



NUCLEAR METALS, INC.

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OKO-08866
SUB-1452

July 27, 1992

U.S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King Of Prussia, Pennsylvania, 19046

Attention: Mr. John D. Kinneman, Chief
SDMP Task Force, NMSS
Div. of Radiation Safety and Safeguards

Reference: 1) NRC Letter to Nuclear Metals, Inc. (NMI), dated
June 7, 1991
2) NRC Letter to NMI, dated May 13, 1992

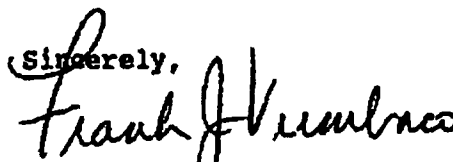
Dear Mr. Kinneman,

With respect to the references noted above, NMI is providing in draft form changes to our "Letter of Credit" previously submitted to you. We have also included a Clerk's Certificate, again in draft form, for your review.

It is thought that it would be more efficient to formally submit these documents to the NRC once we have them in a form acceptable to the NRC. Authorized signatures will be affixed to these documents following your review and the incorporation of any further changes.

NMI contact for questions pertaining to this letter and its enclosures is the undersigned

Encl/ Amended Standby Trust Agreement
Clerk's Certificate

Sincerely,

Frank J. Vurbaco
Manager, Health/Safety

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2229 Main Street, Concord, Massachusetts 01742 (508) 369-5410

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AMENDED AND RESTATED STANDBY TRUST AGREEMENT

TRUST AGREEMENT entered into as of July 25, 1990 by and between NUCLEAR METALS, INC., a Massachusetts corporation having its principal place of business in Concord, Massachusetts, hereinafter, together with its successors and assigns referred to as the "Grantor" and STATE STREET BANK AND TRUST COMPANY, a banking corporation having its principal office in Boston, Massachusetts, hereinafter, together with any successor, referred to as the "Trustee", and hereby amended and restated in its entirety as of July , 1992.

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 40. These regulations, applicable to the Grantor, require that a holder of, or an applicant for, a Part 40 license provide assurance that funds will be available when needed for required decommissioning activities; and

WHEREAS, the Grantor has elected to use a letter of credit to provide all of such financial assurance for the facilities identified herein; and

WHEREAS, drawing upon such Letter of Credit may be made by NRC at any time and from time to time and the proceeds are to be paid to the Trustee hereunder.

WHEREAS, any payment made under said letter of credit shall be paid to the Trustees of this Standby Trust; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree to establish the "NMI Decommissioning Trust" as follows:

Section 1. Costs of Decommissioning. This Agreement pertains to the costs (the "Decommissioning Costs") of decommissioning NRC licensed materials and activities of Grantor identified in the following licenses, each of which has been continued in effect by a timely renewal application:

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- a. NRC License SMB-179.
- b. NRC License SUB-1452.

Such licenses and renewals are pursuant to 10 CFR Part 40.

Section 2. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 3. Payments Constituting the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, financial instruments or other liquid assets acceptable to the Trustee. The Fund shall consist of the Letter of Credit described on Exhibit A hereto delivered to the Trustee as well as any other property subsequently transferred to the Trustee together with all proceeds thereof and earnings and profits thereon (hereinafter referred to as the "Fund"), less any payments or distributions made by the Trustee pursuant to this Agreement. The Trustee shall cooperate with NRC in arranging for drawings under the Letter of Credit.

Section 4. Adequacy of Fund. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible for the adequacy of the Fund or, except that it shall hold and pay out the Fund as provided hereunder, for the efficacy of this Agreement to assure that funds will be available for decommissioning activities as intended nor shall it undertake any responsibility beyond the value of the Fund for the amount of any payments necessary to discharge any liabilities of the Grantor for Decommissioning Costs established by the NRC, nor any duty to collect from the Grantor, the amount of any deficiency.

Section 5. Payment for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to the Grantor upon presentation to the Trustee of the following:

- a. A certificate duly executed by an executive officer and attested by the Clerk of the Grantor attesting to the occurrence of the events, and in the form set forth in the attached Specimen Certificate, and
- b. A certificate duly executed by an executive officer and attested by the Clerk of the Grantor attesting to the following conditions:
 - (1) that decommissioning is proceeding pursuant to an NRC-approved plan;

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- (2) that the funds withdrawn will be expended for Decommissioning Costs undertaken pursuant to that plan; and
- (3) that the NRC has been given thirty (30) days' prior notice of Grantor's intent to withdraw funds from the escrow fund.
- (4) that either (i) the withdrawal from the fund does not exceed the larger of ten percent (10%) of the outstanding balance of the Fund or Seventy-Five Thousand Dollars (\$75,000), or (ii) that the approval of the NRC is attached.

No withdrawal from the fund can exceed the larger of ten percent (10%) of the outstanding balance of the Fund or Seventy-Five Thousand Dollars (\$75,000), unless NRC approval is attached.

In the event that the NRC shall have certified to the Trustee in writing the Grantor's default or inability to direct decommissioning activities, the Trustee thereafter shall make payments from the Fund as the NRC shall direct, in writing, to provide for the payment of Decommissioning Costs. The Trustee shall reimburse the Grantor or other persons, as specified by the NRC, from the Fund for expenditures for Decommissioning Costs in such amounts as the NRC, shall direct, in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with the written instructions of the Grantor given to it from time to time including in the investments described in Section 7 hereof, except that securities or other obligations of the Grantor, or any other owner or operator of the facilities described in the Licenses referred to in Section 1, or any of their affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80A-2(a)), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government or as they may be included in investments made pursuant to Section 7 hereof. The Trustee is authorized to hold uninvested cash, awaiting investment or distribution. The Trustee shall not be responsible for any loss on any such investment.

