

PROTOCOL

on Claims, Legal Proceedings and Indemnification to the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation

The Government of the Kingdom of Belgium, the Government of the Kingdom of Denmark, the Government of the Republic of Finland, the Government of the French Republic, the Government of the Federal Republic of Germany, the Government of the Kingdom of the Netherlands, the Government of the Kingdom of Norway, the Government of the Russian Federation, the Government of the Kingdom of Sweden, the Government of the United Kingdom of Great Britain and Northern Ireland, the European Community, and the European Atomic Energy Community (hereinafter referred to as the Parties),

Reaffirming their commitment to achieving the purposes of the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation signed on 21 May 2003 (hereinafter referred to as the Agreement),

Convinced of the need to establish provisions ensuring that claims against the Contributing Parties and their personnel or contractors, subcontractors, consultants, suppliers or sub-suppliers of equipment, goods or services at any tier and their personnel, for any loss or damage of whatsoever nature arising from activities undertaken pursuant to the Agreement are not brought by the Russian Party and, if brought by a third party, are indemnified by the Russian Party,

HAVE AGREED AS FOLLOWS:

Article 1

1. The definitions contained in Article 2 of the Agreement shall apply to this Protocol as fully and effectively as if they were set forth in full herein.
2. For the purposes of this Protocol, the following terms shall have the following meanings:

nuclear incident: Any occurrence or series of occurrences having the same origin which causes nuclear damage.

nuclear damage: (i) loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation;

(ii) any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and

(iii) if the law of the State in which the nuclear installation of the liable operator is situated so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionising radiation emitted by any other source of radiation inside a nuclear installation.

3. For the purposes of this Protocol, whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident, or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Protocol, to be nuclear damage caused by that nuclear incident.

Article 2

1. With the exception of claims for injury or damage against individuals arising from omissions or acts of such individuals done with intent to cause injury or damage, the Russian Party shall bring no claims or legal proceedings of any kind against the contributors and their personnel or contractors, subcontractors, consultants, suppliers or sub-suppliers of equipment, goods or services at any tier and their personnel, for any loss or damage of whatsoever nature, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Russian Federation arising from activities undertaken pursuant to the Agreement. This paragraph shall not apply to the enforcement of the express provisions of a contract.

2. With the exception of claims for nuclear damage against individuals arising from omissions or acts of such individuals done with intent to cause damage, the Russian Party shall provide for the adequate legal defence of and indemnify, and shall bring no claims or legal proceedings against the contributors and their personnel, or any contractors, subcontractors, consultants, suppliers, or sub-suppliers of equipment, goods or services at any tier and their personnel in connection with third party claims, in any court or forum, arising from activities undertaken pursuant to the Agreement, for nuclear damage occurring within or outside the territory of the Russian Federation, that results from a nuclear incident occurring within the territory of the Russian Federation.

3. Upon request by a Party, the Russian Party or its authorised representative shall issue an indemnity confirmation letter to any contractor, subcontractor, consultant, supplier or subsupplier confirming the provisions of this Protocol. A standard form of such Indemnity Confirmation Letter is enclosed as an integral part of this Protocol.

4. The Parties may consult as appropriate, on claims and proceedings under this Article.

5. Any payments related to the indemnification in paragraph 2 of this Article shall be made promptly and shall be freely transferable to the beneficiary in its national currency.

6. Contributors, contractors, subcontractors, consultants, suppliers or subsuppliers of equipment, goods or services at any tier and their personnel may refer any dispute concerning the implementation of obligations under this Article to arbitration in accordance with UNCITRAL Arbitration Rules, if such dispute has not been resolved amicably within 90 days of its submission to the Russian Party. Any arbitration award shall be final and binding on the parties to the dispute.

7. Nothing in this Article shall be construed as acknowledging the jurisdiction of any court or forum outside the Russian Federation over third party claims to which paragraph 2 of this Article applies, except as provided for in paragraph 6 of this Article and in any other case where the Russian Federation has pledged itself to acknowledge and execute a legal decision on the basis of provisions of international agreements.

8. Nothing in this Article shall be construed as waiving the immunity of the Parties with respect to potential third party claims that may be brought against any of them.

Article 3

1. This Protocol is open for signature by any signatory to the Agreement.

2. This Protocol is subject to ratification, acceptance or approval by signatories that are Parties to the Agreement. Instruments of ratification, acceptance or approval shall be deposited with at least one of the depositaries of the Agreement.

3. This Protocol shall be open to accession by any Party that has acceded to the Agreement.

4. Accession shall be effected by the deposit of an instrument of accession with at least one of the depositaries of the Agreement.

5. The depositaries of this Protocol shall be the depositaries of the Agreement and shall fulfil their duties in accordance with Article 77 of the Vienna Convention on the Law of Treaties of 23 May 1969 and shall consult each other in the fulfilment of their duties.

Article 4

1. Subject to the entry into force of the Agreement, this Protocol shall enter into force on the 30th day following the date of receipt by at least one of the depositaries of the instruments of ratification, acceptance or approval referred to in Article 3(2) from the Russian Federation and from any other signatory to this Protocol and it shall remain in force for a period of five years from that date. For each signatory ratifying, accepting or approving thereafter, this Protocol shall enter into force for it on the 30th day following the receipt by at least one of the depositaries of the instruments of ratification, acceptance or approval referred to in Article 3(2) and it shall remain in force until the expiration of its original five-year period.

2. For each Party acceding to this Protocol, it shall enter into force for it 30 days following the receipt by at least one of the depositaries of the instrument of accession referred to in Article 3(4) and it shall remain in force until the expiration of the original five-year period mentioned in paragraph 1 of this Article.

