

ATOMIC ENERGY

Cooperation

**Agreement Between the
UNITED STATES OF AMERICA
and SOUTH AFRICA**

Signed at Vienna September 14, 2009

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

SOUTH AFRICA

Atomic Energy: Cooperation

*Agreement signed at Vienna September 14, 2009;
Entered into force September 14, 2009.
With annex.*

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

ON COOPERATION IN RESEARCH AND DEVELOPMENT

OF NUCLEAR ENERGY

PREAMBLE

The Government of the United States of America and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and separately as a "Party").

RECALLING the Agreement for Cooperation between the United States of America and the Republic of South Africa Concerning Peaceful Uses of Nuclear Energy signed on August 25, 1995;

SEEKING to collaborate in research and development of advanced technologies for improving the cost, safety and proliferation-resistance of nuclear power systems; and

NOTING that the Department of Energy of the United States of America proposes to engage in cooperative nuclear research and development under this Agreement as part of the International Nuclear Energy Research Initiative, whose objective is to undertake, through bilateral agreements between the Department of Energy and international counterpart governmental entities, research and development to develop safe, cost effective, proliferation-resistant, and sustainable nuclear technologies to meet future global energy needs;

HEREBY AGREE as follows:

ARTICLE 1 OBJECTIVE

- (1) The overall objectives for cooperation under this Agreement are to-
 - (a) promote collaboration between the United States and South African agencies and organizations for research and development of advanced nuclear energy systems;
 - (b) develop advanced concepts and scientific breakthroughs in nuclear fission and reactor technology to address and overcome the principal technical, societal, and economic obstacles to the expanded peaceful use of nuclear energy; and
 - (c) promote and maintain each Party's nuclear science and engineering infrastructure to sustain the capabilities necessary for the development and use of nuclear energy.
- (2) Cooperation under this Agreement shall be on the basis of mutual benefit, equality, and reciprocity.

ARTICLE 2 COMPETENT AUTHORITIES

The Competent Authorities responsible for the implementation of this Agreement are-

- (1) for the Government of the United States of America, the Department of Energy; and
- (2) for the Government of the Republic of South Africa, the Department of Energy.

ARTICLE 3 AREAS OF COOPERATION

The areas of cooperation under this Agreement include, but are not limited to-

- (1) joint research projects for the research, development, testing, and evaluation of advanced nuclear reactor systems, nuclear fuel, hydrogen production applications, system modeling and analysis, and fundamental nuclear science;
- (2) advanced nuclear fuel and material irradiation and use of experimental facilities; and
- (3) other areas of collaboration that may be added by written agreement of the Parties.

ARTICLE 4 MODE OF COOPERATION

- (1) Cooperation in accordance with this Agreement includes, but is not limited to, the following:
 - (a) exchange of unclassified scientific and technical information and results of research and development;
 - (b) exchange of scientists, engineers and other specialists, including those from industry, for participation in nuclear energy-related research, development, analysis, design and experimental activities conducted in research centers, laboratories, engineering offices, and other facilities and enterprises of the Parties or their Competent Authorities;
 - (c) exchange of samples, materials, instruments and components for testing;
 - (d) organization of seminars, workshops, and other meetings on agreed topics;
 - (e) visits by a Party's specialist teams or individuals to the facilities of the other Party within the framework of Project Arrangements as contemplated by Article 5;
 - (f) the use by one Party's Competent Authority of the facilities owned or operated by the other Party. Such use of facilities shall be the subject of a separate written agreement between the Parties' Competent Authorities;

(g) cooperative programs and projects in which the Parties decide to share the work and costs. Such joint projects shall be the subject of separate written agreement between the Parties' Competent Authorities.

(2) Other specific forms of cooperation may be added by written agreement between the Parties.

ARTICLE 5 PROJECT ARRANGEMENTS

Cooperative activities under this Agreement may be undertaken by the Parties' Competent Authorities or, as appropriate, laboratories or contractors of the Parties' Competent Authorities. Each cooperative activity that may involve the sharing of costs or that may give rise to intellectual property shall be described in writing in a Project Arrangement, which shall be subject to approval by the Coordinators (as provided for in Article 6). Such Project Arrangements shall include detailed provisions for carrying out the specified forms of cooperation, including such matters as technical scope, exchange of business-confidential information, management, total costs, cost sharing and schedule. Each Project Arrangement shall be subject to and shall refer to this Agreement.

ARTICLE 6 JOINT COORDINATING COMMITTEE

(1) A Joint Coordinating Committee hereinafter referred to as the "JCC" consisting of an equal number of representatives of each Party's Competent Authority shall supervise the implementation of this Agreement. Decisions of the JCC shall be made on the basis of consensus.

(2) The JCC shall meet periodically to evaluate all aspects of cooperation under this Agreement. These meetings shall be held alternately in the United States of America and the Republic of South Africa, unless otherwise agreed.

(3) Under the direction of the Parties' Competent Authorities, the JCC shall approve and monitor all cooperative activities to be carried out under this Agreement.

(4) The JCC may establish separate subcommittees in any of the areas of cooperation to facilitate implementation of projects undertaken under this Agreement.

(5) The JCC shall review and evaluate any proposed activities and the status of cooperation under this Agreement. The JCC shall give appropriate guidance and direction to the subcommittees and the project managers responsible for activities undertaken under this Agreement.

(6) Each Competent Authority shall designate a Coordinator to supervise the day-to-day activities undertaken under this Agreement and to serve as the principal point of contact between the Competent Authorities. If requested, the Coordinators may advise the Parties and their Competent Authorities regarding future cooperative activities under this Agreement.

ARTICLE 7 EXCHANGE OF PERSONNEL

The following provisions shall apply concerning exchanges of personnel under this Agreement:

(1) Whenever an exchange of personnel is contemplated, each Party's Competent Authority shall endeavor to ensure the selection of qualified personnel with skills and competence necessary to conduct the activities planned under this Agreement. Each such exchange of personnel shall be agreed to in advance through an exchange of letters between the Parties' Competent Authorities, referencing this Agreement and its pertinent intellectual property provisions.

(2) Each Party shall be responsible for the salaries, insurance, and allowances to be paid to its staff or its contractors.

(3) Each Party shall pay for the travel and living expenses of its staff or its contractors while on assignment to the host Party, unless otherwise agreed in writing.

(4) Each Party shall help locate adequate accommodations for the other Party's staff or contractors and their families on a mutually acceptable, reciprocal basis.

(5) Each Party shall provide all necessary assistance to the assigned staff of the other Party or its contractors and their families as regards administrative formalities, such as assistance in making travel arrangements.

(6) The staff and contractors of each Party shall conform to the general and specific rules of work and safety regulations in force at the host establishment.

ARTICLE 8

EXCHANGE OF EQUIPMENT AND MATERIAL

A Party may by mutual agreement of the Competent Authorities provide equipment to be utilized in a joint activity. In that event, the following provisions shall apply:

- (1) The sending Party shall supply, as early as possible, a detailed list of the equipment to be provided, together with the relevant specifications and appropriate technical and informational documentation related to use, maintenance, and repair of the equipment.
- (2) Title to the equipment and necessary spare parts supplied by the sending Party for use in joint activities shall remain with the sending Party, and the property shall be returned to the sending Party upon completion of the joint activity, unless otherwise agreed.
- (3) Equipment provided pursuant to this Agreement shall be brought into operation at the host establishment only by agreement of the Competent Authorities.
- (4) The host establishment shall provide the necessary premises and shelter for the equipment, utilities such as electric power, water and gas; and normally, shall provide materials to be tested, in accordance with all technical requirements, which shall be as mutually agreed upon.
- (5) Responsibility for expenses, safekeeping and insurance during the transport of equipment from the original location in the country of the sending Party to the place of entry in the country of the receiving Party shall rest with the sending Party. If the sending Party elects to have the equipment returned, it shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the original point of entry in the country of the receiving Party to the final destination in the country of the sending Party.
- (6) Responsibility for expenses, safekeeping, and insurance during the transport of equipment from the place of entry in the country of the receiving Party to the final destination in the country of the receiving Party shall rest with the receiving Party. If the sending Party elects to have the equipment returned, the receiving Party shall be responsible for expenses, safekeeping and insurance during the transport of the equipment from the final destination in the country of the receiving Party to the original point of entry in the country of the receiving Party.

(7) Equipment provided pursuant to this Agreement for use in joint activities shall be considered to be scientific, not having a commercial character, and each Party shall make its best effort to obtain duty free entry.

ARTICLE 9 SAMPLES AND MATERIALS

Unless otherwise agreed in writing, the following provisions shall apply to the transportation and use of samples and materials provided by one Party to the other Party under this Agreement:

(1) All samples and materials provided by the sending Party to the receiving Party shall remain the property of the sending Party, and shall be returned to the sending Party on request.

(2) Where one Party requests that a sample or material be provided by the other Party, the Party making the request shall bear all costs and expenses associated with the transportation of the sample or material from the location of the sending Party to its final destination.

(3) Each Party's Competent Authority shall promptly disclose to the other Party's Competent Authority all information arising from the examination or testing of samples or materials exchanged under this Agreement. The Parties agree that business-confidential information (as defined in Section III of the Intellectual Property Rights Annex attached to this Agreement), which was developed prior to or outside the scope of this Agreement, shall remain business-confidential even though it is contained in the results of an examination or testing of samples or materials. Such information shall be identified as business-confidential by the Party or Competent Authority asserting its business-confidential nature as soon as possible after disclosure of all information arising from the examination or testing is made to such Party's Competent Authority and the other Party's Competent Authority shall be immediately advised of that identification. All information identified as business-confidential shall be controlled as provided for in Section III of the Intellectual Property Rights Annex.

(4) A Party providing samples or materials to the other Party may also provide a partial or complete list of the types of information that may result from the examination or testing of such samples or materials and which is to be treated as business-confidential as defined in Section III of the Intellectual Property Rights Annex. All such business-confidential information is to be controlled as set out in Section III of that Annex.

ARTICLE 10

TRANSFER OF INFORMATION AND EQUIPMENT

(1) The Parties through their Competent Authorities may exchange, as agreed, on a mutually beneficial basis, scientific and technical information, documents and results of research and development of work carried out under this Agreement. Such information shall be limited to that which the Parties have the right to disclose, either in their possession or available to them, relating to the types of cooperation described in Article 3.

(2) If agreed by the Parties' Competent Authorities, seminar proceedings and reports of joint activities carried out under this Agreement shall be published as joint publications.

(3) Information developed and exchanged under this Agreement should be given wide distribution. Except as provided in Section III of the Intellectual Property Annex to this Agreement, such information may be made available to the public by either Party or its Competent Authority through customary channels and in accordance with the applicable domestic law in force in the country of the Party.

(4) All information or equipment transmitted by one Party to the other Party under this Agreement and any related Project Arrangement shall be appropriate and accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information or equipment transmitted for any particular use or application by the receiving Party or any third party. Information or equipment developed jointly by the Parties shall be appropriate and accurate to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly-developed information or the appropriateness of equipment nor its suitability for any particular use or application by either Party or by any third party.

ARTICLE 11

ADDITIONAL ORGANIZATIONS

The Parties through their Competent Authorities may invite public and private organizations in their respective countries to participate, at those organizations' own expense and subject to such terms and conditions as the Parties' Competent Authorities may specify, in cooperative activities under this Agreement.

ARTICLE 12
INTELLECTUAL PROPERTY AND BUSINESS-CONFIDENTIAL
INFORMATION

The protection and allocation of intellectual property and the treatment of business-confidential information created or furnished in the course of cooperative activities under this Agreement shall be governed by the provisions of the Intellectual Property Rights Annex, which constitutes an integral part of this Agreement.

ARTICLE 13
GENERAL PROVISIONS

- (1) Unless otherwise agreed in writing, all costs resulting from cooperation pursuant to this Agreement shall be the responsibility of the Party that incurs them.
- (2) Cooperation in accordance with this Agreement shall be subject to the availability of appropriated funds.
- (3) Each Party shall conduct the activities provided for in this Agreement in accordance with its international obligations and the domestic law in force in its respective country.

ARTICLE 14
SETTLEMENT OF DISPUTES

Any dispute between the Parties concerning the interpretation or implementation of this Agreement shall be settled amicably through consultation and negotiations between the Parties.

ARTICLE 15
AMENDMENT

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 16
DURATION AND TERMINATION

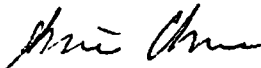
- (1) This Agreement shall remain in force indefinitely, unless terminated in accordance with the provisions of paragraph (2) of this Article 16.
- (2) Either Party may terminate this Agreement by giving three (3) months written notice in advance to the other Party through the diplomatic channel, of its intention to terminate this Agreement.
- (3) All ongoing joint projects and experiments not completed at the termination of this Agreement may be continued until their completion under the terms of this Agreement.

ARTICLE 17
ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature hereof.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in duplicate.

DONE at Vienna on this 14th day of September 2009.



FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA:

Annex on Intellectual Property Rights

Pursuant to Article 12 of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant Project Arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.
- B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
- C. This Annex addresses the allocation of rights and interests between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by the law of that Party's country.
- D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.
- E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. Allocation of Rights

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.**
- B. Rights to all forms of intellectual property of visiting researchers, inventors and authors, other than those rights described in Paragraph II.A. above, shall be allocated as follows:**
 - (1) Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor or author shall be entitled to awards, bonuses, benefits, or any other rewards in accordance with the policies of the host institution.**
 - (2) (a) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own country. Rights and interests in third countries will be determined in Project Arrangements. If research is not designated as "joint research" in the relevant Project Arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B.(1) above. In addition, each person named as an inventor or author shall be entitled to awards, bonuses, benefits, or any other rewards in accordance with the policies of the participating institutions.**

(b) In the event that either Party believes that a particular joint research project under this Agreement has led or will lead to the creation or furnishing of a type of intellectual property that it protects but is not protected throughout the territory of the other Party, the Parties shall immediately hold discussions to determine the allocation of the rights to the said intellectual property. The joint activities in question will be suspended during the discussions, unless otherwise agreed by the Parties thereto. If no agreement can be reached within the three month-period from the date of the

request for discussions, co-operation on the project in question will be suspended or terminated at the request of a Party.

III. Business-Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws and administrative practices in their respective countries. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.