

Agreement Between the
UNITED STATES DEPARTMENT OF ENERGY
and the
AUSTRALIAN SAFEGUARDS OFFICE
Concerning Research and Development
in
Nuclear Material Control, Accountancy, Verification,
Physical Protection, and Advanced Containment and Surveillance Technologies
for
International Safeguards Applications

The Department of Energy (DOE) and the Australian Safeguards Office (ASO) (hereafter called "the Parties"), sharing a desire to cooperate on research, development, testing, and evaluation of technology, equipment, and procedures in order to improve nuclear material control, accountancy, verification, physical protection and advanced containment and surveillance technologies for international safeguards applications, hereby agree as follows:

ARTICLE 1

Cooperation under this Agreement may include but is not limited to:

- 1.1 Exchange of information, equipment, funding, or personnel.
- 1.2 Exchange of loan of samples, materials, equipment, and components for evaluation and testing.
- 1.3 Joint projects for the research, development, testing, and evaluation of nuclear material control, accountancy, verification, physical protection and advanced containment and surveillance technologies, techniques, or procedures.

ARTICLE 2

- 2.1 A Permanent Coordinating Group (PCG) shall be established, with each Party designating two officials to serve as coordinators, to supervise the implementation of this Agreement. As mutually agreed, the PCG shall meet to evaluate all aspects of the cooperation under this Agreement. These meetings shall be held alternately in the United States and Australia.
- 2.2 All cooperative activities to be carried out under this Agreement shall be approved and monitored by the PCG. Each cooperative activity shall be described in a document defined as an Action Sheet which shall be approved by the PCG in writing and shall be annexed to this Agreement.

- 2.3 Technical management of the cooperation under this Agreement shall be carried out by project leaders designated by the coordinators. Project leaders shall be responsible for the working contacts between the Parties in their respective areas of cooperation.

ARTICLE 3

The following provisions shall apply concerning exchanges of equipment pursuant to this Agreement:

- 3.1 By mutual agreement, a Party may provide equipment to be utilized in a joint activity. In such cases, the sending Party shall supply, as soon 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.
- 3.2 Title to the equipment and necessary spare parts supplied by the sending Party for use in joint activities shall remain in the sending Party, and the property shall be returned to the sending Party upon completion of the joint activity, unless otherwise agreed.
- 3.3 Equipment provided pursuant to this Agreement shall be brought into operation at the host establishment only by mutual agreement between the Parties.
- 3.4 The host establishment shall provide the necessary premises for the equipment, shall provide for utilities such as electric power, water and gas, and normally shall provide materials to be tested, in accordance with the technical requirements which shall be as mutually agreed upon.
- 3.5 The responsibility and expenses for the transport of equipment and materials from the United States of America by plane or ship to an authorized port of entry in Australia convenient to the ultimate destination, and also responsibility for its safekeeping and insurance en route shall rest with DOE.
- 3.6 The responsibility and expenses for the transport of equipment and materials from Australia by plane or ship to an authorized port of entry in the United States convenient to the ultimate destination, and also responsibility for its safekeeping and insurance en route, shall rest with ASO.
- 3.7 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 4

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

- 4.1 Whenever an exchange of personnel is contemplated, each Party shall ensure the selection of adequate personnel with skills and competence necessary to conduct the activities planned under this Agreement. Each such exchange of personnel shall be mutually agreed in advance by an exchange of letters between the Parties, referencing this Agreement and its pertinent intellectual property provisions.
- 4.2 Each Party shall be responsible for the salaries, insurance, and allowances to be paid to its staff or its contractors.
- 4.3 Each Party shall pay for the travel and living expenses of its staff or its contractors when staying at the establishment of the host Party, unless otherwise agreed.
- 4.4 Each Party shall arrange for adequate accommodations for the other Party's staff or its contractors (and their families) on a mutually agreeable, reciprocal basis.
- 4.5 Each Party shall provide all necessary assistance to the staff of the other Party or its contractors as regards administrative formalities.
- 4.6 The staff of each Party or its contractors shall conform to the general rules of work and safety regulations in force at the host establishment.

ARTICLE 5

- 5.1 The Parties shall support the widest possible dissemination of information provided or exchanged under this Agreement subject to patent and to copyright restrictions.
 - (A) For the purpose of this Agreement, the term "information" means unclassified scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under this Agreement. No classified information exchange will occur under this Agreement.
 - (B) For the purpose of this Agreement, "business-confidential information" means any know-how, technical data, or technical, commercial, or financial information, that is developed outside this Agreement and that meets all of the following conditions:
 - (1) It is of a type customarily held in confidence for commercial reasons;
 - (2) It is not generally known or publicly available from other sources;
 - (3) It has not been previously made available by the owner to others without an obligation concerning its confidentiality;
 - (4) It is not already in the possession of the recipient without an obligation concerning its confidentiality.

