSE's (or other relevant body's) intention to revoke such licence or permit or any part thereof where the Contractor has no ability to appeal, challenge or discharge any such intention to revoke; and
- (h) any other events or situations expressly described in this Agreement,

unless in either case such revocation or threatened revocation is for the sole purpose of issuing to the Contractor a replacement licence, authorisation, permit or consent which does not materially diminish the capacity or capability of the Site;

**"Contractor
Historical Costs"**

means Costs arising in relation to the period prior to (and excluding) the Commencement Date which are properly attributable to the Contractor, and any Cost which has been or is transferred to the Contractor by a Transfer Scheme;

**"Contractor
Information Asset"**

has the meaning given in Clause 14.4 (*Performance Asset Register*);

Register"

"Contractor Knowledge Management Policy" means a policy to be adopted by the Contractor in accordance with Clause 28.1 (*Knowledge Management*);

"Contractor Records" has the meaning given in Clause 14.2.3 (*Ownership of Records*);

"Contractor Related Party" means the Contractor, each Affiliate, their Subcontractors, their Sub-Subcontractors, and the employees and agents of each of these;

"Contractor's Fee Account" means the bank account nominated as such by the Contractor;

"Contractor's Liabilities" has the meaning given to it in Clause 18.3.4;

"Contractor's Payments Account" means the bank account of the Contractor which the Contractor nominates to the Authority into which drawings made under the Approved Working Capital Facilities are paid and which is separate from the Contractor's Receipts Account;

"Contractor's Receipts Account" means the bank account of the Contractor which the Contractor nominates as such to the Authority;

"Contractor's Representative" means the person appointed pursuant to Clause 37.3 (*Representatives and Delegation of Authority to Act*);

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

"Control" means:

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

provisions of section 1159 of the Companies Act 2006 shall apply); and/or

(b) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof thirty per cent (30%) or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters;

"COP 10"	means the Code of Practice 10 Submission comprising the letter of 1 March 2005 sent to HMRC by Herbert Smith on behalf of the Authority and subsequent correspondence;
"Corrective Action"	means action which the Contractor needs to take in response to the Authority's audit findings;
"Cost"	means a sum of money which the Contractor is legally obliged to pay other than to the Authority;
"CNPP"	means the Combined Nuclear Pension Plan set up by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;
"Critical Site IT Systems"	means the Site IT Systems described in Part 1 (<i>Critical IT Systems</i>) of Schedule 9 (<i>Information Technology</i>);
"Cross SLC Initiatives"	means the strategies, policies, procedures, programmes, services and Collaborative Procurements developed in respect of activities performed by or in relation to, or relevant to, more than one SLC by the governance boards (comprising the SLCs) established by the Authority;
"Currency Hedging Agreement"	means an agreement to hedge foreign currency risk;
"Currency Hedging Strategy"	means the strategy for hedging currency which on the Commencement Date is in use by the Contractor as the same may be amended with the agreement of the Authority from time to time;
"Current Budget"	means, in respect of each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which is allocated to Costs which are not Capital Costs;
"Current Costs"	means all Costs incurred by the Contractor other than Capital Costs;

"Customer"	means any party or former or prospective party to a Customer Contract;
"Customer Contract"	means any Agreement of a value equal to or more than £10,000 (ten thousand pounds sterling) transferred to the Contractor pursuant to the Energy Act or entered into by the Contractor for the provision of the Commercial Operations Tasks to Third Parties;
"Customer Group"	means any group or trade organisation of parties or former or prospective parties to Customer Contracts;
"DFR Fuel"	means Nuclear Fuel which was either intended for or irradiated in the Dounreay Fast Reactor;
"DFR Sphere"	means the spherical containment building associated with the Dounreay Fast Reactor;
"DGENER"	means the European Commission Directorate-General for Energy;
"DPA"	means the Data Protection Act 1998;
"DSRL Socio-Economic Development Plan"	means the Site Socio-Economic Development plan written in compliance with the Socio-Economic Policy. At the Commencement date the current version can be found at: http://www.dounreay.com/UserFiles/File/Dounreay%20Socio%20Economic%20Plans/Dounreay%20Socio%20Economic%20Development%20Plan%202009%20to%202010.pdf ;
"Data"	means facilities, information, books of account, Authority Records, Contractor Records or other documentation (including any stored in electronic form);
"Decommission"	means the final phase in the life cycle of a nuclear installation covering all activities from shutdown and removal of fissile material to environmental restoration of the Site through to its agreed End State and Decommissioning shall be construed accordingly;
"Decommissioning Principles"	means the Authority's principles contained in [●] accessed via: [●];
"Deed of Participation"	means the Deed of Participation for the Combined Nuclear Pension Plan attached as Part 4 (<i>Deed of Participation</i>) of Schedule 4 (<i>Employment and</i>

Pensions);

"Defective Performance" has the meaning given to it in Clause 11.1 (*Defective Performance*);

"Defective Performance Notice" has the meaning given to it in Clause 11.2 (*Defective Performance*);

"Delegation of Authority" means the written authorisation issued from time to time by the Authority and copied to the Contractor in respect of certain of the Authority's staff members or the written authorisation issued from time to time by the Contractor and copied to the Authority in respect of certain of the Contractor's staff members in accordance with Clause 37.3 (*Miscellaneous – Representatives and Delegation of Authority to Act*);

"Deleterious" means, of a material, that (whether alone or in combination or annexure with other materials) it:

(a) poses a threat to health and safety or to the Environment; or

(b) poses a threat to the structural stability or performance or the physical integrity of any thing (or any part of a thing) in which it is used or included; or

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

"Delivered Parent IP" has the meaning given in Clause 29.3.1.1 (*Intellectual Property*);

"Demobilisation" means the reversal of a Mobilisation;

"Dependency Event" means a failure by the Authority to provide any service or item dealt with under Schedule 11 (*Authority Deliverables*) to the applicable standard as set out in that Schedule, or any other event expressly referred to in this Agreement as a Dependency Event;

"Design Life" means the period time beginning from completion of the building or facility for which the building or facility is intended to be capable of fulfilling the duty for which it was designed;

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

"Detailed Project Plans"	means all the documentation produced by the Contractor underlying the LTP and setting out how Tasks will be undertaken and to what standard;
"Determination Date"	has the meaning given to it in Paragraph 6, Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Developed IP"	has the meaning given in Clause 29.4 (<i>Intellectual Property</i>);
"Diffusers"	means part of the redundant liquid Waste management system where liquid is discharged to sea;
"Directive Wastes"	means any subject or object in the categories set out in Annex I of the Waste Framework Directive which the holder discards, or intends to or is required to discard;
"Disallowable Cost"	has the meaning given in Paragraph 4 (<i>Disallowable Costs</i>) Part 2 (<i>Allowable and Disallowable Costs</i>) of Schedule 6 (<i>Finance</i>) and " Disallowable " shall be construed accordingly;
"Disposal"	means the process by which Waste, particularly controlled, contaminated or radioactive Waste is placed in a safe condition, with no intent to retrieve and Dispose shall be construed accordingly;
"Disposal Authority"	means the Radioactive Waste Management Directorate (RWMD) responsible for authorising the Disposal of waste forms or any successor body whose role is to carry out the same or materially similar services to that of the RWMD;
"Dispute or Claim Negotiation"	means any Third Party claim brought against the Contractor where there is reasonable expectation that the financial value of any settlement may exceed the sum of five hundred thousand pounds Sterling (£500,000.00);
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12 (<i>Dispute Resolution Procedure</i>);
"Dounreay Heritage Strategy"	means the strategy, 'Dounreay Heritage Strategy: Delivering a cultural legacy through decommissioning, December 2009, 3 rd Draft accessed via: http://www.dounreay.com/social-responsibility/consultations/complete/heritage-strategy ;
"Dounreay Land	means the information and records relating to location, quantification, nature

Condition Records"	extent etc of any contamination on the Site as defined in the SAFEGROUNDS guidance, 'SAFEGROUNDS, good practice guidance for land quality record management for nuclear-licensed and defence sites, 2007'. accessed via; http://www.safegrounds.com/pdf/W21_Record%20keeping_v2.pdf ;
"Dounreay Stakeholder Group"	means the group of stakeholders established as the formal consultation body relative to the Site under the rules set up for local and national stakeholder groups by the Authority;
"EA"	means the Environment Agency;
"e-Government Metadata Standard (e-GUS)"	means the e-GUS Standard Version 3.0 of 29 April 2004 as updated from time to time;
"EGG 02"	means the Guidance Note for Assessment of Asset Care Requirements for Inclusion in Life Time Plans Rev 1 as may be amended or updated by the Authority from time to time;
"EIR"	means the Environmental Information Regulations 2004 (as amended);
"Emergency Action"	means an action taken by the Contractor pursuant to the Contractor's genuine belief that risk to life, limb or the Environment requires immediate action. It includes assistance to the Authority or to another SLC in respect of an emergency on another nuclear site or in response to an urgent request from a Third Party to assist in a radiological incident not on a nuclear site. Emergency Action includes urgent requests for assistance from the National Radiological Protection Board and urgent assistance required in accordance with the RADS SAFE Emergency Plan;
"Emergency Action Notification"	has the meaning given in the Change Control Procedure;
"Emergency Physical Inventory Taking (EPIT)"	means the emergency arrangement in place to verify in an emergency situation that all nuclear material inventory is accounted for.
"Employees"	means all persons, whether part-time or full-time, employed or engaged by the Contractor in the performance of the Tasks and/or the Contractor's other obligations under this Agreement from time to time (but excluding Nominated

Staff) and "**Employee**" shall be construed accordingly;

"EMU"	means European Economic and Monetary Union;
"End State"	means the physical condition the Site should be returned to as agreed in the Site End State Consultation;
"Energy Act"	means the Energy Act 2004;
"Environment"	means any and all living organisms, ecosystems, air, water, land and property, whether natural or man-made and wherever occurring or situated;
"Environmental Safety Case"	means the Safety Case to be provided by the Contractor in relation to the environmental safety of Disposals of solid radioactive waste which comprises a set of claims concerning the environmental safety of Disposals of solid radioactive [waste], substantiated by a structured collection of arguments and evidence supporting such claims. The purpose of the Environmental Safety Case is to demonstrate that the health of members of the public and the integrity of the environment are adequately protected, both when the Waste is Disposed of and in the future;
"Escrow Agent"	means NCC Escrow International Limited, a company incorporated in England and Wales with registered number 3081952, whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, or such alternative as the Authority shall designate in writing from time to time;
"Escrow Terms"	means the form of source code escrow agreement set out in the standard single licensee escrow agreement of the Escrow Agent, or such other escrow terms as the Authority, acting reasonably, shall specify from time to time;
"EU Procurement Rules"	means Council Directives 89/665/EEC, 92/13/EEC, 92/50/EEC, 93/37/EEC, 93/36/EEC, 93/38/EEC, 98/4/EC, European Parliament and Council Directives 97/52/EC, 98/4/EC, 2004/17/EC and 2004/18/EC and any other EU measures adopted from time to time in relation to procurement, together with the United Kingdom implementing measures and all applicable Treaty principles;
"Exceptional Item"	has the meaning given to it in Paragraph 4.2 (<i>Exceptional Items</i>) of Part 2b (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);
"Exceptional Item Information"	has the meaning given to it in Paragraph 4.4 (<i>Exceptional Items</i>) of Part 2b (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);

"Exceptional Item Threshold"	has the meaning given to it in Paragraph 4.1 (<i>Exceptional Items</i>) of Part 2b (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);
"Exceptional Pension Costs"	means any Pension Costs to the extent that they exceed the contributions which are required to be paid as at the date of this Agreement under the schedule of contributions (prepared under section 58 of the Pensions Act 1995 or section 227 of the Pensions Act 2004, as appropriate) of the pension scheme in force at the date of this Agreement or, where Pension Costs relate to a pension scheme which has not been established or does not have such a schedule of contributions in place as at the date of this Agreement, to the extent that they exceed the contributions which are required to be paid as at the date of this Agreement under the schedule of contributions (prepared under section 58 of the Pensions Act 1995 or section 227 of the Pensions Act 2004, as appropriate) of the Combined Pension Scheme;
"Existing Agreements"	means all agreements that are legally binding on the Contractor and were entered into prior to the Commencement Date;
"Expiry Date"	means, subject to any variation of such date in accordance with the terms of this Agreement and, without prejudice to the validity of any earlier termination of this Agreement in accordance with its terms, the Contract Term Longstop Date or, if earlier, the date on which the Interim End State is accepted as achieved in accordance with the provisions of this Agreement;
"Extravagant Outlays"	means, in relation to any Cost (which would otherwise be an Allowable Cost) which, in the Authority's reasonable opinion, is materially in excess of any value obtained in relation to the LTP, that part of the Cost which is in excess of the value that the Contractor ought reasonably to have expected to have obtained;
"FOIA"	means the Freedom of Information Act 2000 as amended;
"FNP-01"	means the document highlighting the accounting policies and procedures adopted by the Authority for Owner Books as amended from time to time
"FNP-02"	means the document setting out the standards that the Contractor is required to maintain over the Authority's books of accounts and the reports required;
"Fall Due"	means become payable in accordance with the legal terms governing the

relevant obligation to make payment;

"Fee" means in respect of any Contract Year the aggregate of the PBI Fee, the Target Fee (as adjusted by the Shareline) and any further category of fee that may be agreed between the Parties in accordance with this Agreement in each case in respect of the relevant Contract Year;

"Final End State LTP" means the lifetime plan to be provided by the Contractor in accordance with and more particularly defined in Requirement 72;

"Final Reconciliation"

- (h) accidental damage to equipment; and
- (i) structural shift or subsidence;

but expressly excluding:

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

"Foreign Exchange Accounts"	means any bank accounts held in currencies other than sterling used for the purposes of the Currency Hedging Agreements or otherwise;
"FSA"	means the Financial Services Authority;
"Funding Limit"	means each Annual Site Funding Limit, each Current Budget and each Capital Budget;
"GAAP"	means Generally Accepted Accounting Practice
"GDF"	means the Geological Disposal Facility;
"GIS"	means a geographic information system (or geographical information system) which captures, stores, analyzes, manages, and presents data that are linked to location;

"General Change in Law"	means a Change in Law which is not a Specific Change in Law;
"Georgian Nuclear Fuel"	means Nuclear Fuel originating from Georgia;
"Good Industry Practice"	means the exercise of the degree of skill, care, diligence, prudence and foresight which would reasonably (taking into account all the factors relating to the Site) and ordinarily be expected from a skilled and experienced Contractor engaged (in any European Union jurisdiction where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom and any other standards generally adopted in the United Kingdom) in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances, where such Contractor is seeking to comply with Contractual, legal and regulatory obligations which are analogous to those obligations which are incumbent on the Contractor;
"Government Payment Obligations"	means the guidance contained in Annex 4.6 of Managing Public Money 2007;
"Guidance for Site Stakeholder Groups"	means the Authority's guidance, 'Authority's Guidance for Site Stakeholder Groups, Ref LAR3.0, 27 March 2009 found at: http://www.sitestakeholdergroups.org.uk/upload/LAR-3-0-SSG-Guidance.pdf
"Guidelines on Managing Information"	means the guidelines issued by the Cabinet Office, HMG (or any relevant governmental body) including the HM Treasury Good Practice Guide: the internal audit role in information assurance (January 2010), the HMG Security Policy Framework (December 2008);
"HGCRA"	means the Housing Grants, Construction and Regeneration Act 1996;
"HMRC"	HM Revenue & Customs and any successor to such organisation;
"HR Internal Procedure"	means the Contractor's Internal Procedures referred to in Clause 31.9 (<i>Terms and Conditions of Employment</i>);
"HSE"	means the Health and Safety Executive;
"HSSE"	means the obligations on the Contractor to manage the Site so as to

"Obligations"	minimise any material risk to health, safety, security and the environment;
"Harwell/Winfrith Contract"	means the Customer Contract made between DSRL and RSRL dated 1 April 2010, reference D-Sales/10/0004 in relation to payroll services to Harwell/Winfrith;
"High Level Waste (HLW)"	or heat-generating Waste means [Waste in which the temperature may rise significantly as a result of its radioactivity];
"Home Location"	means the location at which a member of personnel ordinarily works, determined by reference to their contract of employment where applicable;
"ILW"	means Intermediate Level Waste, Waste with activity levels above 20GBq/te beta/gamma or 4GBq/te alpha;
"INS"	means International Nuclear Services Limited, the w

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 Review Date an amount referred to in this Agreement shall be increased by the application of the indexation factor set out in Clause 01.2.14 (*Interpretation*);
- "Indexation Review Date"** means each anniversary of the Commencement Date, but excluding the first such anniversary;
- "Information"** has the meaning given in Clause 25.3 (*Confidentiality and Compliance with Legislation*);
- "Information Asset Register"** means a register holding metadata to the e-GMS standard about the information holdings for the Contractor as defined by and agreed with the Authority;
- "Information Assurance"** has the meaning attributed to it in the Guidelines on Managing Information;
- "Information Governance"** has the meaning attributed to it in the Guidelines on Managing Information;
- "Information"**

administrator is given or if an administrator is appointed;

(b) commencing negotiations with all or any class of creditors with a view to rescheduling any debts, or making a proposal for or entering into any compromise or arrangement with creditors (other than for the purposes of a solvent reconstruction or amalgamation);

© the presentation of a petition for winding up;

(d) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation);

(e) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation);

(f) the appointment of, or a person with a right to appoint becoming entitled to appoint, a receiver or manager or administrative receiver;

(g) being unable to pay debts as they fall due or being deemed unable to pay debts within the meaning of section 123 of the Insolvency Act 1986; and

(h) any event occurs, or proceeding is taken, in any jurisdiction which has an effect equivalent or similar to any of the events mentioned above,

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

"Insurance Deductible" the portion of an insured loss to be borne by the insured before he or she is entitled to recovery from the insurer;

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

"Integrated Management System" means the management system developed by the Contractor pursuant to Clause 8 (Integrated Management System);

"Inter SLC Service Contracts" means the Inter SLC services contracts entered into in accordance with Clause 23 (*Inter SLC Service Contracts*);

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

Specification;

- "Internal Procedures"** means all internal company documentation of the Contractor (regardless of the manner in which it is held, stored or collated) which:
- (a) in the reasonable opinion of the Authority, constitutes a mandatory internal guideline, standard, procedure or policy;
 - (b) in the reasonable opinion of the Authority, relates directly or indirectly to the Contractor's structure, operation and management; and
- © relates materially and directly to the duties imposed on the Contractor in accordance with Clause 4.2 (*Contractor's Obligations*) and/or the manner in which the Contractor chooses to fulfil its Contractual, legal and regulatory obligations therein,
- and includes HR Internal Procedures and **"Internal Procedure"** shall be construed accordingly;
- "International Relations Topic Strategy Summary"** means the Authority's strategy, ' International Relations Topic Strategy Summary, Feb 2010, V3.0 accessed via:
<http://www.nda.gov.uk/documents/upload/International-Relations-Topic-Strategy-Summary-February-2010.pdf> ;
- "Investment Opportunity"** means a Work Activity not currently identified in the Lifetime Plan which, if pursued, may result in a cost and/or schedule benefit to the Authority;
- "IP"** means intellectual property including all inventions (whether patentable or not), design rights, database rights, copyright, semiconductor topography rights, unregistered trade and service marks, logos, get-up and trade names and, in each case, the goodwill attaching to them, all patents, utility models, registered designs, registered copyrights, registered trade and service marks, domain names and any applications for registration and rights to grant of any of the foregoing, confidential information, know-how, and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which subsist anywhere in the world;
- "IP Schedule"** means the Authority's policy and strategy document setting out the Authority's requirements in relation to the management and ownership of IP set out in Schedule 8 (*Intellectual Property*);
- "IT Agreement"** means any agreement under which any services are provided or Software is

licensed to the Contractor for the purposes of any Site IT Systems;

- "IT System"** means any communications and/or information technology system including:
- (a) all hardware, including servers, desktop and laptop PCs and other terminal equipment, printers, scanners and other peripherals;
 - (b) networks and network equipment;
 - (c) Software; and
 - (e) data comprised or used therein;
- "IT/ Telecoms Projects"** means a unique set of information technology related tasks and activities, planned and executed in a structured manner to achieve a specific business requirement to a defined duration, or any Subcontracts;
- "Key Personnel"** means the individuals, whether Nominated Staff or Employees, identified by the Authority and named as key personnel in accordance with Clause 31.2 (*Key Personnel*) and listed in Part 2 (*Key Personnel*) of Schedule 4 (*Employment and Pensions*) as amended from time to time;
- "KnK Sodium"** means the sodium which is the subject of a contract between Nuvia and The Authority dated 15 July 1994 for the destruction of sodium originating from the KnK II Reactor;
- "Knowledge Management Policy"** means the Authority's knowledge management policy set out in Schedule 16 (Knowledge Management);
- "Law Society Interest Rate"** means the rate bearing that name, published by the Law Society (or its successor body) from time to time, or any agreed successor thereto;
- "LLW"** [see "Low Level Waste"];
- "LLW Pits"** means the historical Low Level Waste Disposal facility on the Site to be replaced by the LLW Disposal Facility [to be built by the Contractor pursuant to the Client Specification];
- "LLW Disposal Facility"** means the new LLW Disposal facility to be built by the contractor to replace the LLW Pits;
- "LQM"** means land quality management;

"LQM Plan"		means the Contractor's plan detailing its approach to managing land quality;
"LTP 10"		means the LTP dated [●] current prior to [the Commencement Date];
"Landfill 42"		means the historical Disposal facility located adjacent to the Site;
"Legacy Fuel Contracts"	Fuel	means those contracts that were entered into by UKAEA for the processing of Nuclear Fuels through their plants and which could not be completed when the operations of the Site ceased;
"Legal Proceedings"		means any litigation, arbitration, adjudication, defence, dispute, claim, mediation, negotiation, other alternative dispute resolution procedure, compromise, appeal or investigations before an Ombudsman or tribunal;
"Legislation"		means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code or judgment of a relevant court of law, in each case in the United Kingdom;
"Letters of Compliance (LOC)"	of	means the letters issued by the Disposal Authority that set out the limits and conditions to be met in order to receive authorisation to send Waste to the Disposal facility;
"Liability Cap"		has the meaning given in Clause 18.3.1 (<i>Insurance</i>);
"Licensees"		has the meaning given to it in the Nuclear Installations Act;
"Licence Fee"		has the meaning given to it in Clause 29.1.1 (<i>Intellectual Property</i>);
"Licensed Nuclear Site Area"		means the part (or parts) of the Site that is from time to time subject to a Nuclear Site Licence (which at the date of this Agreement comprises the land shown coloured red on the plan attached at Schedule 7 (<i>Property</i>) including all water supplies, pipelines, conduits and drainage systems and other rights and easements appurtenant thereto;
"Lifetime Plan" or "LTP"		means the over-arching document which: <ul style="list-style-type: none"> (a) encompasses delivery of and describes the totality of activities required to take the Site from its current state to full delivery of the

Client Specification, to the point of achieving the Interim End State;

- (b) describes the totality of the post -Interim End State activities required to deliver the Final End State (provided that the inclusion of such post-Interim End State activities within the Lifetime Plan shall not require the Contractor to undertake them);
- (c) shall, in terms of pre-Interim End State activities only, contain no more than those activities which are required to deliver the Client Specification;
- (d) shall be continuously updated in line with the Change Control Procedure;
- (e) identifies:
 - (i) when such work is to be performed (the schedule); and
 - (ii) how much it is anticipated to cost to discharge the scope up to the Interim End State and full lifetime liabilities up to the Final End State
- (f) is a contemporaneous plan which supports and underpins delivery of the Contract Baseline;
- (g) provides the Authority with the information it needs to comply with its statutory reporting obligations; and
- (h) contains sufficient detail to enable verification of Cost and inform funding requirements,

and for the purposes of this Agreement the terms "Lifetime Plan", "LTP", "Performance LTP" and "Lifetime Plan Performance Baseline" have the same meaning and are interchangeable;

"Lifetime Plan Performance baseline" refer to definition of "Lifetime Plan";

"Local" means Caithness and North Sutherland;

"Local Stakeholder" means other public agencies that have an interest or remit in local economic development including bodies such are Highland Council, Highlands and

- Partners"** Island Enterprise, Caithness and North Sutherland Regeneration Partnership, local business organisations such the Chamber of Commerce and the Dounreay Stakeholder Group;
- "Long Term Plan"** means the plan to be prepared, maintained and submitted by the Contractor to the Authority in accordance with Requirement 25 that includes an annualised estimate for scope, schedule and cost in compliance with PCPM Contractor Annexe and shows delivery of the Final End State to allow the Authority to maintain the National Liabilities Estimate and to facilitate strategic decision making;
- "Low Level Waste"** means radioactive Waste with activity levels below 20GBq/te beta/gamma or 4GBq/te alpha;
- "Low Level Waste Repository" (LLWR)** means the UK LLW Disposal Facility located near Drigg in Cumbria;
- "M&O Contract"** means the management and operations contract made between the Authority and Dounreay Site Restoration Limited dated 01 April 2005, as amended and restated by a Deed of Amendment on 01 April 2007 and by the Dounreay Transfer Scheme on 01 April 2008, and which will remain in force until commencement of this Agreement;
- "Magnox Drying Project Manager"** means the project manager responsible for exploring the opportunity for drying Magnox Fuel at Sellafield;
- "Major Work Package"** means a quantifiable component of the work required to achieve the Interim End State, as set out in the table at Paragraph 3.1 of Part 4b (*Target Fee*) of Schedule 6 (*Finance*) and more fully described in the relevant PAF;
- "Make-or-Buy Plan"** means the Contractor's plan setting out the extent to which it proposes to subcontract Tasks it currently performs;
- "Mandatory Services"** means:
- (a) undertaking Emergency Action in accordance with this Agreement;
 - (b) any other works and/or services which a Contractor performing its duties under this Agreement in accordance with Good Industry Practice would have to perform in order to:

- (i) comply with all applicable Legislation;
- (ii) comply with any applicable Regulatory Requirements;
- (iii) comply with the Security Requirements; or
- (iv) comply with HSSE Obligations;

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

- (a) LTP and Contractor's Initial Commitments;
- (b) Detailed Project Plans; or
- © Permitted Activities,

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

- "Material Change in Target Costs"** means an increase or decrease (as the case may be) in the Target Cost by £[●] or more;
- "Minimum Performance Standard"** means Minimum Performance Standards as defined in Schedule 17 (*Minimum Performance Standards*);
- "Month"** means a calendar month (and **"Monthly"** shall be construed accordingly);
- "Monthly Progress Report"** means the monthly progress reports to be provided by the Contractor in accordance with 14.1.2 (*Required Reports*);
- "Monthly Reconciliation Report"** has the meaning set out in Paragraph 8.1 (*Monthly Reporting*) of Part 2b (Payment of Allowable Costs) of Schedule 6 (*Finance*);
- "NII"** means the Nuclear Installations Inspectorate forming part of the Health and Safety Executive and responsible for administering the licensing function and enforcing the Nuclear Installations Act 1965 and the Health and Safety at Work Act 1974 on nuclear sites;
- "NS Mobilisation"** means the movement of a member of Nominated Staff from their Home Location to the Site, and installation of the necessary support infrastructure (both physical and administrative);

