

## **NUCLEAR ENERGY**

### **Civil**

#### **Agreement Between the UNITED STATES OF AMERICA and the PHILIPPINES**

Signed at San Francisco November 16, 2023

Entered into force July 2, 2024



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.”

**AGREEMENT FOR COOPERATION BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA AND  
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES  
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY**

The Government of the United States of America and the Government of the Republic of the Philippines (hereinafter, the "Parties"),

**MINDFUL** of their respective rights and obligations under the Treaty on the Non-Proliferation of Nuclear Weapons done at London, Moscow, and Washington July 1, 1968 ("NPT"), to which both the United States of America and the Republic of the Philippines are parties;

**AFFIRMING** their support for the International Atomic Energy Agency ("IAEA") and its safeguards system, including the Additional Protocol (INFCIRC/540);

**RECALLING** their previous cooperation under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of the Philippines Concerning Civil Uses of Atomic Energy, done at Washington July 27, 1955, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of the Philippines concerning the Civil Uses of Atomic Energy, done at Washington June 13, 1968;

**RECOGNIZING** that the Constitution of the Republic of the Philippines, consistent with its national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory;

**DESIRING** to cooperate in the development of peaceful uses of nuclear energy and recalling the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of the Philippines Concerning Strategic Civil Nuclear Cooperation, signed at Washington March 10, 2022; and

**AFFIRMING** the intent of the Government of the Republic of the Philippines to rely on existing international markets for nuclear fuel services, rather than acquiring sensitive nuclear technology, as a solution for peaceful, safe, and secure uses of civilian nuclear energy, and the intent of the Government of the United States of America to support the supply of reactor(s), material, and equipment in order to ensure reliable nuclear energy supply for the Republic of the Philippines;

**HAVE AGREED AS FOLLOWS:**

## ARTICLE 1 – DEFINITIONS

For the purposes of this Agreement:

(A) **“Byproduct material”** means any radioactive material, except special fissionable material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special fissionable material;

(B) **“Component”** means a component part of equipment or other item so designated by agreement of the Parties;

(C) **“Equipment”** means any reactor, other than one designed or used primarily for the formation of plutonium or uranium-233; reactor pressure vessel, including closure heads; reactor calandria; complete reactor control rod drive system; reactor primary coolant pump; online reactor fuel charging and discharging machine; or any other item so designated by agreement of the Parties;

(D) **“High enriched uranium”** means uranium enriched to twenty percent or greater in the isotope 235;

(E) **“Information”** means data or information of a scientific, commercial, technical or other nature in any form that is appropriately designated by agreement of the Parties to be provided or exchanged under this Agreement;

(F) **“Irradiated nuclear material”** means nuclear material that has been subjected to a form of nuclear irradiation that consequently delivers an external radiation dose requiring special containment and handling;

(G) **“Low enriched uranium”** means uranium enriched to less than twenty percent in the isotope 235;

(H) **“Major critical component”** means any part or group of parts essential to the operation of a sensitive nuclear facility;

(I) **“Material”** means nuclear material, byproduct material, moderator material, radioisotopes other than byproduct material, or any other such substance so designated by agreement of the Parties;

(J) **“Moderator material”** means heavy water or graphite or beryllium of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the Parties;

(K) **“Nuclear material”** means source material or special fissionable material;

(L) **“Peaceful purposes”** include the use of information, nuclear material, equipment, and components in such fields as research, power generation, medicine, agriculture, and industry but do not include use in, research on, or development of any nuclear explosive device, or any military purpose;

(M) **“Person”** means any individual or any entity subject to the jurisdiction of either Party but does not include the Parties to this Agreement;

(N) **“Reactor”** means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium, or thorium or any combination thereof;

(O) **“Restricted Data”** means all data concerning (1) design, manufacture, or utilization of nuclear weapons, (2) the production of special fissionable material, or (3) the use of special fissionable material in the production of energy, but shall not include data of a Party that it has declassified or removed from the category of Restricted Data;

(P) **“Sensitive nuclear facility”** means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(Q) **“Sensitive nuclear technology”** means any information, including information incorporated in equipment or an important component, that is not in the public domain and that is important to the design, construction, fabrication, operation, or maintenance of any sensitive nuclear facility, or any other such information that may be so designated by agreement of the Parties;

(R) **“Source material”** means (1) uranium, thorium, or any other material so designated by agreement of the Parties, or (2) ores containing one or more of the foregoing materials in such concentration as the Parties may agree from time to time; and

(S) **“Special fissionable material”** means (1) plutonium, uranium-233, or uranium enriched in the isotope 235, or (2) any other material so designated by agreement of the Parties.