5.2 Any business-confidential information furnished or transferred will be given full protection by the Parties in accordance with the laws and regulations of their respective countries.

5.3 Procedures.

(A) Any business-confidential information will be appropriately identified before it is furnished in the course of the cooperative activities under this Agreement. Responsibility for identifying such information will fall on the Party which furnishes it. Unidentified information will be assumed not to be information to be protected, except that a Party to the cooperative activity may notify the other Party, in writing, within a reasonable period of time after furnishing or transferring such information that such information is business-confidential information under the laws and regulations of its country. Such information will thereafter be protected in accordance with paragraph 5.2 of this Article. Any document which contains business-confidential information shall be clearly marked by the providing Party with the following (or substantially similar) restrictive legend:

"This document contains business-confidential information furnished in confidence under an agreement dated _____ between the DOE and the ASO and shall not be disseminated outside of these organizations, their contractors, and the concerned departments and agencies of the Governments of the United States and Australia without prior approval of _____. This notice shall be marked on any reproduction hereof, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction."

(B) Business-confidential information received under this Agreement may be disseminated by the receiving Party to:

- (1) persons within or employed by the receiving Party and to concerned government departments and agencies of the receiving Party; and
- (2) prime contractors or subcontractors of the receiving Party located within the geographical limits of the Party's nation, for use only within the framework of their contracts with the receiving Party in work relating to the subject matter of the business-confidential information; provided that any business-confidential information so disseminated shall be pursuant to an agreement of confidentiality and shall be marked with a restrictive legend substantially identical to that appearing in subparagraph 5.3 (A) of this article.

(C) With the prior written consent of the transmitting Party, the receiving Party may disseminate such business-confidential

information more widely than otherwise permitted in subparagraph 5.3(B) of this article. The Parties shall cooperate with each other in developing procedures for requesting and obtaining the prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its national laws and regulations.

- 5.4 If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of this article, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.
- 5.5 Information arising from seminars and other meetings arranged under this Agreement and information arising from the exchange of staff shall be treated by the Parties according to the principles of this Agreement provided, however, no business-confidential information communicated orally shall be subject to the limited disclosure requirements of this article unless the individual communicating such information places the recipient on notice as to the business-confidential character of the information communicated at the time of or prior to such communication.

ARTICLE 6

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant project agreements or annexes. The Parties agree to notify one another 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 article.

6.1 Scope

- (A) This article is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.
- (B) For purpose 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 Article 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 article by obtaining those rights from its own participants through contracts or other legal means, if necessary. This article does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

- (D) Disputes concerning intellectual property arising under this Agreement shall be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual 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 the United Nations Commission on International Trade Law (UNCITRAL) shall govern.
- (E) Termination or expiration of this Agreement shall not affect rights or obligations under this Article.

6.2 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, other than those rights described in paragraph 6.2(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 shall be entitled to national treatment with regard 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 shall be determined in implementing arrangements. If research is not designated as 'joint research' in the relevant implementing arrangement, rights to intellectual property arising from the research shall be allocated in accordance with paragraph 6.2(B)(1) above. In addition, each person named as an inventor shall, nonetheless, be entitled to national treatment with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policies of the participating institutions.

- (b) Notwithstanding paragraph 6.2(B)(2)(a) above, if a type of intellectual property protection is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide.

ARTICLE 7

Unless otherwise agreed, all costs resulting from cooperation pursuant to this Agreement shall be the responsibility of the Party that incurs them. The ability of the Parties to carry out their obligations is subject to the appropriation of funds by the appropriate governmental authority and to laws and regulations applicable to the Parties.

ARTICLE 8

This Agreement is without prejudice to other agreements which exist or could be concluded between the United States and Australia. The provisions of this Agreement shall not affect the rights or duties of the Parties specified under other agreements or arrangements, and shall not preclude the Parties from engaging in activities with other governments or persons, except that industrial property of a business-confidential nature shall have limited dissemination as set forth in Article 5 of this Agreement.

ARTICLE 9

All information or equipment transmitted by one Party to the other Party under this Agreement 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 by 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 10

All questions related to the interpretation or application of this Agreement shall be settled by the Parties by mutual agreement.

ARTICLE 11

This Agreement shall enter into force upon signature by each Party and shall remain in force for five (5) years. This Agreement may be modified or extended by mutual written agreement of the Parties. This Agreement may be terminated upon one (1) year advance notification, in writing, by the Party seeking to terminate. Such termination shall be without prejudice to any rights and interests which may have accrued under this Agreement to either Party up to the date of termination.

Done at Washington, D.C. this 1st day of October, 1992.

For the United States
Department of Energy

Victor E. Alessi
(Signature)

Victor E. Alessi
(Printed Name)

Director
Office of Arms Control
and Nonproliferation
Office of the Secretary
(Title)

For the Australian
Safeguards Office

John Carlson
(Signature)

John A. Carlson
(Printed Name)

Director of Safeguards
Australian Safeguards Office
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