"NS Support Month"	means a minimum of [●] hours [<i>Drafting Note: Figure to represent 80% of a full working month.</i>] of work in support of the activities of the Contractor or otherwise in support of the activities required to deliver the Client Specification, undertaken by a member of Nominated Staff within a Month;
"National Insurance Contributions"	means contributions and sums payable to HMRC under the PAYE system in respect of emoluments and benefits paid or payable by the Contractor, taking into account all deductions and retentions which should be made in accordance with the applicable Legislation;
"National Liabilities Estimate"	means the estimate prepared by the Authority comprising both the cost of Decommissioning and clean-up and the cost of the geological disposal facility [of the UK Government] as prepared in accordance with HM Treasury Guidelines [and as set out in the Authority's Annual Reports and Accounts];
"National Nuclear Laboratory (NNL)"	means the National Nuclear Laboratory Limited of Sellafield Seascale Cumbria CA20 1PG, a nuclear technology services provider;
"Necessary Consents"	means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party;
"Negotiation Mandate"	means the authorisation by the Authority to the Contractor to proceed with negotiation of a Customer Contract as detailed in PCP-17;
"New Assets"	means any assets, whether new or second-hand, acquired by the Contractor in accordance with Clause 6.7 (<i>Asset Management</i>) on or after the Commencement Date, excluding any Subcontracts and Customer Contracts;
"New Customer Contract"	has the meaning given in 20.1 (<i>Authority Rights in Respect of Customer Contracts</i>);
"NISR"	means the Nuclear Industries Security Regulations 2003 (SI 2003/403), as amended, modified or re-enacted from time to time;
"Nominated Staff"	means the individuals listed in Part 1 (Nominated Staff) of Schedule 4 (<i>Employment and Pensions</i>);
"Non Contractor Historical Costs"	means Costs arising in relation to the period prior to (and excluding) the Commencement Date which are properly attributable to anyone other than

the Contractor, and any financial liability which has been or is transferred from the Contractor by way of a Transfer Scheme;

- "Notice"** has the meaning given in Clause 37.7.1 (*Notices*);
- "Nuclear Decommissioning Authority" or "NDA"** has the same meaning as "Authority";
- "Nuclear Fuel"** means uranium or plutonium which has been fabricated into pins, assemblies, plates, or other such similar form for the purposes of fuelling a nuclear reactor;
- "Nuclear Site Licence"** means a nuclear site licence granted to the Contractor pursuant to Section I of the Nuclear Installations Act 1965 (as amended);
- "OCNS"** means the Office for Civil Nuclear Security or any body having responsibility for civil nuclear security in the United Kingdom which substantially replaces the same from time to time;
- "Objection Notice"** has the meaning given in Paragraph 5.2 (*NDA's Instructions*) of Part 1 (*Customer Contracts*) of Schedule 3 (*Commercial Schedule (Customer Contracts)*);
- "Occupational Health Services Contract"** means the Occupational Health Services Contract made between [●] and [●] dated [●] in relation to [●];
- "Office of Civil Nuclear Security (OCNS)"** means the security regulator for the United Kingdom's civil nuclear industry which conducts regulatory activities on behalf of the Secretary of State for Business, Enterprise and Regulatory Reform under the authority of the Nuclear Industries Security Regulations 2003;
- "Operating Procedures"** means all documented procedures, processes or prescribed practices in use at the Site from time to time (including without limitation operating procedures and maintenance procedures) which apply to the performance by:
- (a) the Contractor of its obligations under this Agreement;
 - (b) any Subcontractor of its obligations under a Subcontract; and

	©	any Sub-Subcontractor of its obligations under a Sub-Subcontract;
"OPG Receipts Account"		means the account which the Authority nominates to the Contractor as such;
"Outgoing Parent"		means the Parent Body Organisation;
"Outline Proposal"		has the meaning given in Paragraph 1.2 (<i>Consultation</i>) of Part 1 (<i>Customer Contracts</i>) of Schedule 3 (<i>Commercial Schedule (Customer Contracts)</i>);
"Output"		has the meaning given in Clause 29.4.5 (<i>Intellectual Property</i>);
"Outstanding Trend"		means a trend that has not been acted upon and has been temporarily deferred pending resolution;
"Out Years"		means those years in the LTP beyond the then current Contract Year;
"Overarching Costs Management Agreement" or "OCMA"		means the UKAEA OCMA;
"Overpayment Notice"		has the meaning given to it in Clause 16.8.3 (<i>Finance</i>);
"Owner Books"		means the books of account prepared and maintained by the SLC contractor for the benefit of the the Authority in accordance with its instructions;
"PAF"		has the meaning given to it in Part 5 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>), Paragraph 1.1;
"PAT"		means the Project/Programme Assessment Tool;
"PBI Fee"		means an amount of performance-based incentive fee payable in respect of achievement of PBI Payment Milestones, and which is subject to the maximum amounts (to be apportioned across all PBI Payment Milestones for the Contract Year in question) set out in Paragraph 3.3 of Part 4a (<i>PBI Fee</i>) of Schedule 6 (<i>Finance</i>);;
"PBI Payment Milestones"		means a Payment Milestone agreed or determined pursuant to the provisions of Parts 4a (<i>PBI Fee</i>) and 5 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>), achievement of which will (subject to the provisions of Part 4a (<i>PBI Fee</i>) of Schedule 6 (<i>Finance</i>)) result in a payment of PBI Fee;

"PCP-17"	means the Authority's Sanction and Validation Programme Controls Procedure;
"PCPM Contractor Annexe"	means the Baseline Management System Programme Controls Procedures Dounreay Annexe;
"PRAG(D)"	means the independent advisory body set up to provide advice to SEPA and DSRL on the management of the Particles;
"PSWBS"	means in respect of the Site, the Programme Summary Work Breakdown Structure within the relevant Lifetime Plan which is the structure defined and used by the Authority to subdivide the relevant Lifetime Plan to individual levels where Tasks can be planned, controlled, executed and performance-measured in accordance with the requirements of this Agreement;
"Package Safety Case"	means the safety case required by the Department for Transport for the transport of packages of radioactive or hazardous materials;
"Parent Body Agreement"	means the agreement of that name entered into between the Authority, the Contractor and the Parent Body Organisation on the date of this Agreement;
"Parent Body Organisation" or "PBO"	means ● (Co. no.●);
"Parent IP"	has the meaning given in Clause 29.3.1 (<i>Intellectual Property</i>);
"Partnering Arrangement"	means any agreement, other than one which in the Authority's reasonable opinion is entered into in the ordinary course of the Contractor's business, under which any person would, in the reasonable opinion of the Authority, acquire significant influence over either the Contractor's or the Parent Body Organisation's performance of its obligations under this Agreement and/or the Parent Body Agreement;
"Particle End State"	means the agreed End State for any environmental contamination resulting from the historic release of particles from the Site;
"Particles"	means the particles of Nuclear Fuels which have been released from the Site into the environment and which are found periodically on the beaches and foreshore in the vicinity of the Site;

"Passive Safety"	means the achievement of a safe state without reliance on intervention from active systems or components;
"Payment Milestones"	means in those indicators of performance and milestones which are set out in or otherwise determined pursuant to Schedule 6 (<i>Finance</i>) and which are to be used as milestones by reference to which PBI Fee or a proportion of the Target Fee (as adjusted by the Shareline) is to be paid;
"PBI Payment Milestones"	means a Payment Milestone agreed or determined pursuant to the provisions of Parts 4a (<i>PBI Fee</i>) and 5 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>), achievement of which will (subject to the provisions of Part 4a (<i>PBI Fee</i>) of Schedule 6 (<i>Finance</i>)) result in a payment of PBI Fee;
"People Strategy"	means the NDA strategy, 'The NDA People Strategy, 27 Jan 2010, V1.4' accessed via the following link: [●];
"Pension Costs"	means any pension contributions for which the Contractor (or any subsidiary of the Contractor) is liable including, for the avoidance of doubt pensions deficit contributions;
"Performance Agreement Form"	has the meaning given to it in Paragraph 1.1 of Part 4 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>);
"Performance LTP"	refer to definition of "Lifetime Plan"above;
"Performance Trend"	means a trend that, due to favourable or adverse performance, will result in a change to cost of the work performed or the earned value (ACWP, BCWP and/or estimate at completion) but will not result in an overall change to the scope of the work to be undertaken and is not usually regarded as a valid basis for Change Control but will manifest itself as a cost and/or schedule variance;
"Permitted Activities"	means those activities listed in Part 1 (<i>Permitted Activities</i>) of Schedule 3 (<i>Commercial Schedule (Customer Contracts)</i>) as may be amended from time to time on the instruction or with the agreement of the Authority in accordance with Clause 21 (<i>Permitted Activities</i>);
"Permitted Activities"	has the meaning given to it in Paragraph 6.1 of Part 1 (<i>Customer Contracts</i>) of Schedule 3 (<i>Commercial Schedule (Customer Contracts)</i>);

Request"

"Permitted

**Financial
Indebtedness"**

means any indebtedness for or in respect of:

(a) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(b) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

(c) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(d) any other financial instrument which the Authority, in its absolute discretion, approves of as incurring Permitted Financial Indebtedness;

(e) (without double counting) any guarantee, indemnity or similar assurance against financial loss, in respect of the liabilities of any person falling within (a) to (d) above (inclusive) all as previously approved by the Authority in writing.

**"Persistent
Breach"**

means repeated or similar breaches by the Contractor of the same, or a similar, Operating Procedure (whether or not such Operating Procedure was designed by the Contractor after the Commencement Date) which has or could have (directly or indirectly) a material adverse impact on the accomplishment of any part of the LTP (or any activity necessarily ancillary thereto) or on the provision of the Mandatory Services;

**"Portfolio
Management
Process"**

means the management process contained in the Change Control Procedure;

**"Post Investment
Appraisal" or "PIA"**

has the meaning contained in the Change Control Procedure and PCP-17;

**"Principal
Employer"**

means in relation to the Applicable Schemes, the body in which is vested special powers or duties, such as the appointment of trustees under such schemes or the power of amendment under such schemes;

"Process"

means [●];

"Pre-

any Relief which arises as a consequence of or by reference to any Tax

- Commencement Relief"** Event occurring, or in respect of a period commencing, before the Commencement Date;
- "Programme"** means a co-ordinated portfolio of Projects designed to achieve a set of specified outcomes and benefits;
- "Programme Control Procedures" or "PCPs"** has the meaning given to it in the Change Control Procedure;
- "Prohibited Acts"** means:
- (a) offering, giving or agreeing to give to any employee of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other Agreement with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other Agreement with the Authority;
 - (b) entering into this Agreement or any other Agreement with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the relevant Agreement is entered into, particulars of any such commission and of the terms and conditions of any such Agreement for the payment thereof have been disclosed in writing to the Authority;
 - © committing any offence:
 - (i) under the Prevention of Corruption Acts 1889 – 1916 and/or the Bribery Act 2010;
 - (ii) under any applicable Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other Agreement with the Authority; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Project"	means a unique set of co-ordinated activities by the Contractor intended to meet certain of the Contractor's business objectives, which has precise starting and finishing points and is undertaken by one or more persons to meet specific business objectives within defined time, cost and performance parameters set out in the Contractor's relevant business case. A Project may be contracted to the Contractor, be delivered by Authority internally, or may include IT/Telecoms Projects and must, as a minimum, comprise: (a) a finite and defined lifespan; (b) defined and measurable business deliverables and/or outcomes which meet the specific business objectives of the Contractor together with the corresponding activities to achieve such deliverables and/or outcomes; © a defined amount of all resources required; and (d) a management structure to manage the Project with defined responsibilities allocated to each individual involved;
"Project Level Acquisition Strategy"	means the project level procurement plan and high level procurement approach referred to in the Change Control Procedure and PCP-17;
"Property Lease"	means the leases of part or parts of the Site subject to the terms of this Agreement entered into on the same date as this Agreement and "Property Lease" means any of them;
"Proposal"	has the meaning given to it in Paragraph 1.9.3 of Part 1 (<i>Customer Contracts</i>) of Schedule 3 (<i>Commercial Schedule (Customer Contracts)</i>);
"Proposed Working Capital Facility"	means a loan facility into which the Contractor proposes to enter or into which the Authority proposes that the Contractor should enter;
"Proximity Principle"	means the principle that advocates that Waste should be disposed of (or otherwise managed) close to the point at which it is generated, thus aiming to achieve responsible self sufficiency at a regional or sub regional level;
"Public and Stakeholder Engagement and Communications Topic Strategy"	means the summary as defined in the Public and Stakeholder Engagement and Communication Topic Strategy Summary, 7 Jan 2010, V1.0 accessed via: http://www.nda.gov.uk/documents/upload/Public-and-Stakeholder-

Summary"	Engagement-and-Communications-Topic-Strategy-Summary-January-2010.pdf ;
"Publically Available Specification – 55 (PAS 55)"	means the specification made publically available by the British Standard Institute in relation to good practices in physical asset management;
"RSA93 Authorisation"	means an authorisation given pursuant to the Radioactive Substances Act 1993;
"Radioactive Contamination"	means Contamination with radioactive materials;
"Radioactive Waste"	means any radioactive substance or object which the holder discards or intends to discard or is required to discard;
"Radioactive Waste Management Directorate (RWMD)"	means the body responsible for authorising Disposal sites or Disposal Waste forms;
"Records"	means the records specified in 14.2.2 (Ownership of Records);
"Records Agreement"	means the UKAEA Restructuring Records Agreement or any other agreement concerning the compilation, maintenance, indexing and provision of access to such Records in connection with the business of the Contractor from time to time;
"Redundancy"	has the meaning given in section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992;
"Regulator Meetings"	means all meetings between the Contractor and any Regulator(s) whether or not other persons are invited to attend;
"Regulators"	means the HSE, the EA, the SEPA, the OCNS, the Scottish Executive, the FSA, the Pensions Regulator, the Pension Protection Fund, others specific to the Contractor's obligations under this Agreement and as applicable in the relevant jurisdiction (including in relation to international waters) where the Contractor's obligations under this Agreement are carried out and

"Regulator"	shall mean each or any one of them;
"Regulatory Requirements"	means any legally enforceable requirement of any Regulator;
"Relief"	means: <ul style="list-style-type: none">(a) any relief, loss, allowance, exemption, set-off or credit in respect of Tax;(b) any deduction or other relief available in relation to Tax or in the computation of income, profits or gains for the purposes of Taxation; and(c) any right to the repayment of Tax, including any repayment supplement and interest;
"Remediation Plan"	means a detailed proposal to be prepared by the Contractor in response to a Remediation Notice, setting out how the Contractor will remedy the failure giving rise to the Remediation Notice such that the Authority is placed in no worse a position than that in which it would otherwise have been had such failure not occurred, and how recurrences of such failure will be avoided in future, and such proposal shall include the times by which each step within it shall be achieved;
"Reports"	means the reports required by Clause 14.1.2 (<i>Performance Management, Performance Assurance and Records</i>);
"Representative"	means either the Authority's Representative or the Contractor's Representative, as the case may be;
"Requirement"	means a particular Authority requirement set out in the Client Specification set out in Schedule 1;
"Required Parent IP"	has the meaning given in Clause 29.3.1.2 (<i>Intellectual Property</i>);
"Re-Sanction" and "Re-Sanction Submission"	means the obtaining of further Sanction as set out in the Change Control Procedure and PCP-17;
"Reserved Parent IP"	has the meaning given in Clause 29.3.5 (<i>Intellectual Property</i>);
"Retentions"	has the meaning given to it in Clause 12.3.1.1 (<i>Dependency Events</i>);

"RSSS"	means the Rolling SLC Sanctioning Schedule;
"Safety Case"	means a document to be produced by the Contractor in accordance with the Regulators' requirements which demonstrates (among other things) that the operations of a particular plant or facility have been considered in normal operations and fault conditions and demonstrates that any resulting risk is tolerable;
"Sanctions" and "Sanction Submission"	means the application by the Contractor to the Authority for sanction and validation as contained in the Change Control Procedure and PCP-17;
"Sanction Plan"	means the " <i>Work Activity Sanction Plan</i> " as referred to and contained in Appendix C of PCP-17;
"SaV"	means Sanction and Validation as referred to in PCP-17;
"Schedule of Delegated Authority"	means the current notification to the Contractor of levels of financial delegated authority against specific work activity thresholds in accordance with the relevant agreement in place at the time between the Parties (as may be amended by agreement from time to time);
"Scheme Design"	means a design that is more advanced than an outline or concept design, and to include layout drawings, scoping calculations and be sufficient to show how the facility would operate and to allow a cost estimate of the facility to be produced. It should have sufficient detail to allow a future Site operator to place a contract for the detailed design and build of such a facility without further work;
"Scheme Documents"	has the meaning given in the Deed of Participation;
"Scheme Trustee"	means the trustee for the time being of the CNPP;
"Scope Trend"	means a trend that results from an anticipated change to the scope of work to be performed, typically as a result of emerging issues, changes in priorities or better understanding of the scope to be performed. If acknowledged, scope trends are incorporated into the baseline through Change Control;
"Scottish Government's Public"	means the proposed Scottish Government's Public Consultation on Waste Return;

**Consultation on
Waste Return"**

- "Scottish Sites"** means the nuclear sites in Scotland;
- "Sea Bed Monitoring Contract"** means the contract between the Contractor and [●] for the provision of the services in relation to the monitoring and retrieval of Particles on the sea bed resulting from historic Site operations;
- "Seconding Employer"** means a company (or other business entity) which provides Nominated Staff to the Contractor by means of a Secondment Agreement;
- "Secondment Agreement"** means an agreement entered into or to be entered into by the Parent Body Organisation, a member of Nominated Staff, the Authority, the Contractor and the Seconding Employer, in the form attached at Part 3 (*Pro Forma Secondment Agreement*) of Schedule 4 (*Employment and Pensions*);
- "Security Interest"** means any mortgage, assignment, charge, lien, hypothecation, pledge, encumbrance, trust arrangement or any other security interest or arrangement for the purpose of providing to any person security or a priority in right of payment except for any lien arising by operation of law;
- "Security Plan"** means the security plan approved for the Site in accordance with NISR;
- "Security Requirements"** means all security requirements relating to the Site including those required by the Security Plan and all other security requirements to which a competent manager of a nuclear site would reasonably be expected to adhere;
- "Segregated Waste Services"** means those services, for the treatment of Waste, offered by the Low Level Waste Repository;
- Sellafield** means the Authority owned site located near Calderbridge in Cumbria;
- "Senior Information Risk Owner"** means the individual with responsibility for the overall information risk policy of the Authority in accordance with the Security Policy Framework as published by the Cabinet Office;
- "SEPA"** means the Scottish Environment Protection Agency;
- "Series of Subcontracts"** means more than one Agreement for the procurement of the same or substantially similar goods or services between the Contractor and the same supplier or Subcontractor;

"Shareholder"	means the holder of shares of any class of the Contractor from time to time;
"Shareline"	has the meaning given to it in Paragraph 3.1 of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);;
"Simplified Import VAT Accounting"	means the HM Revenue and Customs scheme of that name providing for a facility to traders to reduce the level of financial guarantee required to operate a duty deferment account for VAT purposes;
"Site"	means the areas shown edged red on the plans attached at Schedule 7 (<i>Property</i>);
"Site Drawings"	means all engineering drawings of the Site provided and maintained by the Contractor that show the current status of the Site at any given time and particularly indicating the location of structures (including drains and roads) on the Site;
"Site End State Consultation"	means the output of the consultation described in 'Output from Stakeholder Consultation for the Site End State for Dounreay, SMS/TS/A2/1/1/R005, October 2009, Issue 1. At the commencement date this document can be accessed via the following link: http://www.nda.gov.uk/documents/upload/Output-from-Stakeholder-Consultation-for-the-Site-End-State-Dounreay-October-2009.pdf
"Site IT Systems"	means IT Systems on the Site or used by or on behalf of the Contractor in respect of the Site;
"Site Manager"	means the person appointed from time to time by the Contractor pursuant to the terms of Clause 6.5.5 (<i>Asset Management</i>);
"Site Meetings"	means all meetings held or to be held by the Contractor on the Site (or, in respect of the Commercial Operations Tasks at any other locations which the Contractor uses in its performance of the Commercial Operations Tasks) with or without Third Parties present (and excluding Regulator Meetings if applicable) which are agreed by the Parties prior to each Contract Year;
"Site Maintenance Register"	means the Site Maintenance Register to be maintained by the Contractor in accordance with Clause 6.5.2 (<i>Asset Management</i>);
"SLC"	means a Contractor to whom the HSE has granted a Nuclear Site Licence;
"SLC Annual"	means the overall funding limit for the SLC as specified in the Schedule 6

"Funding Limit"	(Finance) and adjusted (if at all) pursuant to the Change Control Procedure;
"Socio-Economic Development Plan"	means the document to be provided to the Authority by the Contractor pursuant to Clause 9 (<i>Socio-Economic Development</i>);
"Socio-Economic Policy"	means the Authority's Socio-Economic Policy found at: https://www.nda.gov.uk/stakeholders/socioeconomic/index/cfm ;
"Software"	means all computer software, together with any related supporting documentation and materials necessary to enable a user to make full use of the functionality of, or to administer effectively, such software;
"Source Code"	means, in respect of any Software, the entirety of such Software in an eye-readable form in which such Software can be interpreted by a programmer of reasonable skill and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation reasonably necessary for the use, reproduction, modification and enhancement of such Software;
"Specification"	means the technical data forming the subject matter of each Subcontract or Series of Subcontracts (including benchmarking, performance requirements, procurement of materials (including material component flow) and labour, method statements, deliverability, access requirements, restrictions and limitations, impact and risk assessments, quality management, hours of working, programmes and policies relating to fire safety, safety, training and industrial relations);
"Specific Change in Law"	means any Change in Law which specifically relates to: (a) the Tasks being carried out at the Site and not to similar tasks being carried out at other sites; (b) the Contractor and/or Parent Body Organisation and not to other persons; (c) contractors that undertake decommissioning activities at nuclear installations and cleaning up operations at nuclear sites and not to other persons; (e) to the holding of shares in SLCs and not other types of company;

"Springfields"	means the Authority owned site near Preston;
"Staffing Profile"	means the graph showing the number of people employed, by year and by skill type throughout the period to deliver the IES;
"Standalone Procurement"	means an individual procurement by the Contractor or framework agreement for supply of goods or services, including extensions, amendments or renewals which is not part of a Project, Programme or Customer Contract;
"State Aid Decision"	means the State Aid decision attached at Schedule 14 (<i>European State Aid</i>);
"Strategic Interest"	means technologies, processes and systems which are considered by the Authority to be of strategic interest to the Authority and which are set out in a list published by the Authority from time to time, as set out at Annex 1 to Schedule 8 (<i>Intellectual Property</i>);
"Strategic Option Diagram (SOD)"	means the Authority's method of describing strategic options within the Client Specification;
"Subcontract"	means any agreement entered into by the Contractor for works goods and/or services required by the Contractor in connection with the performance of its obligations under this Agreement, including Asset Purchases;
"Subcontractor"	means any person who has entered into a Subcontract with the Contractor in connection with the performance of the Contractor's obligations under this Agreement;
"Subcontract Strategy"	means the detailed strategy for procurement of an individual product or service;
"Sub-Milestone"	means a quantifiable component of a Major Work Package, as set out in the table at Paragraph 3.1 of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>) and more fully described in the relevant PAF;
"Sub-Subcontract"	means any agreement entered into by any Subcontractor with any Sub-Subcontractor or by any Sub-Subcontractor with any other Sub-Subcontractor relating to the performance of the Contractor's obligations under this Agreement;
"Sub-Subcontractor"	means any Contractor not being the Contractor or a Subcontractor entering into any Sub-Subcontract at any level in the supply chain in connection with

the services to be provided by the Contractor under this Agreement;

- "Target Cost"** means the Target Cost as defined in Part 3 (*Target Cost*) Schedule 6 (*Finance*);
- "Target Fee"** means an amount of fee payable to the Contractor in respect of its successful delivery of the Interim End State (and any Target Fee Payment Milestones), as more fully described in Part 4b (*Target Fee*) of Schedule 6 (*Finance*);
- "Target Fee Payment Milestone"** means a Payment Milestone set out in Part 4b (*Target Fee*) of Schedule 6 (*Finance*), Paragraph 9.3 and more fully described in the relevant PAF, achievement of which will (subject to the provisions of Part 4b (*Target Fee*) of Schedule 6 (*Finance*)) result in a payment of Target Fee;
- "Tasks"** means the services, operations, Projects and activities undertaken by the Contractor in the discharge of its obligations under this Agreement;
- "Taxation" or "Tax"** means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) any tax on gross or net income profit or gains (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, wealth taxes, development land tax, petroleum revenue tax, value added tax, customs duties, excise duties, turnover taxes, lottery duty, air passenger duty, insurance premium tax, rates (including the uniform business rate), stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, PAYE, national insurance and other similar contributions, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, in the nature of, replaced by or replacing any of them together with any interest, penalty or fine in connection with any taxation, and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to the Contractor, a subsidiary or any other person and of whether any amount in respect of any of them is recoverable from any other person;
- "Taxation Authority"** means any local municipal, governmental, state, federal or other fiscal, customs or excise authority, body or official anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of taxation;
- "Tenancy"** means any lease, licence or other document (other than this Agreement) that

Document"	subsists from time to time that permits the lawful occupation by any person of the whole or any part of the Licensed Nuclear Site Area;
"Term"	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 takes effect;
"Third Party"	means any person other than the Parties, the Parent Body Organisation and Affiliates;
"Third Party IP"	has the meaning given in Clause 29.6 (<i>Intellectual Property</i>);
"Tolerable Risk"	means the level of risk defined as "tolerable" in the Health and Safety Executive guidance document 'The Tolerability of Risk from Nuclear Power Stations', 1988 as amended in 1992 found at: www.hse.gov.uk/nuclear/tolerability.pdf ;
"Transfer Scheme"	means any nuclear transfer scheme made under section 38 of the Energy Act;
"Transfer Scheme Losses"	means Costs paid or payable by the Contractor to Third Parties in respect of compensation under Paragraph 11 of Schedule 4 of the Energy Act;
"Transition Agreement"	means the transition agreement entered into between (1) the Parent Body Organisation and (2) the Authority;
"Transition In Plan"	means the plan of the Incoming Parent to enable it (when it is preparing to hold the shares in the Contractor or when it is first holding the shares in the Contractor), to: (a) prepare to manage and hold the shares in the Contractor; (b) enable the Contractor to continue to comply with Legislation and Regulatory Requirements; and (c) enable the Incoming Parent to comply with Legislation and Regulatory Requirements.
"Transition Out Plan"	Means the plan of the Parent Body Organisation to enable it and the Contractor, (when it is preparing to transfer the shares in the Contractor back to the Authority) to continue to comply with Legislation and Regulatory Requirements and to facilitate the Transition In Plan of the Incoming Parent;

"Treaty"	means the Treaty establishing the European Communities, as amended by the Treaty on European Union;
"Trend Log"	means a log of trend data undertaken in accordance with the provisions of PCP-05 (Change Control);
"True Cost Variance"	has the meaning given in Paragraph 6.1 of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"UKAEA"	means the United Kingdom Atomic Energy Authority;
"UKAEA Limited"	means UKAEA Limited a company incorporated into England and Wales (Company Registration Number 5597709) whose registered office is at The Manor Court, Chilton, Didcot, Oxfordshire OX11 0RN;
"UK Inventory"	means the definitive UK Radioactive Waste and Materials Inventory compiled and published jointly by the Authority of the Department for Environment, Food and Rural Affairs (Defra);
"UK Strategy for the Management of Solid LLW"	means the Low Level Waste Strategy document found at: http://www.llwrsite.com/llw-strategy ;
"UK Strategy for Radioactive Discharges"	means the document 'UK Strategy for Radioactive Discharges, July 2009', published by the Department for Energy and Climate Change found at: http://www.decc.gov.uk/Media/viewfile.ashx?FilePath=What%20we%20do%5CUK%20energy%20supply%5CEnergy%20mix%5CNuclear%5Cradioactivity%5C1_20090722135916_e_@@_dischargesstrategy.pdf&filetype=4
"VAT"	means Value Added Tax imposed under the Value Added Tax Act 1994 or any similar tax imposed in addition thereto or in substitution therefore;
"VATA"	means Value Added Tax Act 1994;
"VAT Agreement"	means the Agreement dated 1 April 2005 between HM Customs & Excise

"

Subcontractors which renders the Authority Insurance void, voidable, unenforceable, suspended or impaired in whole or in part; or

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

"Vulcan Service Agreement" means the agreement (reference number 8124B) made between [●] and [●] dated [●];

"Vulcan Site" means the Ministry of Defence leased nuclear site adjacent to Dounreay;

"Waste" means any substance or object which the holder discards or intends or is required to discard;

"Waste Framework Directive" means European Parliament and Council Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives;

"Waste Products Specification" means the Waste product specification produced to allow the Disposal Authority to conduct a Disposability assessment and issue a Letter of Compliance;

"Work Activity" means any Task carried out by the Contractor, in-house or procured, which has been identified by the Authority or by the Contractor as requiring Contractor sanctioning (and/or subsequent Authority approval) under the Change Control Procedure and PCP-17; ***[to be reviewed in the context of the new SaV arrangements]***

"Work Activity Sanction Plan" means the document which details the sanctioning strategy of a Work Activity including Contractor and Authority approval milestones as referenced and contained in Appendix C of PCP-17; ***[to be reviewed in the context of the new SaV arrangements]***

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

"Working Day" means Monday to Friday except any day which is generally recognised as a public holiday in England and/or in Scotland.