## ARTICLE 2 – SCOPE OF COOPERATION

1. The Parties intend to cooperate in the safe and secure use of nuclear energy for peaceful purposes. Such cooperation shall be in accordance with the provisions of this Agreement and their applicable international agreements, national laws, and regulations.

2. The Parties intend to encourage information, knowledge, and technology exchange related to nuclear safety, security, and nonproliferation, in accordance with international best practices and standards.

3. Transfer of information, nuclear material, equipment, and components under this Agreement may be undertaken directly between the Parties or through Persons authorized by a Party's competent authority(ies) to engage in transfer activities. Such transfers shall be subject to this Agreement and to such additional terms and conditions as may be agreed in writing by the Parties.

### **ARTICLE 3 – TRANSFER OF INFORMATION**

1. Information related to the items transferred subject to this Agreement may be transferred under this Agreement. Transfers of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, and assignments of staff to facilities.

2. Restricted Data and sensitive nuclear technology shall not be transferred under this Agreement.

3. This Agreement does not require the transfer of any information that the Parties are not permitted to transfer under their respective international agreements, national laws, and regulations.

### **ARTICLE 4 – TRANSFER OF NUCLEAR MATERIAL, EQUIPMENT, AND COMPONENTS**

1. Nuclear material, equipment, and components may be transferred for applications consistent with this Agreement, including for the construction, maintenance, and operation of nuclear reactors. Any special fissionable material transferred to the Republic of the Philippines under this Agreement shall be low enriched uranium, except as provided in paragraph 4 of this Article. Sensitive nuclear facilities and major critical components shall not be transferred under this Agreement.

2. Low enriched uranium may be transferred, including by sale or lease, for use as fuel in reactors and reactor experiments or for such other purposes as may be agreed in writing by the Parties.

3. The quantity of special fissionable material transferred under this Agreement shall not at any time be in excess of the quantity that, as agreed by the Parties, is necessary for any of the following purposes: use in the loading of reactors or in reactor experiments; the reliable, efficient, and continuous operation of reactors or conduct of reactor experiments; the storage of special fissionable material necessary for the efficient and continuous operation of reactors or conduct of reactor experiments; the

transfer of nuclear material for storage, disposition, or return that has been irradiated; and the accomplishment of such other purposes as may be agreed by the Parties.

4. Small quantities of special fissionable material may be transferred for use as samples, standards, detectors, or targets, or for such other purposes as the Parties may agree in writing. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3 of this Article.

5. Nuclear material, equipment, and components transferred from the territory of one Party to the territory of the other Party, whether directly or through a third country or destination, shall be regarded as having been transferred pursuant to this Agreement only upon confirmation, by the appropriate authority of the recipient Party to the appropriate authority of the supplier Party, that such nuclear material, equipment, or components shall be subject to this Agreement.

6. Nuclear material, equipment, and components subject to this Agreement shall no longer be subject to this Agreement if:

(A) Such items have been transferred beyond the territory of the receiving Party in accordance with the relevant provisions of this Agreement and are no longer under its jurisdiction or control anywhere;

(B) In the case of nuclear material, the Parties agree, taking into account among other factors an IAEA determination, if any, in accordance with the provisions for the termination of safeguards in the relevant agreement referred to in paragraphs 2 or 3 of Article 9, whichever is applicable, that the nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards; or

(C) In the case of equipment and components, it is agreed by the Parties in writing.

## **ARTICLE 5 – STORAGE AND RETRANSFERS**

1. Special fissionable material, except as contained in irradiated fuel elements, transferred pursuant to this Agreement or used in or produced through the use of nuclear material or equipment so transferred shall only be stored in a facility to which the Parties agree in writing.

2. Nuclear material, equipment, and components transferred pursuant to this Agreement and any special fissionable material, other transuranic elements, or tritium produced through the use of any such nuclear material or equipment shall not be transferred to unauthorized Persons or, unless the Parties agree, beyond the recipient Party's territorial jurisdiction.



3. In order to facilitate management of spent fuel, irradiated nuclear materials, or nuclear-related waste, nuclear material transferred pursuant to this Agreement may be returned to the United States of America if the Government of the United States of America notifies the Government of the Republic of the Philippines that it is prepared to store or dispose of such nuclear material. In this case, the Parties shall agree in writing upon appropriate provisions to implement such arrangements.

4. With respect to special fissionable material produced through the use of nuclear material transferred pursuant to this Agreement and not used in or produced through the use of equipment transferred pursuant to this Agreement, paragraphs 1 and 2 of this Article shall be applied to that proportion of special fissionable material produced that represents the ratio of transferred nuclear material used in the production of the special fissionable material to the total amount of nuclear material so used, and similarly for subsequent generations.