Section 7. Commingling and Investment. The Trustee is expressly authorized upon the written direction of the Grantor:

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- a. to transfer from ~~time to time~~ any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- b. to purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80A-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the Trustee.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- a. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the Fund;
- b. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- c. to register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest payments and funds from matures and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- d. to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by

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the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal Government;

- e. to perform all ministerial acts necessary or appropriate to the administration of this trust; and
- f. to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund. The Grantor shall prepare and file appropriate federal and Massachusetts tax returns reflecting items of income and deduction of this trust. The Trustee shall timely provide all information and supporting documentation reasonably requested by the Grantor for that purpose.

Section 10. Annual Valuation. After payment has been made into this standby trust fund, the Trustee shall annually, at least thirty (30) days before the anniversary date of receipt of payment into the Fund, furnish to the Grantor and to the NRC an account of the Trust, including a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days before the anniversary date of the establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after receipt of such account by the Grantor and the NRC shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the account.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

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Section 13. Successor Trustee. Upon ninety (90) days notice to the NRC, the Trustee may resign; upon 90 days notice to the NRC and the Trustee, the Grantor may replace the Trustee; but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and the successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NRC, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are signatories to this Agreement or such other designees as the Grantor may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, or instructions. If the NRC issues orders, requests, or instructions to the Trustee these shall be in writing, signed by the NRC, or its designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, or the NRC, hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instruction from the Grantor and/or the NRC, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NRC, or by the Trustee and the NRC, if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NRC, or by the Trustee and the NRC, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor.

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Section 17. Immunity and Indemnification. The Trustee shall not be liable for any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor, or the NRC, issued in accordance with this Agreement. The Trustee shall have no liability for indirect or consequential damages and shall have no more or less responsibility on account of the act or omission of any qualified central securities depository than such depository has to the Trustee, except to the extent that such act or omission was caused by the Trustee's own negligence or bad faith. The Trustee shall be indemnified and saved harmless by the Grantor or from the Fund, or both, from and against any loss, cost, damage or expense to which the Trustee may be subjected by reason of its appointment as Trustee hereunder or any act or omission by it as Trustee, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense. A permissive right or power to act given hereunder shall not be construed as a requirement to act. The Grantor shall indemnify and hold the Trustee harmless from any liability on account of taxes, assessments or other governmental charges, including without limitation the withholding or deduction or the failure to withhold or deduct same, and any liability for failure to obtain proper certificates or to properly report to governmental authorities, to which the Trustee may be or become subject in connection with or which arises out of this trust, including costs and expenses (including reasonable legal fees), interest and penalties. The provisions of this Section 17 shall survive the termination of the trust.

Section 18. Successor Company. All covenants and agreements in this Standby Trust Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns. In the event that the Grantor transfers ownership of its assets to another entity, any successor entity shall succeed to the Grantor's rights and obligations hereunder with respect to the interest transferred to the extent, if any, expressly provided in the documents of transfer, upon such transferee's or transferees' execution of an instrument reasonably satisfactory in form and substance to the Trustee making them a part to this Standby Trust Agreement.

Section 19. Governing Law. This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts.

Section 20. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. If any part of this Agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

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Section 21. Notices. Any notice permitted or required hereunder shall be deemed to have been duly given if delivered personally or if mailed certified or registered mail, postage prepaid, to the parties at their address set forth below or to such other address as they may hereafter designate.

If to the Nuclear Regulatory Commission:

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

If to the Grantor:

Nuclear Metals, Inc.
2229 Main Street
Concord, MA 01742

Attention: Wilson B. Tuffin, President

with a copy to:

Thomas A. Wooters, Esquire
Peabody & Arnold
50 Rowes Wharf
Boston, MA 02110

If to the Trustee:

State Street Bank and Trust Company
225 Franklin Street
Boston, MA 02110

Attention: Marsha Hanson
Corporate Trust Department

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the respective officers duly authorized and the corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

NUCLEAR METALS, INC.

Thomas A. Wooters, Clerk

By: Wilson B. Tuffin
President

[SEAL]

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STATE STREET BANK AND TRUST
COMPANY

By: _____ (Title)

ATTEST:

[Title]
[Seal]

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ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK, SS.

On this ____ day of July, 1992, before me, a notary public in and for the County and Commonwealth aforesaid, personally appeared _____, and she/he did depose and say that she/he is the _____ [title], of State Street Bank and Trust Company, a national banking association, Trustee, which executed the above instrument, that she/he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that she/he signed her/his name thereto by like order.

Notary Public

My commission

expires: _____ [Date]

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SCHEDULE A

State Street Bank and Trust Company Irrevocable Letter of
Credit No. 47987-P dated July 23, 1990 and in the amount of
Seven Hundred Fifty Thousand Dollars (\$750,000).

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CLERK'S CERTIFICATE

The undersigned, Clerk of Nuclear Metals, Inc., a Massachusetts corporation, hereby certifies that Wilson B. Tuffin is the President and Treasurer of the corporation and, in that capacity, is authorized to and did sign a certain Amended and Restated Standby Trust Agreement dated as of July __, 1992 between Nuclear Metals, Inc., as grantor, and State Street Bank and Trust Company, as trustee.

IN WITNESS WHEREOF I have executed this Certificate and have affixed the seal of the corporation this __ day of July, 1992.

Thomas A. Wooters, Clerk

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