"Zero Waste Plan" means the document 'Scotland's zero waste plan' which sets the strategic direction for waste policy in Scotland accessed via:

<http://www.scotland.gov.uk/Publications/2010/06/08092645/0>

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, in the event of any conflict between the Clauses and Schedules and the Authority Policies and Procedures, the Clauses and Schedules take precedence over the Authority Policies and Procedures, in the event of any conflict between the Schedules, Schedule 1 (*Client Specification*) and Schedule 6 (*Finance*) shall take precedence over the remaining 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 36 (*Disputes*);
- 1.2.2 in the event of any conflict between the Definitions contained in this Agreement and the definitions contained in the Authority's Policies and Procedures, the Definitions in this Agreement shall take precedence over the Authority's Policies and Procedures;
- 1.2.3 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.7 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);

- 1.2.8 words importing the singular include the plural and vice versa;
- 1.2.9 words importing a particular gender include all genders;
- 1.2.10 "**person**" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.11 any reference to a public 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;
- 1.2.12 references to "**Party**" and "**Parties**" means a Party or the Parties to this Agreement as applicable;
- 1.2.13 all monetary amounts are expressed in pounds sterling;
- 1.2.14 references in this Agreement to amounts expressed to be Indexed are references to such amounts as they stood at the previous Indexation Review Date (following Indexation pursuant to this Clause), multiplied on each Indexation Review Date by:

Index A

Index B

where Index A is the value of the Index most recently published as at the 30 September before the previous Indexation Review Date and Index B is the value of the Index at the 1 October before the current Indexation Review Date;
[Drafting Note: for indexation under CPI, fixing the first year and the timing basis of indexation to be discussed during dialogue.]

- 1.2.15 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.16 references to the word "**includes**" or "**including**" are to be construed without limitation;
- 1.2.17 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;
- 1.2.18 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;

1.2.19 a reference to the "**Site**" shall include any part of the Site; and

1.2.20 all references to a time of day are references to UK time.

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 37.20 (*Obligations*)) remain in full force and effect until the earlier of either the achievement of the Interim End State or the Expiry Date.

PART 3: Core Obligations

3 WARRANTIES

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

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

3.1.2 it has taken all necessary action to authorise the execution and the performance of its obligations under this Agreement.

3.2 The Contractor confirms 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 Parent Body 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 or the [Parent Body Agreement] or the documents referred to in them are those contained or referred to in this Agreement or the Parent Body Agreement or such documents, and for the avoidance of doubt and without limitation, the Contractor has no other right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation

(whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or otherwise howsoever.

- 3.3 On entering into this Agreement, the Contractor shall be deemed to have:
- 3.3.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
 - 3.3.2 subject to Clause 3.5 below, gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.
- 3.4 Subject to Clause 3.5 below, the Contractor 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 Clauses 3.3.2 and 3.4 above shall not apply in respect of the Authority Background Information, and if any inaccuracy in or inadequacy of the Authority Background Information is identified after the Commencement Date which the Contractor could not reasonably have identified before the Commencement Date after having undertaken all reasonable Due Diligence and which has a direct and adverse impact on the Contractor's ability to perform any Task or its other obligations under this Agreement, this shall constitute a Dependency Event.

4 CONTRACTOR'S OBLIGATIONS

4.1 Standard of Performance

The Contractor shall at all times act and perform its obligations under this Agreement:

- 4.1.1 in a safe, secure, efficient and cost-effective manner;
- 4.1.2 in accordance with Good Industry Practice;
- 4.1.3 in accordance with all applicable Legislation and with the Contractor's obligations under its Nuclear Site Licence;
- 4.1.4 in a transparent and co-operative manner with both the Authority and the Regulators;
- 4.1.5 ensuring that all aspects of any works, services or undertakings comply with the requirements of this Agreement including the specific requirements of any Tasks;

- 4.1.6 in a manner that will enable the Authority to fulfil its statutory functions and duties and does not place the Authority in breach of such functions and duties;
- 4.1.7 in a manner that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party, provided that no action taken by the Contractor pursuant to and in accordance with Clause 36 (*Disputes*) shall amount to a breach of this Clause 4.1.6 (*Contractor's Obligations*);
- 4.1.8 in a professional manner, acting with reasonable competence, with integrity, impartiality, objectivity and confidentiality, and avoiding conflicts of interest (and for the avoidance of doubt, notifying the Authority promptly of any potential for conflict of interest which arises); and
- 4.1.9 in accordance with the requirements of the Client Specification.

4.2 **Nature of Contractor's Obligations**

- 4.2.1 Notwithstanding any other provision of this Agreement (but subject to Clause 13.10 (*Force Majeure*)), the Contractor shall perform the Mandatory Services.
- 4.2.2 The Contractor shall, subject to Clause 4.2.1 (*Contractor's Obligations*) and to any Authority Directions or the exercise of any right expressly reserved to the Authority in this Agreement:
 - 4.2.2.1 deliver the Interim End State;
 - 4.2.2.2 be responsible for obtaining and maintaining all Necessary Consents required for the performance of its obligations under this Agreement and for implementing each Necessary Consent within the period of its validity in accordance with its terms and relevant Legislation;
 - 4.2.2.3 obtain the relevant approvals from the Authority in accordance with the provisions of this Agreement;
 - 4.2.2.4 at the request of the Authority (where such request would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Agreement), share information in possession of the Contractor in relation to processes, knowledge, experience and know-how and participate in initiatives made by the Authority in relation to such sharing and shall co-operate with the Authority or its nominee to facilitate such sharing;

4.2.2.5 maintain its membership of the Compensation Scheme for Radiation-Linked Diseases ("**CSRLD**") and provide administrative facilities in relation to the CSRLD the same as or similar to those provided at the Commencement Date, provided that:

4.2.2.5.1 the Contractor will reimburse costs reasonably incurred by either the Parent Body Organisation or a Seconding Employer in complying with such parties' respective obligations under Secondment Agreements to take all reasonable steps to provide a secondee who is a member of the Nominated Staff with access to the CSRLD; and

4.2.2.5.2 for the avoidance of doubt, costs reimbursed by the Contractor in accordance with the foregoing shall be Costs as defined in this Agreement and treated accordingly;

4.2.2.6 not use the Site for the purposes of carrying out any tasks which are not in furtherance of the Client Specification ("**Non-Specification Activities**") without the prior written consent of the Authority, and any such Non-Specification Activities to which the Authority consents shall be carried out by the Contractor in accordance with any conditions contained in such Authority's consent; and

4.2.2.7 comply with the Customer Contracts in accordance with their terms.

4.3 **Co-operation**

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

4.4 **Prohibited Acts**

Contractor Warranty and Undertaking

4.4.1 The Contractor warrants that in entering into this Agreement it has not committed any Prohibited Act.

- 4.4.2 The Contractor shall not, and shall procure that any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their Affiliates or agents or shareholders shall not, commit a Prohibited Act.

5 RIGHTS AND OBLIGATIONS OF AUTHORITY

5.1 Authority Directions

- 5.1.1 Nothing in this Clause 5.1 (*Rights and Obligations of Authority*) shall, or is intended to:

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

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

- 5.1.2 Without prejudice to Clause 5.1.1 (*Rights and Obligations of Authority*) above, the Contractor shall be relieved from the duty to comply with any Authority Direction and shall have no liability resulting from any such Authority Direction unless:

5.1.2.1 a Contractor Default has occurred;

5.1.2.2 the Authority has issued a termination notice in accordance with Clause 33.1 (*Termination*);

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

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

5.1.3 For the avoidance of doubt, in the event of the occurrence of any one or more of the circumstances specified in Clauses 5.1.2.1 to 5.1.2.4 (*Rights and Obligations of Authority*) above, notwithstanding any other provision of this Agreement, the Authority shall notify the Contractor that such circumstances exist, and:

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

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

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

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

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

5.2.1 Without prejudice to Clause 5.1 (*Rights and Obligations of Authority*), and its rights under this Agreement, the Authority shall not wilfully or recklessly impede the Contractor in performing its obligations under this Agreement.

5.3 **Authority Responses**

5.3.1 Unless otherwise expressly specified in this Agreement or agreed between the Parties (each acting reasonably) where the Authority is required to respond in writing to the Contractor on any matter, the Authority shall use reasonable endeavours to do so within thirty (30) Calendar Days, or such other period as the Parties may (acting reasonably) agree, of receipt of such a request.

- 5.3.2 Where the Authority does not respond within the relevant period, and there is an impact on the cost or schedule of the Tasks as a result of such Authority delay, this shall constitute a Dependency Event.

PART 4: Ancillary Obligations

6 ASSET MANAGEMENT

6.1 Right to deal with Authority Assets

- 6.1.1 From the Commencement Date until the expiry or earlier termination of this Agreement, the Authority licences the Contractor:

6.1.1.1 to use the Authority Assets

to enable the Contractor to:

- 6.1.2 perform the Tasks; and
- 6.1.3 discharge its obligations pursuant to Nuclear Site Licences and all other relevant Regulatory Requirements,

but, save where expressly authorised by the Agreement ([i.e above]) or necessarily incidental to the performance of any obligation imposed by this Agreement], the Contractor may not otherwise sell, dispose, let or otherwise part with the possession of Authority Assets without the prior written consent of the Authority.

- 6.1.4 The licence granted to the Contractor by Clause 6.1.1 above is personal to the Contractor and shall not be capable of being assigned or in any way otherwise dealt with or disposed of.

- 6.1.5 The Contractor shall not by virtue of the licence granted by Clause 6.1.1 above (or otherwise) claim to be or become entitled to any estate right or interest in or exclusive possession of the Authority Assets.

6.2 Objects of Antiquity or Value

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

6.3 Condition of Authority Assets

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

6.4 Use of Authority Assets

6.4.1 The Contractor shall not, without the prior written consent of the Authority, use the Authority Assets other than in fulfilment of its obligations under this Agreement, applicable Legislation and/or Regulatory Requirements.

6.4.2 The Authority shall be entitled to require that:

6.4.2.1 any movable Authority Asset be redeployed for use on behalf of the Authority at any place outside the Site, provided that such redeployment will not impede or prevent the Contractor from performing its obligations under this Agreement; and/or

6.4.2.2 the Contractor utilises any other movable asset deployed to the Site by the Authority in the Contractor's performance of its obligations under this Agreement, provided that any such requirement shall be subject to the provisions of the Change Control Procedure where relevant.

6.4.3 The care and maintenance of any Authority Asset redeployed pursuant to Clause 6.4.2.1 above shall be the responsibility of the Authority until such time as the Authority Asset is returned to the Site. The care and maintenance of any other movable asset deployed to the relevant Site pursuant to Clause 6.4.2.2 above shall be the responsibility of the Contractor until the Authority procures the removal of such movable asset from the Site.

6.5 Maintenance of Site and Authority Assets

6.5.1 Save to the extent that it is the responsibility of a Third Party pursuant to a Tenancy Document, the Contractor shall maintain the Site in accordance with the provisions of the Client Specification and shall maintain, service and repair the Authority Assets in accordance with the [Contractor's Internal Procedure relating to asset management and EGG 02.]

6.5.2 The Contractor shall maintain a current and accurate Site Maintenance Register and supply a copy of that register to the Authority upon request.

6.5.3 The Contractor shall create the Asset Register which shall be completed no later than six months after the Commencement Date.

6.5.4 The Contractor shall maintain the Asset Register as current and accurate and shall allow the Authority to inspect the Asset Register at any time upon reasonable notice.

6.5.5 The Contractor shall appoint and keep appointed a suitability qualified person who shall have been previously approved by the Authority (such approval not to be unreasonably withheld) to manage the Site.

6.5.6 The Site Manager shall (inter alia):

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

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

6.6 **Necessary Consents**

6.6.1 The Contractor shall provide to the Authority's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained and any associated legal agreement.

6.6.2 The Contractor shall comply with the conditions attached to any Necessary Consents and the terms of any associated legal agreement and procure that no such Necessary Consent or associated legal agreement is breached by it or any Contractor Related Party, and shall use all reasonable endeavours to preserve the Necessary Consents and procure that such Necessary Consent is not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Tasks.

6.6.3 The Contractor shall not (and shall use all reasonable endeavours to procure that its Affiliates, employees, agents, Subcontractors and Sub-Subcontractors shall not) without the prior consent of the Authority's Representative (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this clause, references in this Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

6.6.4 The Contractor shall indemnify, and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable

legal costs) incurred by it in respect of any breach of Clause 6.6 by the Contractor and/or any act or omission of any Subcontractor or Sub-Subcontractor that results in such breach.

6.7 **New Assets**

- 6.7.1 New Assets acquired by the Contractor in performing this Agreement shall be acquired in the name of the Authority and shall pass into the immediate ownership of the Authority and become Authority Assets.
- 6.7.2 Upon acquiring any New Assets, the Contractor shall promptly and accurately record such acquisition(s) on the Asset Register.
- 6.7.3 Any New Assets must be purchased in accordance with the requirements of Schedule 5 (*Subcontracting and Procurement*).

6.8 **Customer Contracts**

- 6.8.1 Without prejudice to Clause 20.2 (*Authority's Right in Respect of Customer Contracts*) and Clause 6.1.5 (*Asset Management*), if, at the Commencement Date, the terms of any Customer Contract provide to the Customer (and/or an agent of the Customer) rights of access to and use of the Authority Assets, and if the Customer (and/or an agent of the Customer) wishes to exercise such rights, the Authority shall allow the Contractor to fulfil its obligations under such Customer Contract by, upon notice from the Contractor to the Authority, permitting the Customer (and/or an agent of the Customer) such access and such use required under the terms of the relevant Customer Contract subject always to the applicable Legislation and Regulatory Requirements.

7 **SECURITY**

- 7.1 The Contractor shall (and shall procure that all Sub-Contractors and Sub-Sub-Contractors shall) at all times comply with the obligations, restrictions or directions imposed on the Contractor by:
 - 7.1.1 the NISR (along with its supporting documents the NISR Technical Requirements and the Manual of Protective Security) and any direction or approval given by the OCNS pursuant thereto;
 - 7.1.2 compliance with the HMG Security Policy Framework V 1.0 December 2008;
 - 7.1.3 compliance with ISO 27001;

[Drafting Note: Compliance with this standard at a supply chain level to be discussed]

- 7.1.4 any amendments or documents which are successors or supplements to the above referenced documents; and
- 7.1.5 any other applicable Legislation or regulations relevant to physical or information security.
- 7.2 Where any inconsistency exists between the requirements specified in Clause 7.1 above the Contractor shall comply with the most onerous requirement therein.
- 7.3 The Contractor shall, if requested by the Authority, promptly provide to the Authority all information necessary to demonstrate such compliance.
- 7.4 The Contractor shall promptly notify the Authority in the event that the Contractor becomes aware of:
 - 7.4.1 any breach of this Clause 7; or
 - 7.4.2 any notice received by the Contractor alleging a breach or a possible breach of the matters referred to in this Clause 7,

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

8 INTEGRATED MANAGEMENT SYSTEM

- 8.1 The Contractor shall procure that all material aspects of its performance under this Agreement are undertaken in compliance with an Integrated Management System in accordance with Good Industry Practice and an appropriate third party certification against an internationally accepted standard.
- 8.2 The Contractor shall ensure that its Integrated Management System contains all such Internal Procedures as are necessary:
 - 8.2.1 to comply with its legal obligations;
 - 8.2.2 to ensure that it is able to operate safely, securely and efficiently; and
 - 8.2.3 to comply with all Authority Policies and Procedures.
- 8.3 The Contractor shall:

- 8.3.1 upon the Authority's request, supply a detailed list of all existing and applicable Internal Procedures together with such copies of any Internal Procedures as may be required by the Authority;
 - 8.3.2 immediately notify the Authority of any change to an Internal Procedure which materially impacts upon the Authority, including a potential impact to the Cost of or risks to the delivery of the LTP and/or the Interim End State; and
 - 8.3.3 provide to the Authority on a monthly basis a log reporting all significant changes to all Internal Procedures.
- 8.4 When requested by the Authority to do so, the Contractor shall provide to the Authority the basis and rationale for the creation or modification of any Internal Procedure and an explanation of how this reflects Good Industry Practice.
- 8.5 The Contractor shall, within the time reasonably specified by the Authority, prepare and submit for the Authority's approval any further Internal Procedures and modifications to existing Internal Procedures reasonably identified as being required by the Authority.
- 8.6 When responding to any Contractor request for the Authority's approval of changes to the Contractor's Internal Procedures, the Authority shall:
- 8.6.1 respond in writing within thirty (30) Calendar Days (or such other period as the Parties may, acting reasonably, agree) of receipt of such request; and
 - 8.6.2 where the Authority does not approve of such changes, provide reasons for any determination that the Contractor's proposed changes to its Internal Procedures are unsuitable.
- 8.7 For the avoidance of doubt, where Managed Authority Customer Contracts or Customer Contracts place specific obligations on the Contractor in relation to its Integrated Management System, the Contractor shall bring these to the Authority's attention and the Authority shall have due regard to such obligations in reaching its determination pursuant to Clauses 8.5 and 8.6 above.
- 8.8 If the Contractor:
- 8.8.1 fails to comply with the Authority's reasonable request to introduce a new Internal Procedure in accordance with Clause 8.5 above; and/or
 - 8.8.2 fails to establish or comply with an Internal Procedure such that the Authority reasonably considers that such non-compliance materially hinders the Contractor's ability to perform its obligations in accordance with this Agreement or that it is otherwise unable to comply with the provisions of Clauses 8.1 and

8.2 above, and when requested by the Authority does not to the reasonable satisfaction of the Authority substantiate the reason for this action or inaction,

then this shall constitute Defective Performance for the purposes of Clause 11 (*Defective Performance*).

8.9 Within twelve (12) months of the Commencement Date, the Contractor shall develop a set of metrics related to the performance assessmen

10 CDM REGULATIONS

- 10.1 In this Clause 10 "**client**" and "**projects**" have the same meanings as in the CDM Regulations.
- 10.2 The Contractor hereby elects and the Authority consents to the Contractor being treated as the only client in relation to all projects to be carried out under this Agreement for all the purposes of the CDM Regulations. The Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its election that it will be treated as, and its acceptance of its responsibilities as, the only client for all the purposes of the CDM Regulations.
- 10.3 The Contractor shall observe, perform and discharge and shall procure the observance, performance and discharge of:
- 10.3.1 all the obligations, requirements and duties arising under the CDM Regulations in connection with all projects to be carried out under this Agreement;
- 10.3.2 any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the CDM Regulations.
- 10.4 The Contractor warrants to the Authority that it is and shall continue to be competent and appropriately resourced to perform the duties imposed on a client by the CDM Regulations.

PART 5: Performance and Monitoring

11 DEFECTIVE PERFORMANCE

- 11.1 For the purposes of this Agreement, "**Defective Performance**" means:
- 11.1.1 in relation to any Task, a material failure by the Contractor to complete and/or carry out the Task in accordance with this Agreement;
- 11.1.2 any other omission or failure to act which constitutes a material failure by the Contractor to comply with its positive obligations under (and in accordance with) this Agreement;
- 11.1.3 any omission or failure to act in compliance with the Change Control Procedure in accordance with this Agreement; or

- 11.1.4 whether or not falling under Clause 11.1.1 or 11.1.2 above, a material adverse finding being made against the Contractor by any one or more of the Regulators in relation to the Contractor's performance under this Agreement,
- but excluding:
- 11.1.5 any failure by the Contractor to carry out its obligations under this Agreement as a direct result of a Force Majeure Event or Category A Force Majeure Event; and
- 11.1.6 any failure by the Contractor to carry out its obligations under this Agreement as a result of any Dependency Event.
- 11.2 Upon becoming aware of any Defective Performance, the Authority shall be entitled to serve a written notice on the Contractor (a "**Defective Performance Notice**"), giving reasonable details of the same and requiring the Contractor to remedy such Defective Performance.
- 11.3 If the Authority serves a Defective Performance Notice on the Contractor, the Contractor may:
- 11.3.1 dispute the validity of the issue of the Defective Performance Notice and/or the existence of the Defective Performance in question in accordance with the Dispute Resolution Procedure;
- 11.3.2 accept the validity of the issue of the Defective Performance Notice and the existence of the Defective Performance; or
- 11.3.3 accept the validity of the issue of the Defective Performance Notice but dispute the existence of part of the Defective Performance in question in accordance with the Dispute Resolution Procedure, whilst accepting the existence of the remainder of the Defective Performance in question.
- 11.4 If the Contractor does not respond to the Defective Performance Notice within 5 (five) Working Days of its receipt (or, if earlier, its deemed receipt), the Contractor shall be deemed to have accepted the validity of the issue of the Defective Performance Notice, and the existence of the Defective Performance in question.
- 11.5 To the extent that the Contractor accepts or it is otherwise determined that a Defective Performance Notice is valid and the Defective Performance in question exists, the Contractor shall forthwith remedy such Defective Performance.
- 11.6 If either:

- 11.6.1 the Contractor fails to achieve any Minimum Performance Standard; or
- 11.6.2 the Contractor fails to remedy any Defective Performance as required by Clause 11.5 above,

then the Authority shall be entitled to serve a written notice on the Contractor (a "**Remediation Notice**"), giving reasonable details of the same and requiring the Contractor to submit a Remediation Plan.

- 11.7 If the Authority serves a Remediation Notice on the Contractor, the Contractor may:
 - 11.7.1 dispute the validity of the issue and/or the content of the Remediation Notice in accordance with the Dispute Resolution Procedure;
 - 11.7.2 accept the validity of the issue and the content of the Remediation Notice; or
 - 11.7.3 accept the validity of the issue of the Remediation Notice but dispute the part of its content in accordance with the Dispute Resolution Procedure, whilst accepting the remainder of its content.
- 11.8 If the Contractor does not respond to the Remediation Notice within 5 (five) Working Days of its receipt (or, if earlier, its deemed receipt), the Contractor shall be deemed to have accepted the validity of the issue and the content of the Remediation Notice.
- 11.9 If the Contractor accepts or it is otherwise determined that a Remediation Notice is valid and the subject of the Remediation Notice in question exists, the Contractor shall within twenty (20) Working Days [(or such other period as the Parties may, each acting reasonably, agree)] of such acceptance or determination either:
 - 11.9.1 submit to the Authority a Remediation Plan aimed at addressing the subject matter of the Remediation Notice in question; or
 - 11.9.2 acting reasonably accept that the subject matter of such Remediation Notice is incapable of remediation,provided that the Contractor shall act reasonably when determining whether or not it accepts that the subject matter of the Remediation Notice in question is incapable of remediation, provided that any failure by the Contractor to submit a Remediation Plan within the period stipulated in this Clause 11.9 shall be deemed to be an acceptance by the Contractor pursuant to Clause 11.9.2 above.
- 11.10 The Authority shall, within twenty (20) Working Days [(or such other period as the Parties may, each acting reasonably, agree)] of receipt of the Contractor's Remediation Plan, acting reasonably, either:

- 11.10.1 accept such Remediation Plan; or
 - 11.10.2 reject such Remediation Plan, providing its reasons for such rejection and, to the extent reasonably practicable, proposing such amendments to such Remediation Plan as would render it acceptable to the Authority.
- 11.11 Where Clause 11.10.2 above applies, the Contractor shall, within five (5) Working Days (or such other period as the Parties may, each acting reasonably, agree) of receipt of the Authority's response:
- 11.11.1 where relevant, accept the Authority's proposed amendments in full; or
 - 11.11.2 submit to the Authority an amended Remediation Plan aimed at addressing the Authority's reasons for rejecting the previous version of such Remediation Plan.
- 11.12 Where Clause 11.11.2 above applies, the Authority shall, within five (5) Working Days [(or such other period as the Parties may, each acting reasonably, agree)] of receipt of the Contractor's amended Remediation Plan, either:
- 11.12.1 accept such amended Remediation Plan; or
 - 11.12.2 reject such Remediation Plan and refer the matter for determination under the Dispute Resolution Procedure.
- 11.13 Where any of Clauses 11.10.1, 11.11.1, or 11.12.1 above applies, or where the content of a Remediation Plan is determined pursuant to the Dispute Resolution Procedure, the Contractor shall forthwith implement such Remediation Plan in accordance with its terms [(as agreed or determined)], provided that:
- 11.13.1 pending any such agreement or determination of a Remediation Plan the Contractor shall at all times use its best endeavours to mitigate any adverse consequences of the subject matter of any Remediation Notice; and
 - 11.13.2 if the Contractor fails to implement any such agreed or determined Remediation Plan in accordance with its terms this shall constitute a Contractor Default.
- 11.14 If either:
- 11.14.1 the Contractor accepts that the subject matter of any Remediation Notice is incapable of remediation;

11.14.2 an agreed or determined Remediation Plan is implemented in accordance with its terms but this does not have the effect of remedying the subject matter of the Remediation Notice giving rise to such Remediation Plan; or

11.14.3 the Authority, acting reasonably, believes that a material adverse finding by a Regulator is incapable of remediation,

then the Authority shall, at its absolute discretion, be entitled to either:

11.14.3.1 require the Contractor to submit a new Remediation Plan (in which case the provisions of Clauses 11.9 (with the removal of Clause 11.9.2 as an option for the Contractor) to 11.13 above shall apply), provided that the Authority shall not be entitled to exercise its rights under this Clause 11.14.3.1 more than once where Clause 11.9.2 above applies; or

11.14.3.2 terminate this Agreement for Contractor Default.

11.15 For the purposes of Clause 11.14 and Clause 11.9.2 above, a matter will be incapable of remediation if remediation could not (in the reasonable opinion of the Authority) take place before the Expiry Date and without:

11.15.1 resulting in a material adverse impact on delivery of any Task; or

11.15.2 necessitating a Change.

11.16 The provisions of Clauses 11.1 to 11.14 above shall not apply in respect of any Prohibited Act (to which Clauses 11.18 to 11.20 below shall apply instead).

