

PART 9

FOR THE PROTECTION OF THE UK ATOMIC ENERGY AUTHORITY AND UK INDUSTRIAL FUSION SOLUTIONS LTD

APPLICATION

137.—(1) Subject to sub- paragraph (2) for the protection of UKAEA and UKIFS as referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and UKAEA or UKIFS.

(2) Unless otherwise agreed in writing between the undertaker and UKAEA paragraphs 142 and 143 will apply for the protection of UKAEA and UKIFS from the point that UKAEA is the owner of the UKAEA land.

INTERPRETATION

138. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than—

- (a) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and
- (b) "A3" if the rating is assigned by Moody's Investors Services Inc.

"acceptable insurance" means a third-party liability insurance policy effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of not less than £20,000,000 (twenty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be approved by UKAEA. Such insurance shall be maintained during the construction period of the authorised development and arranged with an insurer whose security/credit rating meets the same requirements as an acceptable credit providers such insurance shall include (without limitation)—

- (c) a waiver of subrogation and an indemnity to principal clause in favour of UKAEA; and
- (d) pollution liability for third party property damage and third-party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate.

"authorised development" has the same meaning in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use, maintenance and decommissioning of the authorised development and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring and ground work operations;

"functions" includes powers and duties;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development within the West Burton Power Station;

"undertaker" means the undertaker as defined in article 2(1) of this Order;

"UKAEA" means the United Kingdom Atomic Energy Authority, or any successor in its functions, and shall include UKIFS which may give consent, agreement or approval on behalf of UKAEA for the purposes of paragraphs 139 to 145 below;

"UKAEA land" means the land within plots 05/04, 05/05, 05/06, 05/07 and 05/10 as shown on the Land plan and described in the book of reference;

"UKFIS" means UK Industrial Fusion Solutions Ltd or any successor in its functions; and

"West Burton Power Station" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the West Burton Power Station plan for the purposes of this Order, means that land known as West Burton Power Station.

STREETS SUBJECT TO TEMPORARY PROHIBITION OR RESTRICTION OF USE AND PUBLIC RIGHTS OF WAY

139. Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 11 (temporary stopping up of streets and public rights of way), UKAEA is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to access the West Burton Power Station in the same way as it was able to prior to the prohibition or restriction of use or diversion of that street or public right of way.

PROTECTIVE WORKS TO BUILDINGS

140. The undertaker, in the case of the powers conferred by article 15 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any buildings without the written consent of UKAEA.

ACQUISITION OF LAND

141. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not-

- (a) appropriate or acquire or take temporary possession of or entry to the West Burton Power Station; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of UKAEA,

otherwise than by agreement.

SPECIFIED WORKS

142.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKAEA a plan of the works to be executed and request from UKAEA details of the underground extent of any apparatus or assets belonging to UKAEA which UKAEA must provide to the undertaker as soon as reasonably practicable and in any event within 36 days of the submission of such request.

(2) In relation to specified works the plan to be submitted to UKAEA under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of any assets and apparatus belonging to UKAEA;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus or assets; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub- paragraph (2) applies until UKAEA has given written approval of the plan so submitted

(4) Any approval of UKAEA required under sub- paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in (5) or (7);

~~(a)(b) must not be unreasonably withheld and must be provided within 42 days of submission of the plan under sub- paragraph (1); and~~

~~(b) where UKAEA fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to the plan for the specified works under sub- paragraph (3) within 42 days of submission then such plan then approval shall be deemed to have been given.~~

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(5) In relation to any work to which sub- paragraph (2) applies, UKAEA may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing any apparatus or assets against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to the UKAEA land.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and UKAEA and in accordance with such reasonable requirements as may be made in accordance with sub- paragraphs (5) or (7) by UKAEA for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the UKAEA land, and UKAEA will be entitled to watch and inspect the execution of those works.

(7) Where UKAEA requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UKAEA's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and UKAEA must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan

(9) The undertaker will not be required to comply with sub- paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to UKAEA notice as soon as is reasonably practicable and a plan of those works and must comply with sub- paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

EXPENSES

143. Save where otherwise agreed in writing between UKAEA and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKAEA within 30 days of receipt of an itemised invoice or claim from UKAEA all charges, costs and expenses reasonably and properly incurred by UKAEA in consequence of the execution of the specified works including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works where such responsibilities fall to UKAEA; or
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

INDEMNITY

144.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by them) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any property of UKAEA or UKAEA becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from UKAEA the cost reasonably and properly incurred by UKAEA in making good such damage; and
- (b) indemnify UKAEA for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from UKAEA, by reason or in consequence of any such damage or interruption or UKAEA becoming liable to any third party other than arising from any default or negligence of UKAEA.

(2) The fact that any act or thing may have been done by UKAEA on behalf of the undertaker or in accordance with a plan approved by UKAEA or in accordance with any requirement of UKAEA or under its supervision will not (unless sub paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless UKAEA fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and UKAEA.

(3) Nothing in sub-paragraph (1) is to impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of UKAEA, its officers, servants, contractors or agents; or
- (b) any consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) UKAEA must give the undertaker reasonable notice of any such third-party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) UKAEA must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) UKAEA must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker UKAEA must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker will not commence construction (and not permit the commencement of such construction) of any specified works unless and until UKAEA is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with UKAEA (acting reasonably) provided evidence to UKAEA that it shall maintain such acceptable insurance for the construction period of specified works from the proposed date of commencement of construction of specified works) and UKAEA has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule shall prevent UKAEA from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

ENACTMENTS AND AGREEMENTS

145. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKAEA and the undertaker, nothing in this Part of this Schedule

affects the provisions of any enactment or agreement regulating the relations between the undertaker and the owner of the UKAEA land on the date on which this Order is made.

CO-OPERATION

146.—(1) The undertaker and UKAEA must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

(2) For the avoidance of doubt whenever UKAEA's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

ACCESS

147.—(1) If in consequence of the powers granted under this Order the access to the West Burton Power Station is materially obstructed, the undertaker must provide such alternative means of access to the West Burton Power Station as will enable UKAEA to access the West Burton Power Station no less effectively than was possible before such obstruction.

(2) In the event that access by the undertaker to the West Burton Power Station is materially obstructed by UKAEA, UKAEA must provide such alternative means of access to the West Burton Power Station as will enable the undertaker to access the West Burton Power Station no less effectively than was possible before such obstruction.

ARBITRATION

148. Any difference or dispute arising between the undertaker and UKAEA under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKAEA, be determined by arbitration in accordance with article 37 (arbitration).

NOTICES

149. Notwithstanding article 35 (service of notices), any plans submitted to UKAEA by the undertaker pursuant to paragraph 142 must be submitted to UK[JFSAEA](#) addressed to the company secretary and copied to the land and estates team and sent to Culham Campus, Abingdon, Oxfordshire, OX14 3DB, or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.