3. This Protocol shall be extended automatically for further periods of five years. Any Party may request at least one of the depositaries, at least 90 days before the expiration of the five-year period, to convene a meeting of the Parties to consider the continuation, modification or amendment of this Protocol.

4. Any Party may withdraw from this Protocol upon giving 90 days written notification to at least one of the depositaries. The MNEPR Committee shall immediately be seized of the matter and shall make recommendations to the Parties on the further continuation of this Protocol and the Agreement.

5. The obligations under this Protocol shall remain in effect regardless of any subsequent transfer of ownership of the object of cooperation, and regardless of any termination of, or withdrawal from, this Protocol or the Agreement, or the expiration of their validity.

6. (a) Notwithstanding any termination of this Protocol, it shall continue to apply to any Implementing Agreement which the Parties to such Implementing Agreement agree to continue, for the duration of such Implementing Agreement.
- (b) Where a Party withdraws from this Protocol but continues to be a Party to an Implementing Agreement, this Protocol shall continue to apply to such Party with respect to its participation in such Implementing Agreement.
7. Where,
- (a) the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (hereinafter referred to as the Vienna Convention) and the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 (hereinafter referred to as the Joint Protocol) have both come into force for the Russian Federation, and
- (b) the Vienna Convention or the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and the Joint Protocol have both come into force for any other Party to this Protocol, such other Party may, in its discretion and by notice in writing to the Russian Federation, terminate the application of Article 2(2) of this Protocol as between it and the Russian Federation with respect to any activity undertaken pursuant to the Agreement to which these instruments apply. The Russian Federation and such other Party shall each inform the other in writing of the dates upon which such instruments come into force in their respective territories.
8. This Protocol shall be applied on a provisional basis from the date of its signature.
- Done** at Stockholm on 21 May 2003 in the English, French and Russian languages, all texts being equally authentic, in two originals of which one shall be deposited in the archives of the Ministry of Foreign Affairs of the Russian Federation and one in the archives of the Organisation for Economic Cooperation and Development. Duly certified copies of this Protocol shall be transmitted to the signatories and acceding Parties. In the event of any dispute or divergence in relation to this Protocol the English text shall prevail for the purposes of interpretation (*).

(*) It may be useful to provide that a copy of the letter also be sent to the Government of the country in which the Contractor carries on business.

ANNEX

Model of an INDEMNITY CONFIRMATION LETTER to be provided by the Ministry of the Russian Federation for Atomic Energy to [contractor]

Dear Sirs,

The Government of the Russian Federation and [name of other Party] are Parties to the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation (hereinafter referred to as the MNEPR Agreement) of 21 May 2003 to facilitate cooperation in the area of safety of spent nuclear fuel and radioactive waste in the Russian Federation. They are also Parties to the Protocol to the MNEPR Agreement on Claims, Legal Proceedings and Indemnification of 21 May 2003 (hereinafter referred to as the Protocol).

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, hereby acknowledges that [contractor] has entered into an [Implementing Agreement/Agreement/Contract] with [recipient] on [date] to provide assistance for the implementation of the MNEPR Project known as [project name]. The persons and entities identified in the attached list are the [contractor's] personnel, subcontractors, suppliers, sub-suppliers and consultants who will be providing equipment, goods or services pursuant to the [Implementing Agreement/Agreement/Contract]. [Contractor] may amend this list, from time to time, upon notification to the Ministry of the Russian Federation for Atomic Energy or its authorised representative for the implementation of the [project name].

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, confirms that in accordance with Articles 2(1) and 2(2) of the Protocol,

- a) with the exception of claims for injury or damage against individuals arising from omissions or acts of such individuals done with intent to cause injury or damage, it will bring no claims or legal proceedings of any kind against [contractor] and its personnel or subcontractors, consultants, suppliers or sub-suppliers of equipment, goods or services at any tier and their personnel identified in the attached list as amended from time to time, for any loss or damage of whatsoever nature, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Russian Federation arising from activities undertaken pursuant to the MNEPR Agreement, it being agreed that this paragraph shall not apply to the enforcement of the express provisions of a contract; and
- b) with the exception of claims for nuclear damage against individuals arising from omissions or acts of such individuals done with intent to cause damage, it shall provide for the adequate legal defence of, and indemnify, and shall bring no claims or legal proceedings against [contractor] and its personnel or any subcontractors, consultants, suppliers, or sub-suppliers of equipment, goods or services at any tier and their personnel identified in the attached list as amended from time to time, in connection with third-party claims, in any court or forum, arising from activities undertaken pursuant to the MNEPR Agreement, for nuclear damage occurring within or outside the territory of the Russian Federation, that results from a nuclear incident occurring within the territory of the Russian Federation.

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, agrees that any dispute, controversy or claim arising out of or relating to this Indemnity Confirmation Letter, including its existence or validity, shall be referred to and finally resolved by arbitration in accordance with UNCITRAL Arbitration Rules if such dispute has not been resolved amicably within 90 days of its submission to the Government of the Russian Federation for resolution. The appointing authority for the purposes of the UNCITRAL Arbitration Rules shall be the Stockholm Chamber of Commerce. The place of arbitration shall be the Arbitration Institute of the Stockholm Chamber of Commerce, Stockholm, Sweden and Swedish law shall apply. Where the UNCITRAL Arbitration Rules do not provide for a particular situation the arbitration tribunal shall determine the course of action to be followed.

This Indemnity Confirmation Letter shall enter into force upon signature by the Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, and it shall remain in effect in accordance with the MNEPR Agreement and the Protocol.

.....
(Signature)

.....
(Title)

(Authorised representative of the Ministry of the Russian Federation for Atomic Energy)

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(Date)