11.17 Obligation to Notify

Without prejudice to the provision of Clauses 4.1 and 4.2.2 (*Contractor's Obligations*), which shall continue to apply following any notification under this Clause 11, if at any time:

11.17.1 the Contractor believes it will not be able to carry out and/or complete all or any part of a Task; or

11.17.2 the Contractor becomes aware of any Defective Performance,

it shall notify the Authority of the same as soon as reasonably practicable and provide details of the act, event or circumstances and any impact such act, event or circumstances will have on the Contractor's performance of its other obligations under this Agreement.

Prohibited Acts

11.18 If the Contractor or any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their Affiliates or agents or shareholders commit any Prohibited Act, the Authority shall be entitled to act in accordance with Clauses 11.18.1 to 11.18.5 below:

11.18.1 if the Prohibited Act is committed by an Employee or any member of Nominated Staff, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to procure

11.19.2 the identity of the person whom the Authority believes has committed the Prohibited Act.

11.20 In Clause 11.18 above, "**acting independently**" shall mean where a person does not act under the authority of or with the knowledge of a director or other management of a Subcontractor or Sub-Subcontractor and "**not acting independently**" shall be construed accordingly.

12 DEPENDENCY EVENTS

12.1 The Authority shall endeavour to provide the Authority Deliverables to the a42(o)5.818(n)-6.97692(s36(42(o)5

12.3.2 demonstrate to the reasonable satisfaction of the Authority that, having acted in accordance with the provisions of this Agreement:

12.3.2.1 the relief from the performance of any of its other obligations under this Agreement claimed could not reasonably be expected to be mitigated by the Contractor acting in accordance with Good Industry Practice; and

12.3.2.2 the Contractor is using reasonable endeavours to continue to perform its obligations under this Agreement.

12.4 If and to the extent that the Contractor has complied with its obligations under Clause 12.3 above, then:

12.4.1 the Authority shall not be entitled to exercise its rights to terminate the Agreement under Clause 11 (*Defective Performance*) to the extent that such rights arise (but for this Clause 12.4.1) as a result of the Dependency Event; and

12.4.2 the Authority shall not be entitled to apply Retentions arising as a result of the Dependency Event for the period during which the Dependency Event subsists.

12.5 If the information referred to in Clause 12.3 above is provided after the date referred to in that Clause, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.

12.6 The Parties acknowledge that the occurrence of a Dependency Event and / or the operation of Clause 12.4 above may give rise to a need for a Change to address the impact of the same, and accordingly the Authority shall act reasonably when deciding whether or not to Approve any Proposed Change pursuant to the Change Control Procedure, to the extent that such Proposed Change is required to address such impact.

13 **FORCE MAJEURE**

Performance of Obligations

13.1 Subject to Clauses 13.2 and 13.3 below, if a Party (the "**Affected Party**") is materially hindered, prevented or delayed from performing any of its obligations under this Agreement by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period at least equal to the duration of the Force Majeure Event, except that the Contractor shall not be excused from the due and punctual performance of any of its obligations under this Agreement by reason of any

circumstances to the extent that the impact of such circumstances on the Contractor's ability so to perform its obligations could have been reasonably avoided or mitigated by the maintenance after the Commencement Date of business continuity and disaster recovery plans in accordance with Clause 30.4 (*Information Technology*) and the implementation of such plans.

Notification and Mitigation

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

13.2.1 the nature of the Force Majeure Event relied on;

13.2.2 the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement; and

13.2.3 the period for which it is estimated the Force Majeure Event will continue.

13.3 Without prejudice to Clause 13.6 below, the Affected Party shall:

13.3.1 use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement;

13.3.2 where the Affected Party is the Contractor, inform and consult the Authority's Contracts Manager as soon as is practicable as to the actions undertaken or proposed in order to mitigate the effects of the Force Majeure Event and (without prejudice to the Contractor's responsibilities under Clause 13.3.1 above) take the Authority's Contracts Manager's reasonable views and advice into account;

13.3.3 where the Affected Party is the Contractor, provide written reports as often as the Authority reasonably requires in the circumstances of the Contractor's progress in mitigating the effects of the Force Majeure Event and indicating the costs of such mitigation and when it is estimated that performance of the affected obligations will resume;

13.3.4 where the Affected Party is the Authority, provide updates to the Contractor as often as the Contractor reasonably requires in the circumstances of the Authority's progress in mitigating the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligations will resume;

13.3.5 so far as reasonably practicable, provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and

13.3.6 (without prejudice to any applicable Legislation and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense (provided that, where the Affected Party is the Contractor, if the incurring of such expense is appropriate in all the circumstances, the Contractor shall (and shall be entitled to) incur such expense subject to having first sought and obtained the Authority's express prior written approval of the same).

13.4 As soon as the effect (of the type described in Clause 13.1 above) of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement has ended, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended, and it shall resume the full performance of its obligations under this Agreement. When any Proposed Change instigated under Clause 13.6 below has been approved (without prejudice to any applicable Legislation and/or Regulatory Requirement) the Affected Party's full performance of its obligations under this Agreement will continue in accordance with the approved Change.

13.5 Save to the extent stipulated in this Clause 13, neither Party shall be released from any of its obligations under this Agreement as a result of a Force Majeure Event.

Instigation of a Proposed Change

13.6 In the case of a Force Majeure Event the Contractor shall be entitled to submit a Proposed Change. Such a Proposed Change shall:

13.6.1 be prepared by the Contractor in accordance with the provisions of the Change Control Procedure; and

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

13.7 If the Contractor submits a Proposed Change in accordance with Clause 13.6 above, the Authority shall either (in each case acting reasonably):

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

13.7.2 instruct the Contractor to adopt an alternative Proposed Change (in which case the Contractor shall comply with such instruction).

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

13.8 Any submissions prepared and submitted by the Contractor in accordance with Clause 13.6 above shall be submitted:

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

13.8.2 before any Change specified in the submission is implemented.

13.9 The implementation of a Proposed Change determined in accordance with Clause 13.6 above shall not make a Cost an Allowable Cost where it would otherwise be a Disallowable Cost pursuant to Paragraph 4 (*Disallowable Costs*) of Part 2 (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*).

Category A Force Majeure Events

13.10 In the case of a Category A Force Majeure Event, the following provisions shall apply in addition to or, where stated below, in substitution for, the provisions of Clauses 13.1 to 13.6 (inclusive) above as such apply to Force Majeure Events the Contractor shall use its best endeavours to mitigate the consequences of the Category A Force Majeure Event (and this provision shall supersede Clause 13.3.1 above in respect of such Category A Force Majeure Event).

14 PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS

14.1 Reporting and Reviewing

Reporting and Reviewing Programme

14.1.1 The Contractor shall implement systems and processes for a performance reporting and reviewing programme in a manner which the Authority (acting reasonably) considers satisfactory.

Required Reports

14.1.2 The Contractor shall submit to the Authority:

14.1.2.1 monthly progress reports in accordance with the Change Control Procedure;

14.1.2.2 such other reports as are required by Schedule 6 (*Finance*) or the other provisions of this Agreement;

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

- 14.1.2.4 such other reports as may be agreed between the Authority and the Contractor (acting reasonably) from time to time.

Objections to Reports

- 14.1.3 If the Authority considers (acting reasonably) that any Report either has not been compiled in accordance with the requirements of this Agreement or has been based on erroneous information, it may serve a notice to that effect on the Contractor within thirty (30) Calendar Days of receipt of the Report, setting out its grounds of objection, and the Parties shall endeavour to agree any consequent amendments to the Report in light of the Authority's objections.
- 14.1.4 If any such objection has not been resolved by agreement between the Authority and the Contractor within sixty (60) Calendar Days after service of such notice, the matter shall be resolved in accordance with Clause 36 (*Disputes*).
- 14.1.5 If, following the submission of any Report, but prior to any objection being raised by the Authority pursuant to Clause 14.1.3 above, the Contractor considers that such Report contains a material error, the Contractor shall notify the Authority immediately of such error and shall reflect and clearly identify the required correction(s) in the relevant subsequent Report where applicable (for example the next Monthly report of the same type). If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall forthwith correct the relevant original Report and re-submit it to the Authority.

Revisions to Reports

- 14.1.6 If:
 - 14.1.6.1 the resolution (whether by agreement or determination in accordance with Clause 36 (*Disputes*) of any objection made pursuant to Clause 14.1.3 above; or
 - 14.1.6.2 the correction of any calculation pursuant to any provision of this Agreement,

in either case requires corrections to be made to any Report submitted by the Contractor pursuant to Clause 14.1.2 above, the Contractor shall reflect and clearly identify the required corrections in the relevant subsequent Report (for example the next Monthly report of the same type) where applicable. If there will be no subsequent Report submitted to the Authority (for example because

the original report was not of a type regularly required), the Contractor shall correct the relevant original Report and re-submit to the Authority and the provisions of Clauses 14.1.3 and 14.1.4 above and this Clause 14.1.6 shall apply in respect of the re-submitted Report.

Obligation to Report

14.1.7 Without prejudice to any other obligation on the Contractor under this Agreement to report and notwithstanding the Contractor's right to carry out Permitted Activities, the Contractor shall, as often as reasonably necessary to keep the Authority properly and fully informed and on a regular basis, notify the Authority in as much detail as practicable of any matters of which the Contractor becomes aware, any issue which has affected or which may affect the Commercial Operations Tasks and/or the Customer Contracts and/or the performance by the Contractor of any Tasks relating to any Customer Contract and about which the Authority may reasonably be expected to wish to be informed, including (and without prejudice to the generality of this Clause 14.1.7):

- 14.1.7.1 any breach or impending breach by the Contractor (and/or its counterparty thereto) of any Customer Contract;
- 14.1.7.2 any impending event that will require the Authority's consent under Clause 20 (*Authority Rights in Respect of Customer Contracts*);
- 14.1.7.3 any exercise of the Contractor's Permitted Activities;
- 14.1.7.4 any material change in the financial position of a counterparty to a Customer Contract;
- 14.1.7.5 any change or impending change in the business strategy of a counterparty to a Customer Contract;
- 14.1.7.6 any Change in Control of a counterparty to a Customer Contract particularly where such Change in Control will or is likely to adversely affect the counterparty's financial position or future performance under the Customer Contract(s) to which it is a party;
- 14.1.7.7 any change to the key management personnel with whom the Contractor liaises which might reasonably be expected

to adversely affect the future business relationship with the counterparty to the Customer Contract;

14.1.7.8 any actual or threatened labour disputes affecting the counterparty to the Customer Contracts;

14.1.7.9 any change in the policy of other public authorities including, in particular, public authorities outside the United Kingdom, which might reasonably be expected to adversely affect the performance of the Customer Contracts, the performance by the Contractor of any Tasks relating to any Customer Contracts or the Contractor's relationships with counterparties to the Customer Contracts; and

14.1.7.10 any issue which affects or may reasonably be expected to affect the supply chain relating to any Subcontract or Series of Subcontracts which relate(s) to the Customer Contracts and/or the performance by the Contractor of any Tasks relating to any Customer Contracts.

14.1.8 The Contractor shall also forthwith report to the Authority any exercise of its right:

14.1.8.1 to challenge any threatened or actual revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks and/or any Tasks relating to any Customer Contracts in accordance with Legislation; or

14.1.8.2 to apply for, or resist, or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority.

14.2 **Records**

Records Agreement

14.2.1 The Contractor shall comply with the Records Agreement and will co-operate with the Authority in relation to any review or enhancement of any such

keeping, maintenance of records and contributions to the Information Asset

allow the Authority access to the Authority Records at any time during business hours on a Working Day.

14.2.9 The Contractor shall manage all Authority and Contractor Records in accordance with:

14.2.9.1 Information Governance and Cabinet Office guidelines on Managing Information Risk;

14.2.9.2 the Office of Civil Nuclear Security Requirements Security Policy Framework, subject to Clause 7.1.2 (*Security*);

14.2.9.3 the Public Records Act 1958, without prejudice to Clause 4.1.3;

14.2.9.4 BS ISO 15489-1:2001 (or its equivalent);

14.2.9.5 BS 10008;

14.2.9.6 BS 10012; and

14.2.9.7 BS 5454.

All records will be treated as public records for the purposes of the Public Records Act.

Contractor Records

14.2.10 The Contractor shall make Contractor Records available to the Authority in accordance with open access, inspection and audit rights set out Clause 15 (*Inspection and Audit*) ("**Open Book System**") in such condition, format and detail as is adequate for their intended purpose and as required by the Authority.

14.3 Books of Account and Other Information

Books of Account

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

14.3.1.1 either:

14.3.1.1.1 the UK Accounting Standards, comprising all extant Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs),

Urgent Issues Task Force Abstracts and any relevant industry-specific authoritative guidance; or

14.3.1.1.2 international generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry-specific authoritative guidance;

14.3.1.2 the Companies Act 1985 and Companies Act 2006;

14.3.1.3 Schedule 6 (*Finance*); and

14.3.1.4 an Open Book System.

Further Information

14.3.2 In addition to information provided by the Contractor to the Authority pursuant to the express provisions of this Agreement, the Contractor shall provide to the Authority such further information as the Authority may at any time reasonably request on reasonable notice.

Financial Information

14.3.3 Without prejudice to the generality of Clause 14.3.2 above, the Contractor shall furnish to the Authority as soon as they become publicly available and, in any event, not later than ninety (90) Calendar Days after the close of its statutory accounting period, a copy of the audited financial statements of the Contractor, prepared in accordance with the Accounting Standards for such period, including in each case a balance sheet prepared as at the end of such accounting period, a profit and loss account, cash flow statement in respect of such accounting period and a reconciliation of total Allowable Costs claimed within such accounting period.

Authority Accounts

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

14.4 Information Asset Register

14.4.1 The Contractor shall create within eighteen (18) Months (or such other period as the Parties may, acting reasonably, agree) of the Commencement Date and thereafter maintain an accurate information asset register (the "**Contractor Information Asset Register**") in accordance with the Authority's strategy, as notified to the Contractor from time to time.

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

14.5 Transfer of Metadata

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

15 INSPECTION AND AUDIT

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

15.2 Subject to Clause 15.3 below, the Authority and any Authority Agent, acting reasonably, and subject to compliance with all applicable Legislation and Regulatory Requirements and the Contractor's Internal Procedures, relating to safety and Site security, shall be entitled to carry out for the purpose of fulfilling the Authority's statutory functions and duties and contractual rights pursuant to this Agreement:

15.2.1 any audit, inspection, review, periodic monitoring and spot checks of any of the Contractor's activities in connection with this Agreement and any aspect of the Contractor's performance of this Agreement as required by the Authority or where the same shall have been requested by the National Audit Office or otherwise;

- 15.2.2 audits, inspections, reviews, periodic monitoring and spot checks of all information required to be kept by the Contractor;
 - 15.2.3 audits of the Contractor's compliance with its Inter SLC Service Contract, Internal Procedures, quality management systems, procedures required by Regulatory Requirements and any Operating Procedures, policies or standards ancillary to, or used in connection or accordance with, the same;
 - 15.2.4 inspections and tests to determine the quality of any of the Tasks performed or procured;
 - 15.2.5 interviews with any employees, secondees or other personnel of the Contractor and with the counterparties to the Customer Contracts and any officers, employees or personnel of such counterparties; and
 - 15.2.6 the copying and collation of any information held in electronic or paper form.
- 15.3 The Authority (acting by itself or by any Authority Agents) shall be entitled to carry out the matters referred to in Clauses 15.1 and 15.2 above at any time or frequency, provided always that the Authority or Authority Agents as applicable shall:
- 15.3.1 act reasonably at all times; and
 - 15.3.2 use all reasonable endeavours to minimise any disruption to the provision of the Tasks by the Contractor, a Subcontractor, or a Sub-Subcontractor as applicable.
- 15.4 For the purposes of Clauses 15.1 and 15.2 above, the Contractor shall provide all reasonable co-operation including:
- 15.4.1 granting, or procuring the grant of timely access to any equipment (including all computer hardware and software and databases) used in the performance of this Agreement, wherever situated, provided that, to the extent that such access is required to equipment which does not belong to the Contractor or access is not within the Contractor's control, the Contractor shall (and shall only be obliged to) use all reasonable efforts to procure such access;
 - 15.4.2 granting timely access to any data dictionary and the fields and records within it to enable data to be downloaded from any computer systems operated by the Contractor; and
 - 15.4.3 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration of information during the audit.

- 15.5 The Contractor agrees that the Comptroller and Auditor General, and for the purposes of Clause 15.1 above, the Authority and any Authority Agents, shall have access to such of the Contractor's personnel as they reasonably consider necessary for the performance of their duties.
- 15.6 The Authority (acting by itself or by any Authority Agent) shall at any time be entitled to request and receive a reasonable number of copies of any Data on demand, whether for the purposes of this Agreement or for any other reasonable purpose, including, but not limited to, inviting tenders as part of a competition for the right to manage and operate the Site and carry out the Commercial Operation Tasks or as part of a competition for appointment as a parent body organisation.
- 15.7 The Authority Agents shall be suitably qualified Third Parties entitled to have the access rights and/or undertake any of the inspections or audits referred to in this Clause 15 on the Authority's behalf. Such Authority Agents shall report their findings directly to the Authority.
- 15.8 The Contractor shall:
- 15.8.1 fully co-operate in relation to the subject matter and implementation of the provisions of this Clause 15;
 - 15.8.2 provide the Authority or any Authority Agent with all information reasonably required in connection with the exercise of the Authority's rights under this Clause 15;
 - 15.8.3 keep all records and other relevant documentation relating to the Contractor's quality management system and all information required to be held by the Contractor in good order and in such form as to be capable of audit (including by electronic means) by the Authority or by any Authority Agent;
 - 15.8.4 make such records available for inspection by the Authority or any Authority Agent at all reasonable times; and
 - 15.8.5 at the Authority's or any Authority Agent's request, make available to the Authority or Authority Agent as applicable any software necessary to review such records.
- 15.9 The Authority shall:
- 15.9.1 implement and maintain procedures for notifying all Authority Agents visiting the Site of the Contractor's Internal Procedures relating to safety and Site security;

- 15.9.2 use reasonable endeavours to ensure that all Authority Agents comply with relevant rules and requirements;
- 15.9.3 notify the Contractor that an Authority Agent acting on behalf of the Authority in accordance with this Clause 15 is duly authorised; and
- 15.9.4 procure that the Authority Agent has, in the

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

Audit Findings and Corrective Action

- 15.14 The Contractor shall be entitled to receive a copy of the Authority's audit findings once completed in relation to any audit carried out in accordance with this Clause 15, subject to any redaction reasonably requested by an Authority Agent.
- 15.15 Within thirty (30) Calendar Days of the Contractor's receipt of the audit findings, the Parties shall hold an Audit Close-Out Meeting.
- 15.16 At the Audit Close-Out Meeting, and where applicable, the Contractor shall have the opportunity to demonstrate to the satisfaction of the Authority that some or all of the relevant audit findings are incorrect.
- 15.17 If, at the Audit Close-Out Meeting, the Authority considers that certain corrective action is required, the Contractor shall within thirty (30) Calendar Days of the Audit Close-Out Meeting (or such other date as agreed between the Parties) either:
- 15.17.1 carry out the Corrective Action; or
 - 15.17.2 propose to the Authority, and obtain the Authority's approval for, a plan for carrying out the Corrective Action.
- 15.18 Where the Contractor proposes a plan for the Corrective Action in accordance with Clause 15.17.1 above, the Authority shall have thirty (30) Calendar Days to notify the Contractor whether it accepts such proposed plan for the Corrective Action (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification within the above period shall constitute deemed acceptance by the Authority. Where the Authority accepts or is deemed to accept the Contractor's plan, the Contractor shall (upon such acceptance or deemed acceptance) implement the plan for the Corrective Action. Where the Authority notifies the Contractor that it does not accept the plan for the Corrective Action, the Parties shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the plan for the Corrective Action. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 36 (*Disputes*).

Books of Audit Findings

15.19 The Contractor shall maintain books containing the findings of audits carried out pursuant to this Clause 15 together with any relevant correction reports setting out the Corrective Action taken as a result of such audit findings in accordance with Clause 15.17.1 or Clause 15.18 above.

Best Practice

15.20 Without prejudice to Clause 29.4 (*Intellectual Property*) and subject to the obligations set out in Clause 25 (*Confidentiality and Compliance with Legislation*), the Authority shall be entitled to use any best practice identified during any inspection or audit carried out pursuant to this Clause 15 and/or at any Audit Close-Out Meeting, including the right to promulgate such good practice across all nuclear sites designated under section 3 of the Energy Act, provided that such use would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Agreement.

Records relating to the Authority's Property

15.21 Without prejudice to the generality of this Clause 15, the Contractor shall provide the Authority, any Authority Agent, the Comptroller and the Auditor General (and any of its authorised representatives) with full access to, the right of inspection of, and extraction from all records whether manual or on computer that relate to the Authority's property (both real and personal) leased to or otherwise made available to the Contractor. All such records shall be retained by the Contractor for the period specified in Clause 14 (*Performance Management, Performance Assurance and Records*).

Contractor's Obligations Persist

15.22 The Contractor shall not be excused from performance of any aspect of its obligations under this Agreement for any period of time during which the Authority and/or the Comptroller and Auditor General are exercising their respective rights in accordance with this Clause 15. If, as a result of any Authority or National Audit Office inspection or audit, the Contractor is prevented from performing its obligations under this Agreement, despite having used reasonable endeavours to so perform, this shall constitute a Dependency Event.

Confidentiality

15.23 The Parties' obligations under this Clause 15 shall be subject to the obligations set out in Clause 25 (*Confidentiality and Compliance with Legislation*).

PART 6: Financial Matters and Liability

16 FINANCE

16.1 Funding Limits

16.1.1 The Contractor shall:

16.1.1.1 fulfil its obligation to perform the Tasks and its other obligations under this Agreement; and

16.1.1.2 manage expenditure within Annual Site Funding Limit, Current Budget, Capital Budget in accordance with Good Industry Practice,

such that (subject to any Change in accordance with the Change Control Procedure) its relevant Costs incurred within any Contract Year in respect of the Site, do not exceed the relevant Annual Site Funding Limit, Current Budget and the Capital Budget.

16.2 Determination of Funding Limits and Compliance with Funding Limits

16.2.1 Prior to each Contract Year, the Authority shall determine and notify the Contractor of the Annual Site Funding Limit, the Current Budget and Capital Budget for that Contract Year in accordance with the Change Control Procedure.

16.2.2 The Contractor shall notify the Authority as soon as reasonably practicable after the Contractor becomes aware that it has incurred Allowable Costs in any Contract Year which in aggregate exceed seventy five per cent (75%) of any Annual Site Funding Limit for that Contract Year.

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

16.3 Financial Restrictions

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

16.3.1.1 dispose, let or otherwise part with the possession of the whole of or any part of the Site, business, undertaking or asset of the Contractor (including any asset subject to a

finance or operating lease) nor purport to do any of the foregoing;

- 16.3.1.2 make any change to its accounting reference date;
- 16.3.1.3 make any change to GAAP or the Accounting Policies and Procedures save as required by applicable Legislation and Accounting Standards;
- 16.3.1.4 give any form of guarantee or other security;
- 16.3.1.5 create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by this Agreement;
- 16.3.1.6 save for borrowings under an Approved Working Capital Facility, borrow (including intra-group) or make any payment under any intra-group borrowings;
- 16.3.1.7 create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of cash in the Contractor's Fee Account, or the Contractor's Payment Account;
- 16.3.1.8 commence any litigation or arbitration other than:
 - 16.3.1.8.1 for the purposes of satisfying Clause 6.6 (*Asset Management*), Clause 29 (*Intellectual Property*) or Clause 17 (*Claims Handling*);
 - 16.3.1.8.2 in accordance with the Dispute Resolution Procedure;
 - 16.3.1.8.3 in any attempt to commence judicial review proceedings against the Authority in connection with this Agreement;
 - 16.3.1.8.4 to challenge any threatened or actual refusal to grant, non-renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent

which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Legislation; or

- 16.3.1.8.5 to the extent that the Contractor, acting reasonably, considers such commencement is urgent and necessary to the Contractor's performance of its obligations to the Authority,

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

- 16.3.1.9 incur any liability or financial indebtedness except pursuant to an Approved Working Capital Facility or any Permitted Financial Indebtedness or as permitted by this Agreement;

- 16.3.1.10 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a financial institution approved in writing by the Authority or Office of the Paymaster General as permitted by this Agreement);

- 16.3.1.11 enter into any finance or operating leases;

- 16.3.1.12 notwithstanding the Permitted Activities, enter into any Customer Contract or Subcontract where a material liability or Cost is likely to crystallise after the expiry of:

- 16.3.1.12.1 any termination notice (which has been issued in accordance with Clause 33 (*Termination*) and Clause 37.7 (*Notices*)) to terminate this Agreement; and/or

- 16.3.1.12.2 the expiry or termination of the Parent Body Agreement;

- 16.3.1.13 save as set out in Clause 16.10.5 below, make any payments to the Parent Body Organisation or to any of its other Affiliates which:

- 16.3.1.13.1 are not provided for and made in accordance with Subcontracts specifically approved by the Authority

pursuant to Clause 22 (*Subcontracting/ Procurement*);

16.3.1.13.2 have not been agreed to under an Advance Agreement; or

16.3.1.13.3 are not made in accordance with the provisions of Clause 9 (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement;

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

16.3.1.15 enter into any Agreement, agreement or arrangement the terms of which are not on arm's-length terms or which gives rise to less value for money for the Contractor and/or the Authority than would have been the case were it not for any direct or indirect benefit or advantage which accrues to any Affiliate, or to any Subcontractor;

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

16.3.1.17 open any bank, building society or similar account.

16.3.2 For the purposes of Clause 16.3.1 above, other than where the Authority has expressly withheld its consent in writing, the Contractor shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 16.3.1.11 to 16.3.1.17 above to the extent the relevant activity is:

16.3.2.1 necessary for (or necessarily ancillary to) the delivery of the Interim End State;

16.3.2.2 expressly contained in a Subcontract or Customer Contract which is specifically approved by the Authority, provided that, for the avoidance of doubt and notwithstanding any other provision of this Agreement, any Subcontract or Customer Contract which enables the Contractor to do any of the matters set out in this Clause 16.3 requires the

approval of the Authority notwithstanding the Permitted Activities;

16.3.2.3 expressly contained in an Internal Procedure approved by the Authority in accordance with this Agreement;

16.3.2.4 save in the case of Clause 16.3.1.11 above, a Permitted Activity or otherwise approved by the Authority following the Contractor's compliance with Clause 20.2 (Authority's Rights in respect of Customer Contracts);

16.3.2.5 in the case of Clause 16.3.1.1 above, expressly permitted by Clause 6.1 (Right to Deal with Authority Assets);

16.3.2.6 expressly permitted pursuant to Schedule 6 (*Finance*); or

16.3.2.7 required as a term of an Approved Working Capital Facility.

16.3.3 For the purposes of Clause 16.3.1.7 above, the Authority may not unreasonably withhold or delay its consent.

16.4 **Benchmarking – Working Capital Facilities**

16.4.1 Subject to Clause 16.4.2 below, the Authority shall have the right in each Contract Year to establish the best terms and conditions

16.4.3 The Authority shall notify the Contractor of the outcome of its Benchmark Assessment as soon as reasonably practicable after such Benchmark Assessment has been completed.

16.4.4 The Authority may in its absolute discretion require the Contractor in each Contract Year to undertake the Benchmark Assessment on behalf of the Authority. If so requested, the Contractor shall:

16.4.4.1 comply with the rules set out in Clause 16.4.2 above as if it were the Authority; and

16.4.4.2 deliver the report of the Benchmark Assessment to the Authority as soon as reasonably practicable after such Benchmark Assessment has been completed.