#### **ARTICLE 6 – REPROCESSING, OTHER ALTERATION IN FORM OR CONTENT, AND ENRICHMENT**

1. Nuclear material transferred pursuant to this Agreement, and nuclear material used in or produced through the use of nuclear material or equipment so transferred shall only be reprocessed, enriched, or (in the case of plutonium, uranium-233, high enriched uranium, and irradiated nuclear material) otherwise altered in form or content (except by irradiation or further irradiation) if the Parties agree in writing.

2. With respect to special fissionable material produced through the use of nuclear material transferred pursuant to this Agreement and not used in or produced through the use of equipment transferred pursuant to this Agreement, paragraph 1 of this Article shall be applied to that proportion of special fissionable material produced that represents the ratio of transferred nuclear material used in the production of the special fissionable material to the total amount of nuclear material so used, and similarly for subsequent generations.

#### **ARTICLE 7 – PHYSICAL PROTECTION**

1. Adequate physical protection shall be maintained with respect to any nuclear material and equipment transferred pursuant to this Agreement and any special fissionable material used in or produced through the use of nuclear material or equipment so transferred. The Parties shall keep each other informed through diplomatic channels, as appropriate.

2. To comply with the requirement in paragraph 1, each Party shall apply at a minimum measures in accordance with (i) levels of physical protection at least equivalent to the recommendations published in IAEA document INFCIRC/225/Rev.5 entitled "Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear



Facilities” and in any successor documents accepted by the Parties and (ii) the provisions of the Convention on the Physical Protection of Nuclear Material adopted at Vienna October 26, 1979, as amended, as well as any subsequent amendments to the Convention that enter into force for both Parties.

3. The adequacy of physical protection measures maintained pursuant to this Article shall be subject to visits and consultations by the Parties from time to time and whenever either Party is of the view that revised measures may be required to maintain adequate physical protection.

4. The Parties shall keep each other informed through diplomatic channels of the designated points of contact within their authorities to cooperate on matters related to physical protection of nuclear material and nuclear facilities in their territory or under their jurisdiction or control, response and recovery operations in the event of unauthorized use or handling of nuclear material subject to this Article, out-of-country transportation, and other matters of mutual concern.

#### **ARTICLE 8 – NO EXPLOSIVE OR MILITARY APPLICATION**

1. Nuclear material, equipment, and components that have been transferred between the Parties or will be transferred pursuant to this Agreement and material used in or produced through the use of any nuclear material, equipment, or components so transferred shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

2. Military purposes shall not include the supply of electricity to a military facility from any power network, or production of radioisotopes to be used for medical purposes in a military hospital.

#### **ARTICLE 9 – SAFEGUARDS**

1. Cooperation under this Agreement shall require the application of IAEA safeguards with respect to all nuclear material in all nuclear activities within the territory of the Republic of the Philippines, under its jurisdiction, or carried out under its control anywhere. Implementation of a Safeguards Agreement concluded pursuant to Article III (4) of the NPT shall be considered to fulfill this requirement.

2. Nuclear material transferred to the Republic of the Philippines pursuant to this Agreement and any nuclear material used in or produced through the use of nuclear material, equipment, or components so transferred shall be subject to safeguards in accordance with the Agreement between the Republic of the Philippines and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-proliferation of Nuclear Weapons, signed at Vienna February 21, 1973, which entered into force October 16, 1974, and the Additional

Protocol thereto signed at Vienna September 30, 1997, which entered into force February 26, 2010.

3. Nuclear material transferred to the United States of America pursuant to this Agreement and any nuclear material used in or produced through the use of any nuclear material, equipment, or components so transferred shall be subject to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, signed at Vienna November 18, 1977, which entered into force December 9, 1980, and the Additional Protocol thereto signed at Vienna June 12, 1998, which entered into force January 6, 2009.

4. Upon the request of either Party in writing, the other Party shall authorize the IAEA to make available to the requesting Party information on the implementation of the applicable safeguards agreement with the IAEA within the scope of cooperation under this Agreement. To the extent consistent with its applicable national law and regulations, each Party shall ensure that all information provided under this paragraph 4 is not publicly disclosed and is accorded appropriate protections with a view to providing at least the equivalent level of protection accorded to such information by the IAEA. The Parties shall consult regarding the appropriate protections for such information.

5. If either Party becomes aware of circumstances that demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreements with the IAEA referred to in paragraph 2 or paragraph 3 of this Article, to ensure effective continuity of safeguards the Parties shall consult and immediately enter into arrangements with the IAEA or between themselves that conform with IAEA safeguards principles and procedures, that provide assurance equivalent to that intended to be secured by the system they replace, and that conform with the coverage required by paragraph 2 or paragraph 3 of this Article, as applicable.