16.4.5 When either Party notifies the other Party of the outcome of a Benchmark Assessment (either pursuant to Clause 16.4.3 or Clause 16.4.4 above), the Party receiving notice of the Benchmark Assessment has the right to contest the Benchmark Assessment provided that in doing so it complies with the Dispute Resolution Procedure.

16.4.6 If:

16.4.6.1 a Proposed Working Capital Facility is offered; and/or

16.4.6.2 any then Approved Working Capital Facility is,

on terms and conditions which (from the Authority's perspective, as the body obliged (subject to the provisions of Schedule 6 (*Finance*)) to reimburse the Costs of the Approved Working Capital Facilities) are neither equal to nor better than the Benchmark, then the Contractor shall:

16.4.6.2.1 (in the case of a Proposed Working Capital Facility) not enter into such Proposed Working Capital Facility without the Authority's prior written consent (such consent to be given or withheld within thirty (30) Calendar Days of the date on which the outcome of the relevant Benchmark Assessment has been given to the Authority or, if later, within thirty (30) Calendar Days of the date on which the Authority is provided with full details of the terms of the relevant Proposed Working Capital Facility); and

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

16.5 Historical Costs

- 16.5.1 The Contractor shall determine whether any Cost, claim or liability which relates to the period prior to the Commencement Date and which has been satisfied by the Contractor after the Commencement Date falls within the definition of a Contractor Historical Cost or a Non Contractor Historical Cost. Where relevant, the Contractor shall apply the terms of the relevant Overarching Costs Management Agreement when deciding whether such a Cost, claim or liability is a Contractor Historical Cost or a Non Contractor Historical Cost.
- 16.5.2 The Contractor shall mitigate, to the extent reasonably possible, all Contractor Historical Costs and meet such Contractor Historical Costs subject, where relevant, to the provisions of Clause 17 (*Claims Handling*).
- 16.5.3 Where the Contractor has paid a Non Contractor Historical Cost to which an Overarching Cost Management Agreement relates, the Contractor shall use reasonable endeavours to reclaim such Non Contractor Historical Cost from the person to whom it is properly attributable in accordance with the terms of the relevant Overarching Costs Management Agreement. The Contractor shall pay any amounts reclaimed pursuant to this Clause 16.5.3 to the Authority as Category I Revenue.

16.6 Cashflow

16.6.1 Costs and Capital

Working Capital

- 16.6.1.1 The Contractor shall ensure that it maintains a working capital facility to enable it to meet its obligations under this Agreement on the basis that the Authority makes payments under this Agreement as and when such payments fall due.
- 16.6.1.2 The Contractor shall make payments, which are to be made out of the Contractor's Payments Account, to creditors as they Fall Due and in accordance with the

Government Payment Obligations (save as otherwise agreed by the Authority in writing).

16.6.1.3 Unless the Authority approves otherwise in writing, the working capital facility required under Clause 16.6.1.1 above shall be provided by the Contractor entering into one or more Approved Working Capital Facilities.

16.6.1.4 All drawings under an Approved Working Capital Facility shall be transferred only into the Contractor's Payments Account. The Contractor shall only pay creditors out of the Contractor's Payments Account including, without limitation, Working Capital Costs.

16.6.1.5 The provisions of Clause 16.6.1.2 above shall not apply to the extent that the relevant creditor is to be satisfied as an Exceptional Item which the Authority has failed to pay to the Contractor in accordance with Part 3 (Payment of Allowable Costs) of Schedule 6 (*Finance*).

16.6.2 **Cashflow Forecasting**

The Contractor shall regularly submit to the Authority a cashflow forecast in a form and at a frequency to be determined by the Authority, acting reasonably, and notified to the Contractor from time to time in accordance with FNP-02.

16.7 **Determination of Revenue Category**

16.7.1 The Authority shall be entitled, acting reasonably and in consultation with the Contractor, to:

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

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

16.7.2 If, at any time in a Contract Year, the amount of Category II Revenue received by the Contractor exceeds the amount forecast by the Contractor in the LTP as receivable for that Contract Year, the Authority shall be entitled at any time

thereafter in the current Contract Year, acting reasonably, to treat the excess revenue falling within the definition of Category II Revenue as revenue falling into the definition of Category I Revenue.

16.7.3 The Authority shall (acting reasonably and in consultation with the Contractor) be entitled at any time to add new categories of revenue to the definition of Category I Revenue and/or Category II Revenue to the extent that such categories of revenue are not already accounted for as Category I Revenue or Category II Revenue in the current Contract Year's LTP.

16.7.4 Monies received or receivable by the Contractor shall predominantly be treated as Category I Revenue. Any dispute as to whether monies received or receivable by the Contractor are to be treated as Category I Revenue or Category II Revenue shall be determined by the Authority acting reasonably.

16.8 **Category I and II Revenue**

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

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

16.8.3 If the Contractor becomes aware that an amount so transferred to the OPG Receipts Account was paid into the Contractor's Receipts Account in error and therefore should not have been so transferred, then the Contractor shall reclaim the amount paid in error by informing the Authority of the amount, the date of transfer and the reason for the error (an "**Overpayment Notice**"). The Contractor will use all reasonable endeavours to make such claim within 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 16.8.1 above. In the event that, exercising such reasonable endeavours, the Contractor is unable to make such claim as aforesaid, the Contractor shall make such claim as soon as reasonably practicable after the expiry of 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 16.8.1 above.

16.8.4 The Contractor will provide along with the Overpayment Notice or as soon as reasonably practicable following the Authority's receipt of an Overpayment Notice all relevant supporting documents and information (and in such a form) as the Authority may reasonably require in order to satisfy itself that the payment into the Contractor's Receipts Account was made in error. If the Parties cannot agree whether an amount was paid into the Contractor's Receipts Account in error or if there is any disagreement regarding the amount paid in error the matter shall be resolved in accordance with Clause 36 (*Disputes*).

16.8.5 If it shall be decided or determined that the Contractor transferred all or part of the amount referred to in the Overpayment Notice to the OPG Receipts Account in error, then as soon as reasonably practicable following such agreement or determination the Authority will repay the relevant amount to the Contractor's Receipts Account.

16.9 **Invoicing and Payment**

16.9.1 The Contractor shall be paid for the provision of the services under this Agreement in accordance with the provisions of Schedule 6 (*Finance*).

16.10 **Operation of Accounts**

16.10.1 Contractor's Fee Account

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

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

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

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

16.10.1.2.3 make payments to the Parent Body Organisation which are not Allowable Costs and which are permitted b195f8 b4(e)5.819570.413(b4(.4824(a)-6.97536924()-3p51644(r)-2

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

16.10.2 Contractor's Payments Account

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

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

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

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

16.10.2.3 The Contractor shall have available a daily cashflow analysis of the Contractor's Payments Account which justifies the Agreed Payment Profile adopted for the reimbursement of Allowable Costs. The Contractor shall supply the Authority with a copy of such daily cashflow analysis of the Contractor's Payment Account on request by the Authority and in line with Schedule 6 Part 2B: Payment of Allowable Costs clauses 7.2(j) and 8.1.

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

16.10.2.4.1 such payments are in accordance with the Currency Hedging Strategy: or

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

16.10.3 Contractor's Receipts Account

16.10.3.1 The Contractor shall maintain the Contractor's Receipts Account as a designated account for the receipt of payment from Customers and the passing over of such payments to the Authority under Clause 16.8 above.

16.10.3.2 Any interest which accrues on credit balances in the Contractor's Receipts Account shall be payable by the Contractor to the Authority as Category II Revenue in accordance with Clause 16.8.1 above.

16.10.3.3 Payments shall only be made from the Contractor's Receipts Account in accordance with Clause 16.8 above.

16.10.4 Foreign Exchange Accounts

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

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

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

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

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

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

16.10.4.4 Interest on credit balances in Foreign Exchange Accounts shall be payable by the Contractor to the Authority as

Category II Revenue on a daily basis unless the value is equal to or less than £1,000 when it is to be transferred to the Authority no later than one month following receipt .

16.10.4.5 Other Accounts

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

16.10.5 Payments to Parent

16.10.5.1 Save as set out in the following provisions of this Clause 16.10.5, the Contractor shall not without the prior written consent of the Authority make any payment to the Parent Body Organisation.

16.10.5.2 Notwithstanding Clause 16.3.1.13 above but subject to the Contractor's obligations under clause 16.10.5.5, the Contractor may make payments to the Parent Body Organisation where such payments are made by way of dividend and do not exceed the amount of the profits available for distribution (as defined in section 830 Companies Act 2006) of the Contractor earned by the Contractor during the period from and including the Commencement Date to the date of the payment of the relevant dividend. The amount available to distribute as dividend can never be greater than fee earned and associated interest less disallowable costs less corporation tax at the effective tax rate.

16.10.5.3 For the purposes of calculating such distributable profits the Contractor will be required to apply the Accounting Policies and Procedures. Any failure to agree such changes shall be referred to the Dispute Resolution Procedure.

16.10.5.4 When calculating its profits available for distribution, the Contractor shall exclude income earned and expenditure incurred prior to the Commencement Date but which is, for

whatever reason, only recognised in the accounts of the Contractor after the Commencement Date.

16.10.5.5 Following the Commencement Date and before the Contractor is able to make any payments to the Parent Body Organisation under clause 16.10.5.2, the Contractor shall prepare and supply to the Authority a written policy paper which shall:

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

16.10.5.5.2 set out the process which the Contractor will undertake to satisfy the Authority that any dividend which the Contractor pays is made in accordance with Clause 16.10.5.3 above; and

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

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

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

16.10.5.6.1 in accordance with the Accounting Policies And Procedures; and

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

16.10.5.7 The Annual Reconciliation Report and audited financial statements of the Contractor produced under Paragraphs 8 (*Annual Reconciliation of Allowable Costs*) and 10 (*Final Reconciliation of Allowable Costs*) of Part 2b (*Payment of Allowable Costs*) of Schedule 6 (*Finance*) will be used to agree the financial position of the Contractor at the end of each Contract Year, the termination or expiry of the Parent Body Agreement and on termination of this Agreement. These shall be prepared on the same basis as the Commencement Accounts. If this shows that dividends have been paid in breach of Clause 16.10.5.2 above, then the Parent Body Organisation will be required to procure repayment of the excess to the Authority or Contractor (as the Authority may direct).

16.10.5.8 The Contractor shall be entitled to make payment to the Parent Body Organisation in accordance with the Parent Body Agreement for the provision of support in accordance with Clause 9 (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement and in respect of Allowable Costs for the provision of Nominated Staff.

16.10.5.9 The Contractor shall be entitled to make payment to the Parent Body Organisation in respect of interests and capital repayments made in accordance with an Approved Working Capital Facility provided by the Parent Body Organisation.

16.11 Transparency and Auditing

16.11.1 At any time, the Authority may choose to exercise the rights set out in Clause 15 (*Inspection and Audit*) to audit the Contractor's determination of Costs as Allowable Costs or Disallowable Costs, the Contractor's claims for reimbursement of Allowable Costs, the reconciliation between payments made and accruals, the satisfaction of Payment Milestones and the Contractor's calculations of Fee.

16.11.2 The Contractor shall adopt a system of transparency and open book accounting which provides for all income, expenditure and other matters relating to the financial management and performance of the Contractor. The Contractor shall, at the request of the Authority, make such of its records

available to the Authority as are necessary for the Authority to verify that such a system has been and is being adopted. The Contractor shall ensure that its Subcontractors also comply with such transparency and reporting provisions by including in its Subcontracts such drafting as is necessary to give the Authority equivalent rights in respect of such Subcontracts as it has in respect of this Agreement under Clause 15 (*Inspection and Audit*) and this Clause 16.11. The Authority shall have a right of access to the build up and calculations for each and every item of Cost that is used in the formulation of the prices and sums under this Agreement. The Contractor shall procure that the Authority shall have the right to audit the Subcontractors and such Subcontractors' affiliates (to the extent that they have any involvement with the performance of the Contractor's obligations under this Agreement) on the same basis.

16.12 Taxation

16.12.1 Tax - General

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

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

16.12.2 Corporation Tax

The Contractor:

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

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

16.12.2.3 shall produce a tax pack in respect of the accounting records maintained by the Contractor on behalf of the Authority in the form and to the frequency and timescales

required by the Authority and respond to any queries on a timely basis such that the Authority is able to meet its Taxation obligations.

16.12.3 VAT

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

16.12.3.1.1 shall maintain its registration for the purposes of the VATA;

16.12.3.1.2 agrees properly to charge VAT and issue VAT invoices in respect of supplies made to Third Party customers;

16.12.3.1.3 agrees properly to charge VAT and issue VAT invoices, in accordance with Schedule 6 (*Finance*), in respect of the reimbursement of Allowable Costs by the Authority;

16.12.3.1.4 agrees properly to charge VAT and issue VAT invoices and credit notes as appropriate in respect of the Contract Price;

16.12.3.1.5 agrees properly to prepare and submit VAT returns on a timely basis to HMRC and to seek recovery as far as possible of VAT incurred in respect of goods and services supplied to the Contractor;

16.12.3.1.6 the Contractor shall be responsible for ensuring that it recovers all VAT and all foreign equivalents of VAT from the relevant Taxation Authority on all Costs on the relevant return form covering the period in which relevant invoices are issued to the Contractor by Third Parties regardless of when those invoices are posted to the Contractor's accounting system;

16.12.3.1.7 agrees not to act inconsistently with the principles set out in this Agreement; and

16.12.3.1.8 agrees to apply to the relevant Taxation Authority within thirty (30) Calendar Days of the

Commencement Date for an import VAT and duty deferment guarantee under the Simplified Import VAT Accounting regime and to liaise with the Authority to ensure that the application is processed as quickly as possible.

16.12.3.2 The Authority shall charge VAT in respect of the payments under the Property Leases and shall properly issue VAT invoices in respect thereof.

16.12.3.3 The Authority warrants that it has elected to waive exemption from VAT in accordance with the provisions of Paragraph 2 of Schedule 10 to VATA in respect of the Sites.

16.12.4 Withholding Taxes

16.12.4.1 Any payment made by the Authority or the Contractor under, or pursuant to the terms of, this Agreement shall be made free and clear of all Taxation whatsoever save only for any deductions or withholdings required by applicable Legislation and any VAT payable in accordance with the terms of this Agreement.

16.12.4.2 The Authority warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.

16.12.4.3 The Contractor warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.

16.12.4.4 Where the Contractor is or will be required to account under this Agreement to the Authority in respect of any receipt from a Third Party, and such receipt is or may be subject to deductions or withholdings in respect of Taxation, the Contractor is required to take reasonable action necessary to obtain the payment without such deduction or withholding, or to recover all or part of the deduction or withholding.

16.12.5 Employee Taxes

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

16.12.6 Tax Returns

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

16.12.7 Income Tax - Construction Industry Scheme Regulations

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

16.12.8 Tax Credits

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

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

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

available to the Subcontractor and (where relevant) Sub-Subcontractor;

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

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

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

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

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

16.12.8.2.2 notwithstanding the provisions of Schedule 6 (*Finance*) the amount of the Allowable Costs which are reimbursed by the Authority shall be reduced by fifty per cent (50%) of the amount of the tax saved as a result of research and development tax relief, including a right to a payment of an associated tax credit, anticipated or shown in the Contractor's estimate of its corporation tax liability or within its

submitted returns. This reduction shall be effected by the Contractor issuing to the Authority a credit note.

16.12.8.2.3 as and when the Contractor's research and development claim (including any right to a payment of an associated tax credit) is agreed by HMRC, the amount of the claim or right to payment shall be compared to the amount claimed in the relevant return. If the research and development tax relief (including any right to a payment of an associated tax credit) in the relevant estimate or return differs from that agreed by HMRC, then within 30 Calendar Days of the agreement with HMRC an adjustment shall be effected by way of credit or debit note or notes to ensure that the Authority has received or will receive fifty per cent (50%) of:

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

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

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

16.12.8.3 For the purposes of this Clause, tax shall not be treated as having been "saved":

16.12.8.3.1 (to the extent that the research and development tax relief is not a right to a payment of a tax credit), until the last date upon which the Contractor or any person to whom the Contractor may surrender tax losses would have been obliged to make an actual payment of Tax (which it would otherwise have had

to pay but for this tax relief or any other claim made by it or on its behalf) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax; and

16.12.8.3.2 (to the extent that the research and development tax credit is a right to a payment of a tax credit), until the date on which the Contractor receives or would but for any other event have received cleared funds in respect of such repayment had a claim been made.

16.12.8.4 For the purposes of this Clause 16.12.8, the Contractor shall be deemed to use any available research and development relief in advance of all other tax reliefs (other than Pre Commencement Reliefs) available to it. Further, to the extent that the Contractor surrenders tax losses to any person, the losses surrendered shall be deemed to include any unutilised research and development tax relief and shall be considered to be utilised at the time that the recipient is next obliged to make an actual payment of Tax (which it would otherwise have had to pay but for the surrender of the tax losses) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

16.12.8.5 Where the Authority receives any credit note under this Clause 16.12.8, the Authority shall be entitled to set the amount of the credit note off against any amount payable by the Authority to the Contractor under this Agreement or to demand repayment of the amount the subject of the credit note within 30 Calendar Days of the relevant demand.

16.12.8.6 Where the Contractor issues a debit note under this Clause 16.12, the Authority shall:

16.12.8.6.1 if its cash flow position reasonably allows, settle the note within thirty (30) Calendar Days of its receipt by the Authority;

16.12.8.6.2 if its cash flow position does not reasonably allow the Authority to make the payment under Clause 16.12.8.6.1 above, settle the note as soon as reasonably practicable.

16.12.8.7 This Clause shall continue to apply for up to a period of ten (10) years following the termination of this Agreement but only to the extent that it relates to research and development tax relief which the Contractor claims or is entitled to claim in respect of expenditure incurred prior to the date of termination of this Agreement.

16.12.9 Pre Commencement Reliefs

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

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

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

16.12.9.2 Notwithstanding the provisions of Schedule 6 (*Finance*) the amounts of Allowable Costs which are reimbursed by the Authority shall be reduced by one hundred per cent (100%) of the amount of Tax saved, as a result of Pre

note or debit note or notes to ensure that the Authority has received or will receive one hundred per cent (100%) of the tax saved as a result of the use of Pre Commencement Reliefs. Should the claim to HMRC be adjusted after this event, a further credit or debit note or notes will be issued to take the adjustment into account.

16.12.9.4 For the purposes of this Clause 16.12, Tax shall not be treated as having been "saved":

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

16.12.9.5 For the purposes of this Clause 16.12.9, the Contractor shall be deemed to use any available Pre Commencement Reliefs in advance of all other tax reliefs available to it. To the extent that the Contractor surrenders Reliefs to any person, the Reliefs surrendered shall be deemed to include any Pre Commencement Reliefs and shall be considered to be utilised at a time when the recipient is next obliged to make an actual payment of tax (which it would have otherwise had to pay but for the surrender of the Reliefs) in order to avoid incurring any fine, penalty or interest in respect of unpaid tax.

16.12.9.6 The provisions of Clauses 16.12.8.5, 16.12.8.6.1 and 16.12.8.7 above shall apply mutatis mutandis to this Clause 16.12.9.

17 CLAIMS HANDLING

17.1 The provisions of Clause 13 (*Claims Handling*) of the Parent Body Agreement shall apply to this Agreement with the wording of that Clause 13 (*Claims Handling*) amended as necessary to make contextual sense and to ensure that the contractual effect of this Clause 17 is the same as the contractual effect of that Clause 13 (*Claims Handling*).

18 INSURANCE AND LIABILITY

18.1 Authority Insurances

18.1.1 Without prejudice to the Contractor's obligations and liabilities to the Authority under this Agreement and subject to Clause 18.1.3 below, the Authority shall take out and maintain the Authority Insurances (which shall not include directors' and officers' insurance, which shall be the responsibility of the Parent Body Organisation).

18.1.2 The insured parties under the Authority Insurances shall be as follows:

18.1.2.1 covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities connected with this Agreement and the Parent Body Agreement only), and all Subcontractors in respect of their on Site activities:

18.1.2.1.1 all risks property damage and contract works;

18.1.2.2 covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities connected with this Agreement and the Parent Body Agreement only), but not any Subcontractor:

18.1.2.2.1 public liability;

18.1.2.3 subject to Clause 18.1.4 below, covering the Contractor (in respect of its liability under the Nuclear Installations Act 1965 in connection with its activities at or on the Site) and the Authority but not the Parent Body Organisation or any Subcontractor:

18.1.2.3.1 nuclear public liability;

18.1.2.4 covering the Contractor but not the Parent Body Organisation nor any Subcontractor:

18.1.2.4.1 motor; and

18.1.2.5 covering the Contractor (including for any relevant liability to a member of the Nominated Staff) but not the Parent Body Organisation nor any Subcontractor:

18.1.2.5.1 employers' liability; and

18.1.2.5.2 any further insurances that the Contractor is required by Legislation to maintain.

18.1.3 If:

18.1.3.1 the Authority Insurances become unavailable or protection or cover available to the Contractor under the Authority Insurances materially diminishes in cover (save where such unavailability or diminution in cover is caused by a breach of Clause 18.2.2 below by the Contractor); or;

18.1.3.2 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 use its reasonable endeavours to ensure that the Contractor has no greater financial exposure due to the unavailability of the Authority Insurances than as at the date immediately prior to such unavailability.

18.1.4 If there is any extension and/or increase of the liability and/or obligation of the Contractor to any person pursuant to any amendments made to the provisions of the Nuclear Installations Act 1965, the Authority shall ensure that adequate mechanisms are made available to the Contractor to ensure that there is in place such provision (either by insurance or by some other means) for sufficient funds to be available as required by, and that, so far as possible by funding means, the Contractor is able to meet any such liabilities or obligations pursuant to the Nuclear Installations Act 1965 as amended.

18.2 **Acknowledgement by Contractor**

18.2.1 The Authority shall provide to the Contractor policy terms and requirements of the insurers with whom the Authority Insurances are placed and the Contractor shall comply with such requirements. The Contractor will notify the Authority of any act, occurrence or failure which may:

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

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

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

18.2.3 [The Contractor shall ensure that provisions having similar effect to the provisions of Paragraph 4.1 (hh) or (kk) (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (*Finance*) and imposing a liability in respect of Insurance Deductibles in similar proportions are incorporated into each and every Subcontract.]

18.3 **Liability Cap**

18.3.1 Subject to Clause 18.3.6 and Clause 18.5 below, for each Contract Year the Liability Cap shall be as follows:

18.3.1.1 for Contract Year 1, £[●];

18.3.1.2 for Contract Year 2, £[●] (Indexed);

18.3.1.3 for Contract Year 3, £[●] (Indexed);

18.3.1.4 for Contract Year 4, £[●] (Indexed);

18.3.1.5 for each Contract Year from Contract Year 5 onwards, £[●] (Indexed); and

18.3.1.6 after termination or expiry of this Agreement, £[●] (provided that such figure shall, at the end of each twelve (12) month period following such termination or expiry, be reduced by the aggregate of any sums of the type described in Clause 18.3.2 below identified in that period, and the remaining amount shall be Indexed, with the resulting amount replacing the figure stated above for the purposes of this Clause 18.3.1.6).

18.3.2 If at any time the aggregate of the Contractor's Liabilities arising in any one Contract Year (or in any single twelve (12) month period following termination or expiry of this Agreement) when taken together with any liability to the Authority arising in the same period pursuant to the Parent Body Agreement

and falling within the scope of liabilities which are (under the Parent Body Agreement) expressed to be subject to the Liability Cap reaches the level of the Liability Cap, then:

18.3.2.1 where this Agreement has not expired or been terminated, the Contractor shall not be liable to the Authority for any Contractor's Liabilities arising in that Contract Year in excess of the Liability Cap for that Contract Year;

18.3.2.2 where this Agreement has expired or been terminated, the Contractor shall not be liable to the Authority for any Contractor's Liabilities arising after such expiry or termination in excess of the Liability Cap described under Clause 18.3.1.6 above; and

18.3.2.3 the Authority shall (provided that the Contractor shall comply with Clause 36 (*Disputes*) and Clause 17 (*Claims Handling*), and subject to Clause 18.3.3 below), indemnify the Contractor for the Contractor's Liabilities in excess of the Liability Cap.

18.3.3 The indemnity in Clause 18.3.2 above shall not apply in respect of the following types of Disallowable Costs:

18.3.3.1 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(ee);

18.3.3.2 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(ll), to the extent that such Costs do not fall within Clause 18.3.5.19 below; and

18.3.3.3 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(uu).

18.3.4 For the purposes of this Clause 18.3, "**Contractor's Liabilities**" shall mean any and all of:

18.3.4.1 Class A Disallowable Costs which are incurred in the Contract Year in question; and

18.3.4.2 the Contractor's liability to the Authority under or in connection with this Agreement however arising (but excluding any liability of the Contractor pursuant to Clause 19.1 (*Contractor's Indemnity*) arising from [the Contractor's fraud (or that of any other person for whom the Contractor is, pursuant to Clause 19.1 (*Contractor's Indemnity*), responsible), or from] death or personal injury caused by negligence and excluding any liability of the Contractor to pay the disallowable costs referred to in Clause 18.3.3.1 and 18.3.3.2 above),

provided that, for the avoidance of doubt, any abatement or withholding of Fee pursuant to the provisions of Schedule 6 (*Finance*) shall not constitute a Contractor's Liability for the purposes of this Clause 18.3.

18.3.5 The following types of Disallowable Costs shall be "Class B Disallowable Costs" (and accordingly shall not fall within the Liability Cap nor the indemnity in clause 18.3.2 above):

18.3.5.1 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(a);

18.3.5.2 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(b);

18.3.5.3 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(c);

18.3.5.4 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(e);

18.3.5.5 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(f);

18.3.5.6 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(g);

- 18.3.5.7 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(i);
- 18.3.5.8 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(j);
- 18.3.5.9 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(k);
- 18.3.5.10 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(m);
- 18.3.5.11 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(o), but only to the extent that the VAT or other Tax in question is itself in respect of a Class B Disallowable Cost listed elsewhere in this Clause 18.3.5;
- 18.3.5.12 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(o), but only to the extent that the Costs in question relate to VAT or other Tax which is itself in respect of a Class B Disallowable Cost listed elsewhere in this Clause 18.3.5;
- 18.3.5.13 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(t);
- 18.3.5.14 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(u);
- 18.3.5.15 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(w);

- 18.3.5.16 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(x);
- 18.3.5.17 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(ff);
- 18.3.5.18 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(gg), except where the subject matter of the relevant debt is itself a Class A Disallowable Cost;
- 18.3.5.19 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(ll), but only to the extent that such Costs arise as a result of the fraud, recklessness or wilful default of a member of Nominated Staff, or as a result of a Persistent Breach or Contractor Default for which a member of Nominated Staff is responsible;
- 18.3.5.20 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(mm);
- 18.3.5.21 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(oo), but only to the extent that the payments being met are towards a Class B Disallowable Cost listed elsewhere in this Clause 18.3.5;
- 18.3.5.22 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(rr);
- 18.3.5.23 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(ss); and
- 18.3.5.24 Costs of the type described at Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph 4.1(tt).

18.3.6 The Liability Cap shall only be adjusted during a Contract Year as a consequence of a Change. Any such adjustment shall be by way of agreed Change in accordance with Clause 18.5 below and the Change Control Procedure.

18.3.7 If either:

18.3.7.1 at any time the aggregate of the Contractor's Liabilities arising in any one Contract Year when taken together with any liability to the Authority arising in the same period pursuant to the Parent Body Agreement and falling within the scope of liabilities which are (under the Parent Body Agreement) expressed to be subject to the Liability Cap, exceeds [75%] of the Liability Cap applicable to that Contract Year; or

18.3.7.2 at any time it becomes apparent that there is no reasonable prospect that the Liability Cap will not be reached (thus triggering Clause 18.3.2 above),

then the Authority shall be entitled to terminate this Agreement for Contractor Default.

18.4 **Disallowable Costs**

Subject to Clause 18.3 above, the Contractor hereby indemnifies the Authority against all Disallowable Costs incurred in any Contract Year.

18.5 **Review of Limit on General Liability**

Subject to Clause 37.10 (*Miscellaneous - Variation*), if at any time the Authority or the Contractor considers (acting reasonably) that the ratio of the Liability Cap to the Fee which the Contractor is capable of earning (assuming the Contractor performs its obligations under the Agreement in accordance with Good Industry Practice) has changed significantly since the Commencement Date, then it may make a proposal to change the Liability Cap in accordance with the Change Control Procedure and the Parties shall act reasonably when considering such proposal to ensure that the said ratio is substantially the same as it was at the Commencement Date.

18.6 **Consequential Loss**

18.6.1 Unless expressly stated otherwise, neither Party shall be liable to the other Party under or in connection with this Agreement for:

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

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

18.6.2 For the avoidance of doubt this Clause 18.6 shall not operate to prevent either Party from recovering any payments that are lawfully due to that Party from the other Party under this Agreement, including without limitation any payments due in respect of Allowable Costs.

19 CONTRACTOR'S INDEMNITY

19.1 The Contractor shall, subject to Clause 18.3 above and Clause 19.2 below, be responsible for, and shall release and indemnify the Authority, its employees, agents and its other contractors on demand from and against all liability for all third party actions, claims and demands, and associated costs, charges and expenses (including legal expenses on an indemnity basis), which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Agreement, or the acts or omissions of the Contractor, a Subcontractor, a Sub-Subcontractor, their employees or agents whilst present on the Site.

Limits on Indemnity

19.2 The Contractor shall not be responsible or be obliged to indemnify the Authority for any liability referred to in Clause 19.1 above to the extent that such liability arises as a direct result of:

19.2.1 the Contractor acting on the instruction of the Authority;

19.2.2 the negligence or wilful misconduct of the Authority, its employees, agents or contractors; or

19.2.3 the breach by the Authority of its obligations under this Agreement.

PART 7: Contracting and Inter SLC Activities

20 AUTHORITY RIGHTS IN RESPECT OF CUSTOMER CONTRACTS

Amendments to Customer Contracts and New Customer Contracts

20.1 Subject to the Authority's rights under Clause 20.3 below, the Contractor shall not enter into a new Customer Contract (a "**New Customer Contract**") nor amend any existing Customer Contract (or suggest any amendment to the counterparty other than on a

without prejudice basis) (an "**Amendment**") unless the Authority has given its prior written consent pursuant to the Change Control Procedure and PCP17.

Obligation to consult the Authority

20.2 Except to the extent of the Permitted Activities, the Contractor shall consult the Authority in respect of the exercise of any discretion under the Customer Contracts in accordance the Change Control Procedure and PCP17.

Authority's right to instruct

20.3 Notwithstanding the Permitted Activities under Clause 21 (*Permitted Activities*), the Authority shall be entitled to instruct the Contractor to exercise or not exercise its rights, or perform or not perform its obligations, or otherwise act, in a specified manner in relation to any of the Customer Contracts in accordance with Schedule 3 (*Commercial Schedule (Customer Contracts)*).

20.4 If the Authority wishes to issue instructions to the Contractor pursuant to Clause 20.3 above, the Authority shall act in accordance with Schedule 3 (*Commercial Schedule (Customer Contracts)*), and where practicable, initially discuss the relevant issue with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any impact of which the Contractor is aware that the relevant issue may have upon the Authority, the Contractor, any Subcontract or Series of Subcontracts, the performance of or terms of this Agreement or the Customer Contracts.

21 PERMITTED ACTIVITIES

21.1 The Permitted Activities shall be without prejudice to the Contractor's obligations to seek Authority approval and/or consult the Authority in accordance with any provision of this Agreement, subject to Clause 21.2 below.

21.2 Subject to Clause 20.2 (*Authority's Rights in Respect of Customer Contracts*) and 21.3 to 21.5 (*Permitted Activities*) (inclusive), the Contractor shall be entitled to take such action in relation to new or existing Customer Contracts as is permitted by the Permitted Activities without seeking the consent of or consulting with the Authority in accordance with Schedule 3 (*Commercial Schedule (Customer Contracts)*) provided that, unless the Authority agrees otherwise, the Contractor shall ensure that any such New Customer Contract or Amendment complies with the requirements contained in Schedule 3 (*Commercial Schedule (Customer Contracts)*).

- 21.3 In undertaking its Permitted Activities, the Contractor shall have due regard to any current strategy for Customer Contracts of the Authority as notified to the Contractor by the Authority from time to time.
- 21.4 If the Contractor is uncertain whether any of its activities in respect of the Customer Contracts (including any proposed exercise of a discretion under a Customer Contract, entry into a New Customer Contract or Amendment to an existing Customer Contract) falls within its Permitted Activities, it shall consult with the Authority to obtain confirmation of whether the proposed activity is a Permitted Activity or whether the Contractor is obliged to obtain the Authority's consent to carry out the activity.
- 21.5 The Authority shall be entitled, acting reasonably, at any time to amend, add or withdraw any Permitted Activity by serving a notice in writing on the Contractor setting out the relevant amendment, addition or withdrawal.
- 21.6 Subject to Clauses 21.5 above and Clause 21.7 below, the amendment, addition or withdrawal of any Permitted Activity shall be effective seven (7) Calendar Days after the receipt of the Authority's written notice and the Contractor shall as soon as practicable amend the Permitted Activities to reflect the amendment, addition or withdrawal set out in the Authority's written notice.
- 21.7 If the Contractor reasonably considers, given the nature of the Permitted Activity and the circumstances in which it is used, that it is inappropriate for the relevant Permitted Activity to be amended, added or withdrawn, the Authority (acting reasonably) shall consider any representations made to it by the Contractor (including in respect of altering the time period in which the amendment, addition or withdrawal of the relevant Permitted Activity becomes effective).

Customer Contract Log

- 21.8 Except to the extent that the Contractor is carrying out Permitted Activities pursuant to this Clause 21, the Contractor shall keep a record (a "**Customer Contract Log**") which sets out the progress of:
- 21.8.1 any New Customer Contract;
- 21.8.2 any Amendment;
- 21.8.3 any exercise of the Contractor's discretion under a Customer Contract; and
- 21.8.4 any exercise of the Authority's right to instruct pursuant to Clause 20.2 above,
- from the initiation of the issue or matter until such issue or matter is executed, carried out, rejected, abandoned or resolved (as the case may be) in each case recording the

date of any relevant issue or matter and the Contractor's, Authority's and/or counterparty's action, inaction or response as applicable.

22 SUBCONTRACTING / PROCUREMENT

22.1 The Contractor shall:

22.1.1 (save to the extent otherwise agreed in writing with the Authority), comply with the provisions of Schedule 5 Part 1 (*Subcontracting and Procurement – Work Activity Management*) (as applicable);

22.1.2 use its best endeavours to ensure that no Subcontract or Sub-Subcontract contains any provisions the effect of which is to prevent the Authority being able to use best practice pursuant to Clause 15.20; and

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

22.2 The Contractor shall be responsible for the work executed or services performed under any Subcontract or Sub-Subcontract as if such work were executed or services were delivered by the Contractor itself.

22.3 Subject to Clause 22.4 below, the Contractor shall use its reasonable endeavours to procure that any Sub-Subcontracts which are entered into on or after the Commencement Date contain provisions obliging Sub-Subcontractors to enter into deeds of collateral warranty in favour of the Contractor in relation to the works performed or services provided under Sub-Subcontracts. Deeds of collateral warranty which are procured by the Contractor in accordance with this Clause shall contain the following provisions:

22.3.1 an obligation on the Sub-Subcontractor to maintain professional indemnity insurance at a level no less than the maximum amount which could be paid by the Sub-Subcontractor counterparty under the Sub-Subcontract for due performance by the Sub-Subcontractor, for a period starting with the commencement date of the Sub-Subcontract and ending twelve (12) years after completion of the works performed or services provided under the Sub-Subcontract;

22.3.2 warranties from the Sub-Subcontractor in favour of the Contractor that the Sub-Subcontractor will:

22.3.2.1 exercise the level of reasonable skill, care and diligence which would be expected of a Sub-Subcontractor holding itself out as competent in performing the works or providing

the services in relation to schemes of similar nature, scope and size to the services and/or works which are the subject matter of the Sub-Subcontract; and

22.3.2.2 comply in all material respects with the terms of the Sub-Subcontract,

provided that the Sub-Subcontractor shall owe no greater duty or liability to the Contractor than it would have owed to the Sub-Subcontract counterparty under the terms of the Sub-Subcontract; and

22.3.3 Contractor "step-in rights", such that the Sub-Subcontractor shall not be permitted to terminate the Sub-Subcontract as a result of a breach of Agreement by the Sub-Subcontract counterparty without first giving the Contractor the option to step in and adopt the counterparty's rights and undertake to perform the counterparty's obligations under the Sub-Subcontract.

22.4 The Contractor shall be relieved of its obligations under Clause 22.3 above to the extent that either:

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

22.4.2 it reasonably believes that, taking into account:

22.4.2.1 the nature and value of the Sub-Subcontract;

22.4.2.2 the importance of the Sub-Subcontract in terms of delivering the LTP and/or the Interim End State; and

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

it would not represent the best value for money to require the Sub-Subcontractor to enter into a deed of collateral warranty in favour of the Contractor containing some or all of the provisions specified in Clause 22.3 above and it has provided the Authority with written notice of such belief (and its reasons for holding such belief) and obtained the Authority's written consent to not impose such requirement before entering into such Sub-Subcontract.

23 INTER SLC SERVICE CONTRACTS

23.1 To govern each operational inter-relationship between the Contractor and other SLCs or between the Contractor, each of which shall take effect under both this Agreement and

NOT PROTECTIVELY MARKED

- 23.4 On an annual basis, on each anniversary of the Commencement Date, the Contractor shall provide to the Authority a schedule of Inter SLC Service Contracts and also an updated schedule each time Inter SLC Service Contracts are amended or created.
- 23.5 On request by the Authority, the Contractor shall provide for the Authority's review copies of the Inter SLC Service Contracts (regardless of the manner in which they are held, stored or collated).
- 23.6 The Authority may request changes to any Inter SLC Service Contract, on the grounds that, in the Authority's reasonable opinion:
- 23.6.1 the required changes to the Inter SLC Service Contract would materially enhance the Contractor's ability to perform its obligations under this Agreement;
 - 23.6.2 the required changes to the Inter SLC Service Contract would enhance the ability of the relevant SLC to perform its obligations under its Site Management and Operations Contract; and/or
 - 23.6.3 the Inter SLC Service Contract is contrary to applicable Legislation or Regulatory Requirements or is otherwise incompatible or inconsistent with the Authority's statutory powers and/or function.
- 23.7 The Authority (acting reasonably) shall submit to the Contractor its request for a change to the Inter SLC Service Contract pursuant to Clause 23.6 above in writing as soon as practicable, specifying:
- 23.7.1 the grounds upon which the change is requested;
 - 23.7.2 the nature of the change requested and to whose responsibilities; and
 - 23.7.3 the reasonable period of time within which the Contractor shall be required to submit the revised Inter SLC Service Contract for Authority review,
- and, at the same time, the Authority shall serve the same notification on the other relevant SLC in accordance with its rights under its Site Management and Operations Contract with the relevant SLC requiring that SLC to revise the relevant Inter SLC Service Contract in the same manner.
- 23.8 Upon receipt of the Authority's written notification pursuant to Clause 23.7 above, the Contractor shall work together with the relevant SLC to revise the Inter SLC Service Contract in accordance with the Authority's notification and shall submit to the Authority the revised Inter SLC Service Contract in accordance with the time period specified pursuant to Clause 23.7.3 above.

23.9 In any review of Inter SLC Service Contracts, the Authority will consider the obligations and duties placed on the Contractor by applicable Legislation and Regulatory Requirements, in order to avoid conflict between the relevant Inter SLC Service Contracts and those obligations and duties.

Confirmation by Authority

23.10 Without prejudice to the Authority's rights under Clauses 23.5 and 23.6 above to request the review of and to require changes to any Inter SLC Service Contract, if, within thirty (30) Calendar Days of receipt of a Inter SLC Service Contract submitted to the Authority by the Contractor for review in accordance with Clause 23.5 above or in accordance with Clause 23.6 above, the Authority has not responded, whether to request further changes or to confirm that no changes are required or to specify a further time period, the Authority shall be deemed to have confirmed its acceptance of the relevant Inter SLC Service Contract in the form submitted to it by the Contractor. The provisions of the existing Inter SLC Service Contract (if any) shall prevail until such time as the Authority has responded or is deemed to have responded in accordance with this Clause 23.10.

Failure to comply

23.11 If the Contractor:

23.11.1 fails to supply an Inter SLC Service Contract for review in accordance with Clause 23.5 above;

23.11.2 fails to comply with the Authority's request for change to a Inter SLC Service Contract within the time specified in Clause 23.7.3 above; and/or

23.11.3 fails persistently to comply with an Inter SLC Service Contract to the extent that the Authority reasonably considers that such non-compliance materially hinders the Contractor's ability to perform its obligations in accordance with this Agreement and/or the relevant SLC,

and, when requested by the Authority, does not to the satisfaction of the Authority substantiate the reason for this action or inaction, then this shall constitute Defective Performance for the purposes of Clause 11 (*Defective Performance*).

24 CROSS SLC INITIATIVES

24.1 The Contractor acknowledges that the Authority is developing a variety of Cross SLC Initiatives. For the purposes of the implementation of the Cross SLC Initiatives, the Authority and the Contractor agree the following:

- 24.1.1 the Contractor agrees to use its reasonable endeavours to assist the Authority with the development and the implementation of the Cross SLC Initiatives;
- 24.1.2 the Contractor acknowledges that the Authority may require changes to the LTP in accordance with the Change Control Procedure in order to implement the Cross SLC Initiatives;
- 24.1.3 if the Authority requires the Contractor to implement any Cross SLC Initiative and the Contractor believes that implementation will reduce the cost of delivery of the Interim End State, there will be no adjustment to the Target Cost;
- 24.1.4 if the Contractor believes that an alternative method of fully achieving the objectives of the Authority relating to the Cross SLC Initiatives (other than the implementation of the Cross SLC Initiatives) would be more advantageous to the Authority, the Contractor may submit a Notice to the Authority setting out its belief and proposal for the alternative method, provided that:
 - 24.1.4.1 the Authority shall consider such notice and respond in writing within one (1) Month (or such other period as the Parties may, acting reasonably, agree) of receipt of the Contractor's Notice; and
 - 24.1.4.2 if the Authority agrees (in its sole discretion) that the proposed alternative method is more advantageous to it, the Authority shall direct the Contractor to carry out such alternative method; and
 - 24.1.4.3 if the Authority requires the Contractor to implement any Cross SLC Initiative and the Contractor reasonably believes that implementation will increase the cost of delivering the Interim End State, the Contractor may submit a Proposed Change identifying appropriate equitable adjustment to the Target Cost, and if the Authority (acting reasonably) agrees that the proposed Cross SLC Initiative will increase the cost of delivery of the Interim End State, an appropriate equitable adjustment to the Target Cost will be applied.

PART 8: Information

25 CONFIDENTIALITY AND COMPLIANCE WITH LEGISLATION

25.1 Confidential Information

25.1.1 Subject to Clause 25.3 to 25.6 below, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of Legal Proceedings commenced in accordance with this 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.

25.1.2 The Contractor shall not 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.

25.2 **Contractor Right to Request Confidentiality**

25.2.1 The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 25.3 below, the Authority make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall consider whether to make such representations.

25.3 **Disclosure by the Authority**

25.3.1 The Authority, having considered any request made by the Contractor under Clause 25.2 above may, save for information which is judged by OCNS to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 25.3 holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Agreement (the "**Information**");

- 25.3.1.1 to the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the Government of the United Kingdom, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- 25.3.1.2 to the Regulators;
- 25.3.1.3 to the extent required by applicable Legislation or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 25.3.1.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above;
- 25.3.1.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above;
- 25.3.1.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above, for the purpose of:
 - 25.3.1.6.1 the examination and certification of the Authority's or the Contractor's accounts; or
 - 25.3.1.6.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 25.3.1.7 to the Authority's legal advisers;
- 25.3.1.8 to consultees under the Energy Act; and/or
- 25.3.1.9 to the National Audit Office.

25.3.2 So far as is practicable, the Authority shall give the Contractor reasonable notice of any proposed disclosure pursuant to this Clause 25.3.

25.3.3 Notwithstanding the provisions of Clause 25.1 above, the Authority may, with the consent of the Contractor such consent not to be unreasonably withheld or delayed, further disclose the Information to persons not referred to in this Clause 25.3.

25.3.4 Any determination as to whether it is reasonable for the Contractor to withhold its consent to disclosure under Clause 25.3.2 above shall have regard to:

25.3.4.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;

25.3.4.2 relevant Government policy;

25.3.4.3 the requirement to maintain security;

25.3.4.4 the public interest; and

25.3.4.5 the requirement to maintain openness and transparency.

25.4 **Publication**

25.4.1 The Authority having considered any request made by the Contractor pursuant to Clause 25.2 above may publish, in such form and at such times as it sees fit, the following:

25.4.1.1 amounts of payments to the Contractor and any deductions made from the Contractor under this Agreement;

25.4.1.2 performance statistics;

25.4.1.3 monitoring reports; and

25.4.1.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 25.3.3 above, including information it includes in its annual report.

25.4.2 The Authority shall give the Contractor reasonable notice of any proposed publication pursuant to this Clause 25.4.

25.5 **Disclosure by the Contractor**

25.5.1 For the purposes of performing its 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 Contractor may disclose without the consent of the Authority, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by OCNS to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 25.4.2 above holds all relevant security clearances) to:

- 25.5.1.1 the Regulators;
- 25.5.1.2 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;
- 25.5.1.3 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above;
- 25.5.1.4 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above;
- 25.5.1.5 Subcontractors, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 above; and
- 25.5.1.6 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 25.5.1.1 to 25.5.1.5 above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 25.1 above, to obtaining such an undertaking of confidentiality.

25.6 **National Audit Office**

- 25.6.1 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.

25.7 **Publicity**

Adverse Publicity

25.7.1 Each Party shall notify the other Party as soon as reasonably practicable of any fact or occurrence of which the notifying Party is aware relating to the Authority, Contractor or the Parent Body Organisation which could in the reasonable opinion of the notifying Party be expected to cause adverse publicity to the Authority generally, or to the Contractor or the Parent Body Organisation in relation to this Agreement.

Announcements

25.7.2 Subject to the remaining provisions of this Clause, 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 Party.

25.7.3 Nothing in this Clause 25.7.1 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 Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement or circular.

25.8 Delivery Up

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

25.9 Damages Not the Only Remedy

25.9.1 Without prejudice to any other rights or remedies that the Authority may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the Contractor of this Clause 25.1 above 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 25.1 above by the Contractor shall also be appropriate remedies.

26 FREEDOM OF INFORMATION**26.1 Freedom of Information Act**

- 26.1.1 This Clause 26 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 Contractor's attention is drawn specifically to the Lord Chancellor's Code of Practice on Freedom of Information.
- 26.1.2 The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its disclosure under the FOIA and the EIR. The Contractor shall also comply with the Protocol attached at Schedule 15.
- 26.1.3 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 Contractor or any of its Subcontractors but not the Authority then the Contractor shall provide such information to the Authority as soon as reasonably practicable. The Contractor shall provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information (as defined under the FOIA) within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 26.1.4 Where the Contractor receives, or any of its Subcontractors receive, a Request for Information relating to information held by or on behalf of the Authority, the Contractor shall, and shall also procure that its Subcontractors shall, transfer to the Authority any such Request for Information received as soon as reasonably practicable.
- 26.1.5 The Contractor shall provide a nominated member of staff with sufficient authority to handle, co-ordinate and be responsible for the supply of information to the Authority for the purposes of compliance with this Clause 26.1 and the Protocol contained in Schedule 15.
- 26.1.6 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.
- 26.1.7 The Contractor 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 Contractor, the Site or this

Agreement without consulting the Contractor, or following consultation with the Contractor and having taken its views into account.

26.1.8 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 26.1.

26.1.9 In no event shall the Contractor respond to a Request for Information in relation to information that the Contractor is holding on the Authority's behalf unless expressly authorised to do so by the Authority.

27 DATA PROTECTION

27.1 Data Protection Act

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

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

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

27.1.4 The Contractor shall not disclose personal data to any person other than to:

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

27.1.4.2 the extent required by applicable Legislation or under a court order,

provided that disclosure under Clause 27.1.4.1 above is made subject to written terms substantially the same as, and no less stringent than, the terms

contained in this Clause 27.1 and that the Contractor shall give notice in writing to the Authority of any disclosure of personal data it or a Subcontractor is required to make under Clause 27.1.4.2 above immediately it is aware of such a requirement.

27.1.5 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data of which the Authority is data controller and accidental loss or destruction of, or damage to such personal data, including but not limited to taking reasonable steps to ensure the reliability of Employees and Nominated Staff having access to the personal data and putting into place and maintaining relevant and appropriate systems and procedures.

27.1.6 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and referred to in Clause 27.1.5 above. Within thirty (30) Calendar Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the personal data, it is compliant with the DPA.

27.1.7 For the purposes of this Clause 27.1 the words "personal data", "data controller" and "processing" shall have the meanings given to these terms in the DPA.

28 KNOWLEDGE MANAGEMENT

28.1 The Contractor shall:

28.1.1 comply with the requirements of the Knowledge Management Policy;

28.1.2 adopt a Contractor Knowledge Management Policy that is consistent with Schedule 16 (*Knowledge Management*); and

28.1.3 at the Authority's written request, participate in the Authority's knowledge management initiatives.

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

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

- 28.2.2 a systematic and organised attempt to use knowledge within the Contractor's organisation to transform its ability to store and use knowledge to improve performance; and
- 28.2.3 preservation of knowledge for future use in accordance with Schedule 16 (*Knowledge Management*).

PART 9: Intellectual Property and IT

29 INTELLECTUAL PROPERTY

29.1 Licence of Authority IP to Contractor

- 29.1.1 In consideration of a fee of £1,000 (one thousand pounds sterling) per annum (the "**Licence Fee**"), the Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty-free licence to use the Authority IP during the term of this Agreement for the purpose of fulfilling its obligations under this Agreement. The Contractor shall have the right to sub-license the Authority IP to its Subcontractors to use the Authority IP in the performance of their Subcontracts, (such sub-licence to be subject to the same limitations as are set out in this Agreement and, for the avoidance of doubt, the use of the Authority IP by the Subcontractors shall be limited to the extent required to fulfil the Contractor's obligations under this Agreement), but shall have no other rights to sub-license the Authority IP without the prior written approval of the Authority.
- 29.1.2 The Contractor acknowledges that nothing in this Agreement shall constitute any representation or warranty by the Authority in respect of the Authority IP and, in particular, acknowledges that the Authority does not represent or warrant that any registered Authority IP is valid or that any application for registration or grant will proceed to registration or grant or will remain registered.
- 29.1.3 The Contractor acknowledges that nothing in this Agreement shall constitute any representation or warranty by the Authority that the Contractor's exercise of rights granted under this Agreement shall not infringe any valid intellectual property rights of Third Parties.

29.2 The Licence Fee

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

29.3 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

29.3.1 In respect of IP that is owned by or licensed (with appropriate sub-license rights) to the Parent Body Organisation:

29.3.1.1 any such 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 the Contractor for the purpose of fulfilling its obligations under this Agreement or is used by the Contractor for the purposes of fulfilling its obligations in relation to the Site under this Agreement, but excluding the Required Parent IP (the "**Delivered Parent IP**"); and

29.3.1.2 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 sublicense such rights as set out in Clauses 29.3.2 to 29.3.4 below) in perpetuity to the Authority (in its application as of the Commencement Date 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 Contractor shall implement procedures and systems to record and track Delivered Parent IP and Required Parent IP.

29.3.2 The Authority shall have the right to sub-license the Parent IP to the Contractor in perpetuity who in turn shall be entitled to grant sub-licen

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further sub-licences to their Subcontractors limited to such purpose) without payment of royalty fees (except as provided in Clause 29.3.5 below). 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 Parent Body Agreement until the Authority reasonably determines that the Delivered Parent IP is no longer needed in relation to any Designated Sites for which the Authority has obtained the rights to use the Delivered Parent IP.

- 29.3.4 Except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation, the Authority shall have the right to use and sub-license to Third Parties including other SLCs the Required Parent IP where this is necessary to use or exploit the Developed IP (including the right for such SLCs to grant further sub-licences to their Subcontractors limited to such purpose) without payment of royalty fees (except as provided in Clause 29.3.5 below) and who shall themselves be entitled to grant sub-licences to their Subcontractors 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 Parent Body Agreement until the Authority reasonably determines that the Required Parent IP is no longer needed to enable the use of any Developed IP.
- 29.3.5 Any Parent IP that is of particular value to the Parent Body Organisation is detailed in Schedule 8 (*Intellectual Property*) (the "**Reserved Parent IP**"). Any licence granted by the Authority pursuant to Clause 29.3.3 and 29.3.4 above of Reserved Parent IP shall be subject to the payment of such reasonable royalty as the Authority and the Parent Body Organisation shall agree.
- 29.3.6 The Contractor 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.

Licensing of Parent IP contained in Developed IP

- 29.3.7 For the avoidance of doubt, Parent IP that is contained in or forms the basis or background of any IP developed by or on behalf of the Contractor (including by

Subcontractors) or is otherwise required for the use of such Developed IP, either during the term of this Agreement or after this Agreement has expired or terminated shall, with respect to such Parent IP, be treated for licensing purposes in the same manner as Required Parent IP.

Infringement of Parent IP by Third Parties

29.3.8 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 29.3, the Contractor, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall take such reasonable direction as the Parent Body Organisation may provide for the purposes of the Parent Body Organisation's response to such infringement or suspected infringement.

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

The Contractor shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) for the identification, protection, exploitation, management and ownership of IP in accordance with the IP Schedule; including those needed for IP developed by the Contractor or its Subcontractors and 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 below) whether in the name of Contractor or the Authority and regardless of the date such rights were secured. IP created by or on behalf of the Contractor and/or by Subcontractors during the performance of this Agreement ("**Developed IP**") shall, unless the IP Schedule expressly requires otherwise or where otherwise agreed in writing by the Authority, be owned in accordance with the following provisions (subject to any contrary terms agreed by the Authority in respect of any Subcontract). Developed IP shall be managed in accordance with the IP Schedule. Where in relation to Subcontractor created Developed IP the Contractor believes that an alternative course of action would better meet the IP Schedule the Authority agrees that the requirements of Clauses 29.4.4, 29.4.5, 29.4.7, 29.4.8, 29.4.9, 29.4.10 and 29.4.16 below may be varied in respect of that instance in accordance with the IP Schedule provided that full records are kept of such variation in accordance with the IP Schedule and provided further that the written consent of the Authority is given where this is required in accordance with the IP Schedule.

Ownership by Authority of Developed IP created by the Contractor

29.4.1 The Authority shall own any Developed IP created by the Contractor, subject to any pre-existing rights of Third Parties and of the Parent Body Organisation.

The Contractor hereby assigns to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the date hereof.

Ownership of Developed IP by the Authority

29.4.2 Without prejudice to Clause 29.4.1 above the Authority shall own any Developed IP which the Authority reasonably determines: (i) having regard to any views of OCNS 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 and/or to United Kingdom business.

29.4.3 As between the Authority and the Contractor the Authority shall own any and all IP in all output including information, results, test data, safety cases and other reports obtained by and arising from the application and use of any IP including Developed IP.

Ownership of Developed IP created by or on behalf of Subcontractors

29.4.4 Developed IP that is created by or on behalf of any Subcontractor under its Subcontract shall be owned by the Authority. However, the Authority acknowledges that it may be appropriate, in certain circumstances described in the IP Schedule, for such Developed IP that falls outside the provisions of Clauses 29.4.2 and 29.4.3 above to be owned by the Subcontractor. If permitted by the provisions of the IP Schedule, the Contractor may allow the Subcontractor to retain ownership of such Developed IP, provided that (i) full records are kept, (ii) the written consent of the Authority is given when required by the IP Schedule, and (iii) such Developed IP is licensed to the Authority in accordance with the provisions of the IP Schedule.

Access to and use of information by the Authority

29.4.5 Without prejudice to the provisions of Clause 14.2 (*Performance Management, Performance Assurance and Records*) and Clause 15 (*Inspection and Audit*), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the Contractor, save to the extent prohibited by applicable Legislation or any obligation of confidence imposed on the Contractor by an agreement entered into by the Contractor in accordance with this Agreement. Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 14.2 (*Performance Management, Performance Assurance and Records*) and

Clause 15 (*Inspection and Audit*), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by any Subcontractor during the course of carrying out obligations under the relevant Subcontract, that is part of the Developed IP created by the Subcontractor, or is reasonably necessary for the purpose of using, exploiting or licensing either Developed IP or any contract deliverable under the Subcontract including products, information, data, results and records ("**Output**"). For the avoidance of doubt information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any:

29.4.5.1 Nominated Staff; or

29.4.5.2 personnel provided to the Contractor pursuant to Clause 9 (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement],

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

Further Assurance

29.4.6 In respect of any Developed IP owned by the Authority pursuant to Clauses 29.4.1, 29.4.2, 29.4.3 and 29.4.4 above the Contractor shall (and shall procure that any Subcontractor shall) execute such further documents and do such further acts as the Authority reasonably requires to give full effect to the terms of this Clause 29 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

29.4.7 The Contractor shall procure that any Subcontractor identifies and declares to the Contractor prior to entering into its Subcontract any IP which the Subcontractor owns immediately prior to the commencement of the Subcontract which could be reasonably judged necessary for the Authority, the Contractor or any licensee of either the Authority or the Contractor to use, exploit or license any Output or Developed IP. In respect of any such IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a licence in accordance with Clause 29.4.10 below.

Licence to the Authority of IP licensed to the Subcontractor

29.4.8 The Contractor shall procure that any Subcontractor identifies and declares to the Contractor, as part of any bid or tender or otherwise, any IP that is licensed to the Subcontractor immediately prior to the commencement of the Subcontract which could be reasonably judged necessary for the Authority, the Contractor or any licensee of the Authority or the Contractor to use, exploit or license any Output or Developed IP. In respect of any such IP the Contractor shall procure that the Subcontractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use and exploit any Output or Developed IP together with the right to sub-license that IP to any third party including any SLC (for the same purpose) without the consent of the licensor or Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-license to any of its subcontractors without the consent of the licensor or Subcontractor. Where such rights cannot be procured, and where required by the IP Schedule, the Contractor 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

29.4.9 Subject to Clause 29.4.10 below, in the event that any Developed IP is owned by a Subcontractor, the Contractor shall procure that the Subcontractor shall grant to the Authority a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence to use such Developed IP together with the right to license such Developed IP to any third party including any other SLC without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-license to any of its subcontractors without the consent of the Subcontractor.

Licence of Background IP from Subcontractor to Authority

29.4.10 The Contractor shall procure that, unless lesser rights have been sought in accordance with the provisions of the IP Schedule, any 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**") together with the right to sub-license such 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 Subcontractor and without payment of royalty fees, and permitting any SLC itself to sub-license its rights under any such sub-license 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.

Contractor's Notification of Developed IP

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

Use of Developed IP by the Subcontractor

29.4.12 The Contractor may, if permitted by the provisions of the IP Schedule, grant a licence to a Subcontractor enabling the Subcontractor to exploit outside of the Authority Field of Use any Developed IP developed by the Subcontractor. Where required by the IP Schedule, the Contractor 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

29.4.13 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 world-wide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority Field of Use any Developed IP which vests in the Authority pursuant to Clauses 29.4.1, 29.4.2 or 29.4.4 above. The Authority shall execute such further documents and do such further acts as the Parent Body Organisation reasonably requires to give full effect to the terms of this Clause 29.4.13.

Exclusion of Parent IP from Developed IP

29.4.14 For the avoidance of doubt, Developed IP created by or on behalf of the Contractor (including Subcontractors) and which vests in the Authority pursuant to Clauses 29.4.1, 29.4.2 and 29.4.3 or 29.4.4 above shall exclude any Parent IP under Clause 29.3 above or any Third Party IP under Clause 29.6 above that may form the basis or background of such Developed IP.

Protection of Developed IP

29.4.15 Where any Developed IP vests in the Authority pursuant to Clauses 29.4.1, 29.4.2 and 29.4.3 or 29.4.4 above, the Contractor shall seek (and shall procure that any relevant Subcontractor seeks) reasonable and necessary protection in respect of such Developed IP by way of patent applications or otherwise as the Authority may reasonably direct, at the Authority's costs to the extent Allowable in accordance with this Agreement. The Contractor shall keep the Authority advised as to all developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

29.4.16 The Contractor warrants (and shall procure that any Subcontractor warrants) that the use and licensing of any Developed IP within the Authority Field of Use (and in accordance with the terms of any relevant licence granted pursuant to this Agreement) shall not infringe the IP rights of any Third Party. The Contractor further warrants that it shall take all reasonable steps that are necessary to ensure that it does not infringe the IP rights of any Third Party.

Register of IP

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

29.5 Infringement of IP owned by the Authority

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

29.5.1.1 actual, suspected or threatened infringement of any of the IP owned by the Authority (including Developed IP which vests in the Authority pursuant to Clause 29.4 above) ("**Authority Owned IP**") or of any Developed IP licensed to the Authority pursuant to this Agreement; or

29.5.1.2 allegation, complaint, or Legal Proceedings made, raised or threatened by any Third Party that Authority Owned IP or of any Developed IP licensed to the Authority pursuant to this Agreement infringes the rights of any Third Party.

29.5.2 In the case of any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP or of any Developed IP licensed to the Authority pursuant to this Agreement of which the Contractor is aware or ought reasonably to be aware:

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

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

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

29.5.2.4 the Contractor shall not knowingly make any admission other than to the Authority or with the Authority's consent and the Authority will provide the Contractor with all assistance as it may reasonably require and request in connection with the Contractor conduct of any Legal Proceedings. Such assistance may include the Authority at its cost, agreeing to be joined as a party in any such Legal Proceedings brought by the Contractor pursuant to Clause 29.5.2.2 above; and

29.5.2.5 any award of costs or damages or other compensation payment recovered in connection with any of the matters in this Clause 29.5 shall be for the account of the Authority as Category I Revenue.

29.6 **Third Party IP**

29.6.1 In the event that the Contractor wishes to use third party IP for the purpose of fulfilling its obligations in relation to the Site under this Agreement ("**Third Party IP**") it shall discuss with the Authority, if required by the IP Schedule, whether the Authority wishes to (a) influence the terms or scope of the licence or (b) take responsibility for the negotiations. Unless so instructed by the Authority or the IP Schedule, the Contractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enable the Authority to use and to sub-license to the Contractor the Third Party IP. For the avoidance of doubt, this Clause 29.6.1 shall not apply to IP that is

licensed by a Third Party to any Subcontractor to which the provisions of Clause 29.4.8 above apply.

29.6.2 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the details and use of any Third Party IP licensed to the Contractor or the Subcontractor (as the case may be) for the purposes of this Agreement or any Subcontract relating thereto including the principal terms in respect thereof.

29.6.3 The Contractor shall be responsible for ensuring that where any Third Party IP is licensed to the Contractor or any Subcontractor the terms of such licence are not breached by the Contractor or the Subcontractor as the case may be.

29.7 Contractor's obligation to protect IP

The Contractor shall take all such reasonable and necessary steps to protect Authority Owned IP and any Developed IP licensed to the Authority, in accordance with the IP Schedule. Among other things, the Contractor shall keep the Authority informed of all matters relevant to the protection of the Authority Owned IP and any Developed IP licensed to the Authority and, if requested by the Authority, make applications for patents, diligently prosecute any patent applications, respond to oppositions filed by third parties, assign the patent rights to the Authority and maintain any patents (including the payment of renewal fees). The Authority, at its cost, will provide the Contractor with all assistance as it may reasonably require and request in the protection and maintenance of the Authority Owned IP. For the avoidance of doubt, the Contractor has no responsibility for the prosecution of patents filed prior to April 2005.

29.8 Use and Sharing of Information and Know-How

Subject to Clause 25 (*Confidentiality and Compliance with Legislation*), the Contractor shall, save to the extent prohibited by applicable Legislation or any obligation of confidence imposed on the Contractor by any Subcontract or other agreement entered into by the Contractor in accordance with this Agreement, share information and know-how relating to activities falling within the Authority's Field of Use with the Authority and with Third Parties as directed by the Authority. The Contractor shall be responsible for ensuring that all parties involved in such information sharing are aware of any IP subsisting in such information and that, where appropriate, the parties to the information sharing agree adequate protections for such IP.

29.9 Back-up and Storage

The Contractor shall ensure the back-up of and storage in safe custody of all electronic data, material and documents required to be maintained and retained under this

Agreement in accordance with its Internal Procedures relating to records and data management.

29.10 Documents and Other Materials

29.10.1 At the Authority's request the Contractor shall provide to the Authority any documents and other materials in any form and any other articles (including copies) in its possession or control bearing or embodying any of the Authority IP created on or after the Commencement Date subject to any pre-existing rights of third parties and the Parent Body Organisation.

29.10.2 In the event of expiry or termination of this Agreement, the Contractor shall preserve and shall deliver-up to the Authority all documents and other materials in any form and all other articles (including copies) in its possession or control bearing or embodying any of the Authority IP subject to any pre-existing rights of third parties and the Parent Body Organisation.

30 INFORMATION TECHNOLOGY

30.1 Site IT Systems

30.1.1 The Contractor warrants that during the Term:

30.1.1.1 it shall have in place such Site IT Systems as are required for the full and efficient performance of its obligations under this Agreement, subject to the requirements of this Clause 30;

30.1.1.2 it shall maintain in force and comply with the terms of all licences required for Software used by the Contractor and all other IT Agreements required in respect of the Site IT Systems.

30.2 Access to Authority IT Systems and the Site IT Systems

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

30.3 **Inspections**

Without prejudice or limitation to the Contractor's obligations under Clause 15 (*Inspection and Audit*), the Contractor shall allow the Authority to co-ordinate any inspection by or on behalf of the Authority of the Site IT Systems with any inspection thereof being performed by or on behalf of the OCNS, and shall permit the OCNS to share with the Authority the results of any such inspection by or on behalf of the OCNS.

30.4 **Maintenance and Support and Business Continuity**

30.4.1 Without prejudice to the Contractor's obligations under the LTP(s), the Contractor shall:

30.4.1.1 at all times ensure that the Critical Site IT Systems are maintained and supported in accordance with Good Industry Practice;

30.4.1.2 maintain an up to date schedule of Critical Site IT Systems; and

30.4.1.3 at all times ensure that all material components of Critical Site IT Systems are of a version which is supported by the manufacturer or supplier thereof.

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

30.5 **Changes to Site IT Systems**

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

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

30.5.1.2 the introduction of any new or altered Software which requires the reconfiguration of any application external to the Site and not maintained by the Contractor; and

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

30.5.2 Without prejudice to the Contractor's obligation to comply with the Regulatory Requirements in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Site IT Systems which would adversely affect the separability of the Site IT Systems from any IT Systems owned or operated by the Contractor's Affiliates or any IT Systems external to the Site.

30.5.3 Any change to the hardware or Software comprised in a Site IT System shall be reflected in the Asset Register maintained pursuant to Clause 6.5 (*Maintenance of Site and Authority Assets*).

30.6 **Deposit of Source Code**

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

30.6.2 The Contractor shall ensure that any deposit made in accordance with Clause 30.6.1 above is at all times complete and up to date such that it accurately reflects the relevant Software as the same is installed and used by the Contractor from time to time.

30.7 **Release of Source Code**

In the event that any Source Code deposited pursuant to Clause 30.6 above is released in accordance with the applicable escrow terms, the Contractor shall ensure that the licence referred to in Clause 29.6 (*Intellectual Property*) shall include all IP subsisting in such Source Code.

30.8 Transferability of Agreements

30.8.1 The Contractor shall at all times ensure that, save to the extent otherwise agreed in writing by the Authority, each IT Agreement entered into on or after the Commencement Date shall provide that the rights and obligations (if any) of the Contractor there under which relate to the performance of the Contractor's obligations under this Agreement are capable of being separately transferred to the Authority or its nominee without the consent of any counterparty to such IT Agreement or other Third Party and without incurring any payment obligation or other additional liability under such IT Agreement.

30.8.2 Where, having used all reasonable endeavours to do so, the Contractor is unable to procure the transferability of any IT Agreement referred to in Clause 30.8.1 above, the Contractor shall consult with the Authority and give the Authority such information in relation thereto as the Authority reasonably requests. The Authority will not unreasonably withhold consent to the Contractor entering into such IT Agreement where the Contractor is able to demonstrate to the Authority's reasonable satisfaction that the proposed counterparty thereto will not agree to such transferability on commercially reasonable terms, and there is no acceptable alternative to such counterparty.

PART 10: Personnel Matters**31 EMPLOYEES****31.1 Nominated Staff**

31.1.1 The Contractor shall, in respect of each of the Nominated Staff, enter into and comply with, and shall procure that any Seconding Employer and each person who is a named member of Nominated Staff enters into and complies with, a Secondment Agreement.

31.1.2 The Contractor shall procure that none of the Nominated Staff is withdrawn from full time work at the Site without first obtaining the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a replacement who must have a level of skills and experience broadly comparable to that of the Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position.

31.1.3 Where the withdrawal from full time work of Nominated Staff and/or appointment of a replacement for any Nominated Staff in accordance with this Clause 31.1 requires the approval of any of the Regulators, the Contractor

shall procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

- 31.1.4 In the event that individual persons designated Nominated Staff are withdrawn and replaced in accordance with Clauses 31.1.1 to 31.1.3 above, then the Contractor shall enter, and shall procure that each Seconding Employer and each replacement shall enter into a secondment agreement in terms substantially the same as the Secondment Agreement prior to such replacement commencing work at the Site and such replacement shall be deemed to be a member of the Nominated Staff.
- 31.1.5 Reference to "withdrawal" of Nominated Staff or to any such persons being "withdrawn" in the above provisions and in Clause 31.3.2 below shall not include withdrawal due to 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.

31.2 Key Personnel

- 31.2.1 The Authority shall, provided that it acts reasonably, be entitled to identify and name individuals, whether Employees or Nominated Staff, as Key Personnel from time to time. The individuals so named by the Authority are listed in Part 2 (Key Personnel) of Schedule 4 (*Employment and Pensions*). Such list may be amended from time to time by the Authority whether to take account of the replacement of any individual as a member of Key Personnel or to add any person or to remove any person from such list.
- 31.2.2 Subject to Clause 31.3.2 and Clause 31.3.3 below, the Contractor shall not, and shall procure that the Parent Body Organisation shall not without prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 31.2.2.1 dismiss (either summarily or on notice) any Key Personnel;
 - 31.2.2.2 suspend for more than five (5) Calendar Days any Key Personnel;
 - 31.2.2.3 change the job description of any Key Personnel;

- 31.2.2.4 subject to Clause 31.9.4 below, alter any material term or condition of the contract or terms of employment or engagement of any Key Personnel;
- 31.2.2.5 redeploy or reallocate to other services, any Key Personnel without the prior written consent of the Authority; and/or
- 31.2.2.6 do anything (by act or omission) which is, or may be, a breach of the contract or terms of employment or engagement of any Key Personnel.

31.3 **Organisational Change**

- 31.3.1 Subject to Regulatory Requirements, the Contractor shall not make any significant changes to the management structure of the Contractor without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).
- 31.3.2 Where either the Contractor or the Parent Body Organisation intends to withdraw any member of Key Personnel or Nominated Staff from employment or engagement at the Site, it must:
 - 31.3.2.1 obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a replacement who must have a level of skills and experience comparable to that of the member of Nominated Staff or Key Personnel being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position; and
 - 31.3.2.2 where such withdrawal and/or appointment of a replacement member of Nominated Staff or Key Personnel in accordance with this Clause 31.3.2 requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.
- 31.3.3 Nothing in Clause 31.1 above or this Clause 31.2 will prevent either the Contractor or the Parent Body Organisation from dismissing or suspending from their duties any Key Personnel or Nominated Staff where such action is:

- 31.3.3.1 necessary to comply with any applicable Legislation or Regulatory Requirements;
- 31.3.3.2 required to safeguard the health and wellbeing of any employee on the Site;
- 31.3.3.3 justified on the grounds that any member of the Key Personnel or Nominated Staff has committed an act of gross misconduct;
- 31.3.3.4 justified on the grounds that any member of the Key Personnel or Nominated Staff has failed a drugs and/or alcohol test; and/or
- 31.3.3.5 where the Contractor and/or the Parent Body Organisation dismisses or suspends any Key Personnel or Nominated Staff pursuant to this Clause 31.3.3, the Contractor and the Parent Body Organisation shall as soon as possible and in any event within two (2) Months of the dismissal or suspension replace such Key Personnel or Nominated Staff in accordance with the provisions of this Agreement. Where the replacement of such dismissed or suspended Key Personnel or Nominated Staff requires consultation with the Regulators, the Contractor and the Parent Body Organisation shall comply with such requirement.

31.4 **Non-Contract Activities**

- 31.4.1 The Contractor shall ensure and procure that the Employees and the Nominated Staff are engaged solely in the performance of the Tasks and the Contractor's other obligations under this Agreement and/or the performance of the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract, save as may otherwise be expressly agreed in writing in advance with the Authority pursuant to Clause 9 (Provision of Support to the SLC) of the Parent Body Agreement and save also that this requirement shall not be contravened by appointment of the Nominated Staff to the board of the Parent Body Organisation provided such appointment does not materially detract from the Nominated Staff members' ability to perform his or her obligation in accordance with this Agreement, the Parent Body Agreement and relevant Secondment Agreement.

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

31.5 Notice to Authority of Disputes

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

31.5.1.1 the Contractor (or other relevant employer) and any of the Employees or Nominated Staff; and/or

31.5.1.2 the Contractor and any of the Contractor's Subcontractors engaged in connection with this Agreement and/or their personnel; and/or

31.5.1.3 the Contractor (or other relevant employer) and any trade union or other body representing any such person in Clause 31.5.1.1 or 31.5.1.2 above,

where the consequence of such dispute may include:

31.5.1.3.1 liabilities, Costs or potential Costs in excess of £100,000 (one hundred thousand pounds);

31.5.1.3.2 delay to any [Cardinal Date or any outputs required to achieve the Interim End State]; or

31.5.1.3.3 a significant adverse affect on regulatory, stakeholder or trade union relationships.

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

31.5.2 The Contractor shall keep the Authority informed with regard to any dispute notified pursuant to Clause 17.4.1 above together with any proposed settlements or developments which may affect [the achievement of Cardinal Dates, result in increased cost and/or the approved funding categories in the LTP and/or the LTP itself and/or any outputs required to achieve the Interim End State].

31.6 Maintenance of Skills

The Contractor acknowledges the responsibility of the Authority under section 9(2)(a) of the Energy Act in relation to the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites, shall not by any act or omission cause the Authority to be in breach of such responsibility and shall comply with the provisions of Clause 22 (*Subcontracting/Procurement*). In particular, the Contractor shall:

- 31.6.1 without prejudice to Clause 31.7 below, when considering redundancies or any other programme involving a reduction of Employee or Nominated Staff numbers and/or when making make-or-buy decisions pursuant to its Make-or-Buy Plan, take into account the Authority's duty to maintain and develop in the United Kingdom a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites under section 9(2)(a) of the Energy Act;
- 31.6.2 consider and plan future skills requirements and predict possible skills shortages and needs and, in each case, train Employees and Nominated Staff and recruit and train additional employees accordingly; and
- 31.6.3 ensure that when it replaces any of the Employees pursuant to this Clause 31, the replacement has a level of skills and experience which:
 - 31.6.3.1 is at least broadly comparable to that of the Employee that he or she is replacing; or
 - 31.6.3.2 if more appropriate depending on the relevant job position, matches the necessary skills and experience required for that job position.

31.7 Authority Approval of Redundancy

- 31.7.1 Subject to Clauses 31.1 and 31.2 above, the Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) in advance of:
 - 31.7.1.1 commencing and/or continuing a Redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release scheme whereby Employee numbers are reduced by more than fifteen (15) in any thirty (30) Calendar Day period or by

more than forty-five (45) in any ninety (90) Calendar Day period; and/or

31.7.1.2 suspending or terminating the employment of between five (5) and fourteen (14) Employees within any period of one (1) Month or less or fifteen (15) or more Employees within any period of three (3) Months or less.

31.7.2 Nothing in this Clause 31.7 shall prevent th

- 31.8.7 Employment Equality (Sexual Orientation) Regulations 2003;
- 31.8.8 Employment Equality (Religion or Belief) Regulations 2003;
- 31.8.9 Employment Equality (Age) Regulations 2006;
- 31.8.10 Equality Act 2006;
- 31.8.11 Equality Act 2010; and
- 31.8.12 any other legal or statutory requirement, modification or re-enactment relating to discrimination or equality in employment, and shall procure that the Parent Body Organisation and those of its Affiliates and agents who carry on activities on the Site operate an appropriate equal opportunities policy.

31.9 Terms and Conditions of Employment

- 31.9.1 The Contractor shall keep and maintain adequate HR Internal Procedures and records to enable it to manage the Employees. Such HR Internal Procedures and records shall contain, amongst other things, all Employees' up to date terms and conditions of employment or engagement and details of remuneration including bonus schemes.
- 31.9.2 At the outset of this Agreement and then at each Periodic Review, the Contractor shall propose to the Authority its strategy with respect to the content of its HR Internal Procedures and its approach to employment terms, wages, salary, other elements of pay, benefits and emoluments. This strategy shall be subject to the Authority's agreement which shall not be unreasonably withheld or delayed. The Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld) before making any material change from the agreed strategy or to its HR Internal Procedures and record keeping systems where such change will cause a significant increase in the Costs or liabilities (including without limitation in relation to pensions liabilities) related to the operation of the Site and/or performing its obligations under this Agreement or where such change may affect the relationship with trade unions representing the Employees.
- 31.9.3 Without prejudice to the generality of Clause 31.9.2 above, the Contractor shall not, without the prior written consent of the Authority, increase, or permit any increase in, the Costs to be reimbursed by the Authority in relation to Employees including:

- 31.9.3.1 increase or reclassify wages, salary, other elements of pay, benefits, allowances or emoluments as pensionable or non-pensionable;
- 31.9.3.2 increase wages, salary, other elements of pay, benefits, allowances or emoluments; and
- 31.9.3.3 agree or approve any terms, policies or arrangements relating to notice entitlements, severance or Redundancy (including without limitation any augmentations to any wages, salary, and other elements of pay, benefits, allowances, pensions or emoluments).

31.9.4 Subject to compliance with relevant employment law, the Contractor shall make such additions to, omissions from, or other changes to the employment contracts of Employees from time to time required to be made by the Authority.

31.10

anticipated breach of this undertaking, the Contractor shall do all things necessary, as directed by the Authority, to restore the rights and benefits of such Employees so as to ensure that the Authority fulfils its duties and obligations under Schedule 8 of the Energy Act. The Contractor shall provide such information as the Authority may determine from time to time to be necessary to satisfy the Authority that the Contractor has complied with this Clause.

32.2 Energy Act Requirements

Participation in Combined Nuclear Pension Plan

32.2.1 Subject to Clause 32.2.1, from the Commencement Date the Contractor shall provide the Employees benefits in the CNPP and the Authority and the Contractor shall enter into the Deed of Participation on the date of execution of this Agreement. In the event that the Deed of Participation is not executed on the date of execution of this Agreement, the Contractor shall nevertheless be bound by its terms in the period until it is executed by the Parties as though they were contained in this Agreement.

Participation in Other Applicable Schemes

32.2.2 Subject to Clause 32.2.2, the Contractor shall participate in such of the other Applicable Schemes, and in respect of such of the Employees, as the Authority may at any time direct. If such participation is subject to the consent of any other body, the Authority and the Contractor shall use reasonable endeavours to procure such consent.

32.2.3 The Contractor may only provide benefits in respect of the Employees or Nominated Staff from a pension scheme, and shall only participate in a pension scheme, other than the Applicable Schemes, with the consent of the Authority.

Authority Rights and Contractor Obligations in Respect of Applicable Schemes

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

32.2.5 The Contractor shall, in respect of all Applicable Schemes in which it participates pursuant to this Clause 32.2 and/or Clause 32.2.1 above:

32.2.5.1 comply with the Scheme Documents and, in respect of Applicable Schemes other than the CNPP, comply with the trust deeds or such other governing documents and rules of

- the relevant Applicable Schemes relevant to it as an employer;
- 32.2.5.2 pay all sums due to the Scheme Trustee or the trustees (or if there are no applicable trustees the administrator) of other Applicable Schemes as and when they fall due;
- 32.2.5.3 appoint the Authority as its nominee for the purposes of consultation on the investment strategy of the Applicable Schemes under section 35 of the Pensions Act 1995. The Contractor acknowledges that the Authority may take account of its own interests as well as those of the Contractor when discussing investment strategy with the trustees (or if there are no applicable trustees the administrator) or managers of the Applicable Schemes. In respect of any Applicable Scheme to which section 35 of the Pensions Act 1995 does not apply, any powers held by the Contractor under the Scheme to influence notional investment strategy shall be delegated to the Authority;
- 32.2.5.4 appoint the Authority as its nominee for the purposes of consultation on the member nominated trustee provisions of the Pensions Act 1995 and the Pensions Act 2004;
- 32.2.5.5 not exercise or consent to the exercise of any powers or discretions in relation to the Applicable Schemes without the consent of the Authority and shall exercise any such powers or discretions and shall give such consents in such a way as the Authority may direct;
- 32.2.5.6 only exercise or consent to the exercise of any power or discretion in relation to the Applicable Schemes with the consent or at the direction of the Authority and in such a way as the Authority may direct;
- 32.2.5.7 if the Authority requests and the governing documentation of the relevant Applicable Scheme permits it, agree to a substitution of the Authority as Principal Employer of the Applicable Scheme;
- 32.2.5.8 comply with administration systems and risk management procedures as reasonably required by the Authority or the relevant Applicable Scheme;

- 32.2.5.9 comply with all obligations whenever arising to consult in respect of matters related to pensions and disclose all relevant information in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
 - 32.2.5.10 not terminate (or allow to terminate) the service of any Employees or Nominated Staff in circumstances where an enhanced benefit would be due under the Applicable Schemes without the consent of the Authority;
 - 32.2.5.11 comply with its obligations as employer arising under the general Legislation relating to pensions; and
 - 32.2.5.12 except and to the extent required by Legislation, not make, without the consent of the Authority, any announcements or issue any material, information or issue any publicity or advertising in any media or form whatsoever affecting or relating to pension arrangements such consent not to be unreasonably withheld or delayed.
- 32.2.6 The Authority and the Contractor confirm that, prior to the Commencement Date, they have completed all consultation necessary, including as required under Schedule 8 of the Energy Act, with all Employees relating to any change in their pension arrangements, including the retirement benefit scheme under which they accrue benefit on an ongoing basis, which occurs because of the transfer of the shares in the Contractor.
- 32.2.7 Without prejudice to any other rights under this Clause 32 (*Pensions*), from the Commencement Date the Contractor shall be responsible for all necessary Employee consultation in respect of any change to the pension benefits provided to the Employees it proposes which require such consultation. This Clause 32.2.7 shall not affect the Authority's obligations in respect of any consultation required under Schedule 8 of the Energy Act.

PART 11: Termination

33 TERMINATION

Termination by the Authority

- 33.1 The Authority shall be entitled to terminate this Agreement:

- 33.1.1 on not less than thirty (30) Working Days' prior written notice to the Contractor following any Contractor Default or Persistent Breach;
- 33.1.2 immediately by written notice to the Contractor following any Insolvency Event or (Subject to Clauses 12.17 to 12.19 (*Defective Performance*)) Prohibited Act;
- 33.1.3 immediately by written notice to the Contractor whilst any Category A Force Majeure Event subsists or the Contractor continues to be prevented from providing any Mandatory Services as a result of such Category A Force Majeure Event;
- 33.1.4 on not less than 30 Working Days' prior written notice to the Contractor where, before service of such notice, by reason of a Force Majeure Event affecting the Contractor performance by the Contractor of all or a material part of its obligations under this Agreement is materially prevented, hindered or delayed for a period of more than ninety (90) consecutive Calendar Days; or
- 33.1.5 otherwise at its discretion, subject only to providing not less than 30 Working Days' prior written notice to the Contractor.

Termination by the Contractor

- 33.2 The Contractor shall be entitled to terminate this Agreement:
 - 33.2.1 on not less than 30 Working Days' prior written notice to the Authority following an Authority Default;
 - 33.2.2 on not less than thirty (30) Calendar Days' prior written notice to the Authority where, before service of such notice, by reason of a Force Majeure Event affecting the Authority payment by the Authority of an aggregate amount exceeding £[●] (Indexed) due under this Agreement is delayed beyond the due date for its payment for a period of more than sixty (60) consecutive Calendar Days; or
 - 33.2.3 on not less than thirty (30) Working Days' prior written notice to the Authority where, before service of such notice, by reason of a Force Majeure Event affecting the Contractor performance by the Contractor of all or a material part of its obligations under this Agreement is materially prevented, hindered or delayed for a period of more than ninety (90) consecutive Calendar Days, provided that the Authority shall (subject to keeping the Contractor financially whole in respect of its increased costs and lost revenue arising directly from the Force Majeure Event in question) be entitled, at any time before the expiry of such thirty (30) Working Days period, to serve written notice on the

Contractor preventing such termination, in which case this Agreement shall not terminate pursuant to the Contractor's notice issued under this Clause 33.2.3 and the Contractor shall continue to be relieved from its obligations as appropriate pursuant to Clause 13 (*Force Majeure*), provided further that the Authority shall have no such right to prevent termination if the Contractor's notice under this Clause 33.2.3 is issued within [●] [months] of the Contract Term Longstop Date.

Termination Notices

33.3 In addition to any other requirements pertaining to notices generally or termination notices specifically, set out elsewhere in this Agreement, any termination notice served by either Party pursuant to Clauses 33.1 and 33.2 above shall specify the grounds on which the Party serving such notice purports to terminate the Agreement and, in the case of any such notice served by the Authority, shall also specify which, if any, of the Nominated Staff and other employees provided by the Parent Body Organisation pursuant to Clause 8 (*Provision of Support to the SLC*) and Schedule 7 (*Provision of Support to the SLC*) of the Parent Body Agreement (Provision of Support to the SLC) of the Parent Body Organisation the Authority wishes to remain in post following termination in accordance with Clause 7.11 (*Continuing Nominated Staff*) of the Parent Body Agreement (Provision of Staff to the SLC – Continuing Nominated Staff).

Expiry and Cross-Termination

33.4 Subject to any earlier termination as set out in Clauses 33.1 and 33.2 above, this Agreement shall otherwise terminate as set out in Clause 2 (*Commencement and Duration*) or, if earlier, automatically on termination of the Parent Body Agreement in accordance with the terms of that agreement.

Consequences of Termination

33.5 Without prejudice to Clause 36 (*Disputes*), all Disputes arising between the Parties in connection with this Agreement after the date of termination of this Agreement shall be dealt with in accordance with the provisions of the Dispute Resolution Procedure relating to arbitration.

33.6 Where this Agreement is terminated pursuant to Clause 33.1.5 or 33.2.1 above (which shall be deemed to be the case where the Parent Body Agreement is terminated pursuant to Clause 20.7 (*Termination for Convenience*) of that agreement), the Contractor shall be entitled to recover from the Authority (as its sole remedy in respect of such termination, but without prejudice to the Contractor's entitlement to any Fee payable on such termination pursuant to Schedule 6 (*Finance*)) its reasonable costs (not including loss of profit or any other indirect or consequential loss) arising directly

from such termination, subject to Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), paragraph [4.1(rr)].

33.7 Where this Agreement is terminated otherwise than pursuant to Clause 33.1.5 or 33.2.1 above, the Contractor shall not (without prejudice to provisions of Clause 33.10 below) be entitled to recover from the Authority any amount in respect of such termination.

33.8 Where this Agreement is terminated pursuant to Clause 33.1.1 or 33.1.2 above, the Authority shall be entitled to recover from the Contractor its reasonable and proper costs incurred in carrying out either:

33.8.1 a process by which the Authority requests tenders from any parties interested in becoming an Incoming Parent, evaluates the responses from those interested parties and enters into a new contract with an Incoming Parent; or

33.8.2 any other process the aim of which is procuring a replacement for the existing arrangement embodied by this Agreement and the Parent Body Agreement,

provided that the Authority shall take reasonable steps to mitigate such costs.

Termination for Revocation of Licence

33.9 Where the Authority has issued a termination notice for Contractor Default of the type described at limb (g) of the definition of that term which the Authority accepts (acting reasonably) has occurred through no fault of the Contractor, the Authority shall provide reasonable assistance to the Contractor in its discussions with HSE and/or EA or SEPA as applicable to procure the remedy of such Contractor Default.

Accrued Liabilities

33.10 Termination of this Agreement pursuant to this Clause 33 shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination.

34 TRANSITION OUT

Acknowledgement

34.1 The Contractor acknowledges that the Authority may wish, at or before the expiry of the Term:

34.1.1 to invite persons (including the Parent Body Organisation) to tender for the right to own the shares in the Contractor and to negotiate:

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

- 34.4.1 the Competition being conducted in accordance with EU Procurement Rules;
and
- 34.4.2 the perception by all interested parties that the Competition is fair and unbiased.
- 34.5 If the Parent Body Organisation wishes to participate in the competitive process then immediately on receipt of notice from the Authority notifying the Contractor of the commencement of any Competition for the Site, the Contractor shall demonstrate to the satisfaction of the Authority that:
- 34.5.1 the Contractor is:
- 34.5.1.1 remaining impartial;
 - 34.5.1.2 treating all tenderers equally including providing them with equality of information;
 - 34.5.1.3 making the Employees (including the Nominated Staff) equally available to assist and be consulted by tenderers, remaining impartial at all times;
 - 34.5.1.4 using all reasonable endeavours to procure that the tenderers perceive that they are being treated equally; and
 - 34.5.1.5 that all Nominated Staff and Key Personnel have entered into an Impartiality Undertaking in the form attached at Part 5 (*Pro Forma Impartiality Undertaking*) of Schedule 8 (*Employee Schedule*).
- 34.6 The Contractor shall not allow any Employee and/or Nominated Staff to participate in any Competition on behalf of the Parent Body Organisation unless such Employee or Nominated Staff have, subject to the prior written approval of the Authority and the Regulators been withdrawn at the start of or during the Competition (in accordance with Clause 5 (*Employees*)) from full time employment at the Site. For the avoidance of doubt, the Contractor shall not allow any Employee and/or Nominated Staff to participate in the competitive process on behalf of the Parent Body Organisation.

Employees

- 34.7 Once the Authority has decided on the likely date(s) of contract award in a Competition, the Authority will inform the Contractor of such date(s) (the "**Contract Award Date(s)**"). Save as where otherwise required by applicable Legislation and Regulatory Requirements, during the twelve (12) Months prior to the Contract Award Date(s), the

Contractor shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld):

34.7.1 vary or purport or promise to vary the terms and conditions of employment or pensions terms of any Employee;

34.7.2 vary or purport or promise to vary or terminate the Secondment Agreement;

34.7.3 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;

34.7.4 create or grant, or purport or promise to create or grant, terms or conditions of employment for any Employee where the employment of such Employee by the Contractor may commence on or after the end of the Contract Award Date(s) if and to the extent that such terms or conditions are materially different from the terms or conditions of employment of equivalent Employees;

34.7.5 increase or decrease the number of Employees such that:

34.7.5.1 the total number of Employees or the total cost per annum to the Contractor of employing all Employees is increased;
or

34.7.5.2 the total number of Employees is decreased,

in each case, by more than five per cent (5%) during such period of twelve (12) Months; and

34.7.6 to make any changes to the identity of any Key Personnel or to any of the Nominated Staff.

Third Party Contracts

34.8 Save as otherwise expressly provided in this Agreement, during the twelve (12) Months prior to the Contract Award Date(s), the Contractor shall not:

34.8.1 enter into any Subcontract, Customer Contract or any other contract or agreement with a Third Party;

34.8.2 agree to any significant or material amendment of the terms of any Subcontract, Customer Contract or any other contract or agreement with a Third Party

without the Authority's prior written consent (such consent not to be unreasonably withheld).

- 34.9 The Contractor shall cooperate and comply with any requirements by the Authority to take steps to terminate any Subcontracts that will continue beyond the expiry or earlier termination of the Term.

Establishment of New SLC

- 34.10 If the Authority notifies the Contractor that it intends to establish a new SLC, the Contractor shall fully co-operate with any reasonable instruction of the Authority to assist in such establishment of and transfer to the new SLC, including in relation to consultation of relevant Employees regarding transfer to the new SLC, separation of IT systems, novation or assignment of IT Contracts, Customer Contracts and Subcontracts, the requirement to put legally binding contracts in place between the new SLC and the Contractor and any party with whom the Contractor has Inter SLC Service Contracts and obtaining a new Nuclear Site Licence in respect of the relevant site.
- 34.11 Any requirement of the Authority placed on the Contractor pursuant to Clause 34.10 (*Establishment of New SLC*) shall, to the extent that such requirement is not already contained within the LTP, be the Authority's Change to be included in the LTP in accordance with the Change Control Procedure.

35 TRANSITION ON EXPIRY OR TERMINATION

Transfer to the Authority or Incoming Parent

- 35.1 During the final twelve (12) months before the date on which this Agreement is (pursuant to Clause 2.1 (*Commencement and Duration*)) due to expire, or during any notice period applying to an earlier termination of this Agreement, the Contractor 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).
- 35.2 For the purposes of this Clause 34 the meaning of the term "co-operate" shall include:
- 35.2.1 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;
- 35.2.2 subject to any constraints imposed by Legislation or any Regulator, allowing the Authority and/or the Incoming Parent access (at reasonable times and on reasonable notice) to relevant Employees, the Site and any assets; and

- 35.2.3 without prejudice to Clause 15.6 (*Inspection and Audit*), providing to the Authority and/or to the Incoming Parent all and any 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 35.2.3 "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*)).
- 35.3 The Contractor shall use all reasonable endeavours to 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 Contractor shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to:
- 35.3.1 prejudice, frustrate or make more difficult such transfer; and/or
- 35.3.2 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.
- 35.4 The Contractor undertakes that it will:
- 35.4.1 comply with the Transition In Plan of the Incoming Parent and undertakes that, save to the extent that the Contractor must comply with applicable Legislation and Regulatory Requirements, the Contractor undertakes to the Authority that it will not take any action which prevents, prejudices or frustrates (or attempts to prevent, prejudice or frustrate) the transition in of the Incoming Parent or the success of the Transition In Plan;
- 35.4.2 grant the Incoming Parent and the Incoming Parent's authorised representatives access to:
- 35.4.2.1 the Site;
- 35.4.2.2 the Nominated Staff and Employees;
- 35.4.2.3 Records and other relevant documentation,

in all cases to an extent sufficient, in the Authority's reasonable opinion, to facilitate the Transition In Plan in accordance with the timetable notified to the Contractor by the Authority for such Transition In Plan.

Co-operation with Outgoing Parent

35.5 The Contractor also undertakes to the Authority that it will co-operate with the reasonable instructions of the Outgoing Parent and, in particular, will use all reasonable endeavours to facilitate the release of the Nominated Staff of the Outgoing Parent as soon as is compatible with Regulatory Requirements.

Novation of Contracts

35.6 The Authority may request that any Subcontracts, Customer Contracts or any other contracts or agreements with Third Parties be novated to the Authority on the same terms as such Subcontracts, Customer Contracts or any other contracts or agreements and the Contractor shall give all reasonable assistance to the Authority in seeking such novation of such Subcontracts, Customer Contracts or any other contracts or agreements as requested, provided that no such novation shall take effect before the date on which this Agreement expires or is terminated pursuant to Clause 33 (*Termination*) unless expressly agreed by the Parties.

35.7 The Contractor's reasonable and proper costs associated with compliance with this Clause 34 (*Transition on Expiry or Termination*) shall be an Allowable Cost.

36 DISPUTES

36.1 Requirement to Refer Disputes

36.1.1 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 Contractor and the Authority by agreement, be resolved in accordance with the Dispute Resolution Procedure.

36.1.2 Neither Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.

36.1.3 Nothing in this Clause 36.1 shall prevent or restrict the right of either Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

36.1.4 The Contractor shall not be entitled to commence any Legal Proceedings in respect of any Dispute nor to refer any Dispute for resolution under the Dispute Resolution Procedure without having first provided Notice to the Authority of the existence of such Dispute within [●] Working Days of either:

36.1.4.1 the date of the Authority's decision (or failure to give a decision or consent by the date on which it was, pursuant to this Agreement, to have been provided) giving rise to such Dispute; or

36.1.4.2 otherwise, the date on which the set of facts giving rise to such Dispute first arose.

36.2 Reasonableness of the Authority

36.2.1 Wherever in this Agreement it is provided that the Authority shall reasonably determine (or words to similar effect) any matter, the Authority's determination pursuant to the relevant matter shall prevail unless and until it is agreed or found to be unreasonable.

36.2.2 In the event that the Authority is found to have acted unreasonably, the Authority shall bear such costs.

PART 13: Contract Administration and Miscellaneous Provisions

37 MISCELLANEOUS

37.1 Change in Law

37.1.1 If a CIL Change is necessary to comply with a General Change in Law, then:

37.1.1.1 it shall not affect the categorisation of Costs pursuant to the provisions of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (*Finance*); and

37.1.1.2 the Contractor shall receive no additional compensation for that CIL Change and there shall be no adjustment to the Target Costs (or any component thereof),

as a result of such a CIL Change.

37.1.2 If a CIL Change is necessary to comply with a Specific Change in Law then, without prejudice to the provisions of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (*Finance*):

- 37.1.2.1 the Target Cost shall be increased to reflect any reasonable increase in Target Costs in excess of any upward Material Change in Target Costs; or
 - 37.1.2.2 the Target Cost shall be decreased to reflect any reasonable decrease in Target Costs in excess of any downward Material Change in Target Costs.
- 37.1.3 If a Change in Law occurs or is shortly to occur, then either Party may provide notice (the "**Notice of CIL Change**") to the other Party expressing an opinion on its likely effects, giving details of its opinion of:
- 37.1.3.1 any necessary change in the Tasks;
 - 37.1.3.2 whether any changes are required to the terms of this Agreement to deal with the Change in Law;
 - 37.1.3.3 whether any Necessary Consent must be obtained or amended as a direct result of the Change in Law;
 - 37.1.3.4 whether relief from compliance with obligations is required, including the obligation of the Contractor to deliver the Client Specification and/or the Interim End State and/or achieve the Minimum Performance Standards; and
 - 37.1.3.5 any Material Change in Target Costs that is a direct result of any Specific Change in Law,

and such Notice of CIL Change shall be dealt with as a Proposed Change in accordance with the Change Control Procedure.

- 37.1.4 In support of any consideration of a Proposed Change in response to a Specific Change in Law, in accordance with the Change Control Procedure the Contract shall, at the Authority's reasonable request:
- 37.1.4.1 provide evidence that the Contractor has used reasonable endeavours, including (where practicable) the use of competitive quotes, to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
 - 37.1.4.2 demonstrate how any Costs to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would

have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;

37.1.4.3 give evidence as to how a Specific Change in Law has affected prices charged by any similar businesses to the Contractor's; and

37.1.4.4 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Specific Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 37.1.3.5 above.

37.2 **State Aid**

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

37.3 **Representatives and Delegation of Authority to Act**

37.3.1 Each of the Authority and the Contractor shall appoint the person whose name, address and telephone number is set out in Clause 37.7 below as their respective Representatives in connection with this Agreement.

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

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

Change in Representative

37.3.4 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 37.7 below shall be updated accordingly.

37.3.5 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

37.3.6 Subject to Clause 37.7 below, any Notice, information, instructions or public communication given to:

37.3.6.1 the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor;
and

37.3.6.2 Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

37.3.7 The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on or fail to act on any Notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person is the Authority's Representative or Delegated Representative.

37.4 Liaison with Regulators

Communications with Regulators

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

Regulator Meetings

37.4.2 The Contractor shall use all reasonable endeavours to give the Authority prompt notice of all Regulator Meetings.

37.4.3 Save in relation to the meetings, or parts thereof, where a Regulatory Requirement prevents the Authority from doing so, the Authority may attend

Regulator Meetings. The attendance of the Authority at Regulator Meetings shall at all times be at the discretion of the relevant Regulator(s).

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

Notification of Breach

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

37.5 Meetings

Site Meetings

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

- 37.5.2 The Contractor shall:

- 37.5.2.1 maintain a timetable of all Site Meetings;
- 37.5.2.2 give the Authority reasonable notice of all proposed Site Meetings in order to enable the Authority to attend; and
- 37.5.2.3 at the Authority's request, provide the Authority with the minutes of and any action plans and other related documents resulting from any Site Meeting.

Other Meetings

- 37.5.3 The Contractor shall notify the Authority of any proposed meetings with Customers or Customer Groups or relevant stakeholders and shall give reasonable notice of the date, timing and location of such meetings so that the Authority may also attend such meetings if the Authority so wishes. Where Existing Agreements and/or Customer Contracts contain provisions which

prohibit the Authority's attendance at such meetings, the Contractor shall use its reasonable endeavours to procure the agreement of the Customer and/or counterparty to the Authority's attendance at such meetings, and, until such agreement is obtained, the Authority will have due regard to the provisions of the Existing Agreements and/or Customer Contracts in deciding whether to attend such meetings.

37.6 **Severability**

37.6.1 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.

37.6.2 In the circumstances referred to in Clause 37.6.1 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.

37.7 **Notices**

37.7.1 A notice, approval, consent, electronic mail (in the case of Clause 37.7.5 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 "Site Licence Company Agreement Communication" to the relevant Party's Representative at the address or facsimile number specified in Clause 37.7.2 below or, for the purposes of Clause 37.7.5 below only, by electronic mail to an address for the time being notified for that purpose to the Party giving notice.

37.7.2 All Notices must be marked for the attention of the relevant Party's Representative as contained in Clause 37.7.3 below.

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

Authority's Representative:

Addressee: NDA Dounreay Site Restoration Site Programme Director

Address: Nuclear Decommissioning Authority

Freswick House, Forss Business & Technology Park,

Thurso, Caithness

KW14 7UZ

Telephone: [●]

Facsimile: [●]

Email: [●]

Contractor's Representative:

Addressee: [●]

Address: Dounreay Site Restoration Limited,
Building D2300, Dounreay
Thurso, Caithness,
KW14 7TZ

Telephone: [●]

Facsimile: [●]

37.7.4 Any change to the address, telephone number or facsimile number of the Representative must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with Clause 37.3.4 above. The Parties' respective Representatives' addresses, telephone numbers and facsimile numbers must be within the United Kingdom.

37.7.5 If an electronic mail address has been provided pursuant to Clause 37.7.1 above, the following Notices may be sent by electronic mail:

37.7.5.1 electronic transmission of a scanned image of an original executed Notice;

37.7.5.2 day-to-day communication in connection with this Agreement and the documents referred to in it; and

37.7.5.3 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.

37.7.6 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 37.7.7 below.

37.7.7 Subject to 37.7.8 (*Notices*), a Notice is deemed to be received:

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

37.7.7.2 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 Calendar Day after posting;

37.7.7.3 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; or

37.7.7.4 where sent by electronic mail (where applicable), on the second Calendar Day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 37.7.2 above.

37.7.8 A Notice received or deemed to be received in accordance with Clause 37.7.7 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.

37.7.9 The Contractor shall ensure that all Notices sent from the Contractor to the Authority in relation to this Agreement shall comply with the Authority's Protective Marking Policy as communicated by the Authority to the Contractor from time to time.

37.8 **Waiver**

37.8.1 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.

37.8.2 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 such waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations shall not apply to the extent that the relevant Party's conduct (limited, in the case of the Contractor, to the conduct only of the Nominated Staff or any other person who is provided to the Contractor in accordance with the Parent Body Agreement) leading to such fault, negligence, tort, strict liability, breach of Agreement, or otherwise was fraudulent and/or reckless and/or constitutes wilful misconduct.

37.8.3 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 Contractor in accordance with the Parent Body Agreement) other than the Contractor in respect of any losses, liabilities, costs, claims or expenses incurred or arising out of or in connection with this Agreement (together "**Losses**") where and to the extent that the Authority:

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

37.8.3.2 would have been so entitled but for any waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, exclusions, indemnities, hold harmless obligations or other reliefs from liability set out or referred to in this Agreement or arising as a result of the acts or omissions of the Authority; or

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

provided that this restriction shall not operate to limit or exclude any liability that the Contractor may have for the acts or omissions of any such individuals or any rights held by the Authority under the Parent Body Agreement.

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

37.9 **Entire Agreement**

Each of the Parties confirms that this Agreement together with the Parent Body 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 by Legislation or by custom.

37.10 **Variation**

37.10.1 Any Proposed Change and Change shall be made in accordance with the provisions of the Change Control Procedure.

37.10.2 Subject to and without prejudice to the Authority's rights under Clause 37.10.1 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.

37.10.3 If the Authority decides to change any of the Authority Policies and Procedures, the Contractor will be entitled to submit a Proposed Change, to the extent that the Change is required to respond to the change to the Authority Policies and Procedures, to reflect the impact of such change.

37.11 Assignment

Subject to Clause 22 (*Subcontracting/Procurement*), the Contractor shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

37.12 Contracts (Rights of Third Parties) Act 1999

No term of this Agreement is enforceable under the Agreements (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

37.13 Examination

Without limitation to Clause 37.9 above, no enquiry, examination or inspection or lack of enquiry, examination or inspection by the Authority into any matter nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, (nor any absence of the same) shall in any respect relieve or absolve the Contractor from, or modify, any of its obligations or liabilities under or in connection with this Agreement.

37.14 Inspections

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

37.15 Contractor's Documents

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

37.16 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.

37.17 Governing Law

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.

37.18 Set-off

37.18.1 The Contractor 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 Contractor under this Agreement which has fallen due and payable against any amount due to the Contractor under this Agreement.

37.18.2 If the payment or deduction of any amount referred to in Clause 37.18.1 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.

37.19 Default Interest

If either 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 a rate of three (3) per cent above the base rate of Lloyds TSB Bank plc.

37.20 Continuing Obligations

37.20.1 Save as otherwise expressly provided in this Agreement:

37.20.1.1 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

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

37.20.1.2.1 Clause 1 (Definitions);

37.20.1.2.2 Clause 7 (Security);

37.20.1.2.3 Clause 14 (Performance Management, Performance Assurance and Records);

- 37.20.1.2.4 Clause 16 (Finance);
 - 37.20.1.2.5 Clause 17 (Claims Handling);
 - 37.20.1.2.6 Clause 19 (Contractor's Indemnities);
 - 37.20.1.2.7 Clause 25 (Confidentiality and Compliance with Legislation);
 - 37.20.1.2.8 Clause 26 (Freedom of Information);
 - 37.20.1.2.9 Clause 27 (Data Protection);
 - 37.20.1.2.10 Clause 29 (Intellectual Property);
 - 37.20.1.2.11 Clause 30 (Information Technology);
 - 37.20.1.2.12 Clause 34 (Transition Out);
 - 37.20.1.2.13 Clause 35 (Transition on Expiry or Termination);
 - 37.20.1.2.14 Clause 36 (Dispute Resolution Procedure) but only insofar as applies to Disputes referred to the Dispute Resolution Procedure prior to termination or the Expiry Date;
 - 37.20.1.2.15 Clause 37.3 (Delegation of Authority);
 - 37.20.1.2.16 Clause 37.6 (Severability);
 - 37.20.1.2.17 Clause 37.8 (Waiver);
 - 37.20.1.2.18 Clause 37.9 (Entire Agreement);
 - 37.20.1.2.19 Clause 37.12 (Rights of Third Parties);
 - 37.20.1.2.20 Clause 37.13 (Examination);
 - 37.20.1.2.21 Clause 37.14 (Inspections);
 - 37.20.1.2.22 Clause 37.16 (Counterparts);
 - 37.20.1.2.23 Clause 37.18 (Law and Jurisdiction);
 - 37.20.1.2.24 this Clause 37.20 (Continuing Obligations); or,
- 37.20.1.3 any Schedule to this Agreement that is necessary to give full effect to any of the above; or

37.20.1.4 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.

AGREED by the Parties on the day and year first above written

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

was affixed in the presence of:

.....

DOUNREAY SITE RESTORATION LIMITED

hereto affixing its Common Seal

in the presence of:

.....

Director

.....

Company Secretary

NOT PROTECTIVELY MARKED

Schedule 1

Client Specification

Schedule 2

Change Control

Schedule 3

Commercial Schedule (Customer Contracts)

NOT PROTECTIVELY MARKED

Schedule 4

Employment and Pensions

NOT PROTECTIVELY MARKED

Schedule 5

Subcontracting and Procurement

Part 1

Work Activity Management

Schedule 6

Finance

Schedule 7

Property

NOT PROTECTIVELY MARKED

Schedule 8

Intellectual Property

NOT PROTECTIVELY MARKED

Schedule 9

Information Technology

Schedule 10

Insurance

NOT PROTECTIVELY MARKED

Schedule 11

Authority Deliverables

NOT PROTECTIVELY MARKED

Schedule 12

Dispute Resolution Procedure

Schedule 13

Reporting

NOT PROTECTIVELY MARKED

Schedule 14

European State Aid

NOT PROTECTIVELY MARKED

Schedule 15

Freedom of Information

NOT PROTECTIVELY MARKED

Schedule 16

Knowledge Management

NOT PROTECTIVELY MARKED

Schedule 17

Minimum Performance Standards