6. Each Party shall take such measures as are necessary to maintain and facilitate the application of safeguards applicable to it provided for under this Article.

7. Each Party shall establish and maintain a system of accounting for and control of source material and special fissionable material transferred pursuant to this Agreement and source material and special fissionable material used in or produced through the use of any nuclear material, equipment, or components so transferred. The procedures for this system shall be comparable to those set forth in IAEA document INFCIRC/153 (Corrected), or in any revision of that document accepted by the Parties.

## **ARTICLE 10 – ADMINISTRATIVE ARRANGEMENT**

1. Upon request by either Party in writing, the appropriate authorities of the Parties shall, by mutual decision, establish an Administrative Arrangement in order to provide for the effective implementation of the provisions of this Agreement.
2. The principles of fungibility, equivalence, and proportionality shall apply to nuclear material subject to this Agreement. Details for applying these principles shall be set forth in the Administrative Arrangement.
3. For the purposes of this Agreement, each Party shall establish and maintain inventories of all nuclear material, equipment, and components subject to this Agreement. Each Party shall provide the other an updated report containing such inventories annually and upon request in writing. To supplement such reporting, upon the request in writing of either Party, the other Party shall request and permit the IAEA to report to the requesting Party on the status of all inventories of nuclear material subject to this Agreement.
4. If an Administrative Arrangement is established pursuant to this Article, it may be modified in writing by mutual consent of the appropriate authorities of the Parties through diplomatic channels. Such modification shall take effect in accordance with the respective national procedures of the Parties.

## **ARTICLE 11 – CESSATION OF COOPERATION AND RIGHT OF RETURN**

1. If either Party at any time following entry into force of this Agreement:
  - (A) does not comply with the provisions of Article 5, 6, 7, 8, or 9 of this Agreement;
  - (B) terminates, abrogates, or materially violates a safeguards agreement with the IAEA;

the other Party shall have the rights to cease further cooperation under this Agreement and to require the return of any nuclear material, equipment, or components transferred under this Agreement and any special fissionable material produced through their use.

If either Party exercises its rights under this Article to require the return of any material, equipment, or components, it shall promptly, after removal from the territory of the other Party, reimburse the other Party for the fair market value of such material, equipment, or components.

2. If the Government of the Republic of the Philippines following entry into force of this Agreement detonates a nuclear explosive device, the Government of the United States of America shall have the same rights as specified in paragraph 1 of this Article.

3. If the United States of America detonates a nuclear explosive using material, equipment, or components transferred pursuant to this Agreement or nuclear material used in or produced through the use of such items, the Government of the Republic of the Philippines shall have the same rights as specified in paragraph 1.

## **ARTICLE 12 – CONSULTATIONS, REVIEW, AND ENVIRONMENTAL PROTECTION**

1. The Parties shall consult at the request in writing of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The Parties shall consult, with regard to activities under this Agreement, to identify the international environmental implications arising from such activities and shall cooperate in protecting the international environment from radioactive, chemical, or thermal contamination arising from peaceful nuclear activities under this Agreement and in related matters of health and safety.

## **ARTICLE 13 - SETTLEMENT OF DISPUTES**

The Parties shall address any dispute concerning the interpretation or application of this Agreement by negotiation or any other mutually agreed upon peaceful means of dispute settlement through diplomatic channels.

## **ARTICLE 14 - ENTRY INTO FORCE, AMENDMENT, DURATION, AND TERMINATION**

1. This Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties informing each other that they have completed their respective domestic requirements for the entry into force of this Agreement.

2. This Agreement shall remain in force for a period of thirty (30) years, unless terminated by either Party. This Agreement may be terminated at any time by either Party on one (1) year's written notice to the other Party. This Agreement may be amended by written agreement of the Parties. Amendments to this Agreement shall enter into force on the date of the later note of an exchange of diplomatic notes between the Parties informing each other they have completed all applicable requirements for entry into force. The Parties intend to open discussions on extension

of this Agreement no less than two (2) years prior to the date of expiration through diplomatic channels.

3. Notwithstanding the termination or expiration of this Agreement or any cessation of cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9, and 11 of this Agreement shall continue in effect so long as any nuclear material, equipment, or components subject to Articles 5, 6, 7, 8, 9, and 11 of this Agreement remain in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such nuclear material, equipment, or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at <sup>San</sup> ~~San Francisco~~, this <sup>16</sup> day of ~~November~~ 2023, in duplicate, in the English language.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA:



FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
THE PHILIPPINES:

