

AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY

The Government of the Republic of India and the Government of the Republic of Korea, hereinafter referred to as the "Parties".

DESIRING to strengthen the friendly relations that exist between the Parties;

NOTING that nuclear energy provides a safe, environment friendly and sustainable source of energy;

AFFIRMING the desire of the Parties, as States with comprehensive capabilities in advanced nuclear technologies to develop bilateral cooperation in promoting the use of nuclear energy for peaceful purposes for mutual benefit;

RECOGNISING that the Republic of Korea, through its various national programmes, has developed independent and advanced nuclear technology and in order to secure its energy security as well as to combat climate change, is dedicated to expanding peaceful uses of nuclear energy through the advancement of its technological capacities;

RECOGNISING that India is committed to the full development of its national three-stage nuclear programme, including associated fuel cycle, to meet the twin challenges of energy security and protection of the environment and has a sovereign and inalienable right to carry out nuclear research and development activities for the welfare of its people and other peaceful purposes;

DESIRING in the interest of the Parties to develop such cooperation on the basis of mutual respect for sovereignty, non-interference in each other's internal affairs, equality, mutual benefit, reciprocity, with due respect for each other's nuclear programs and in accordance with the principles governing their respective nuclear policies and their respective international obligations;

DESIRING to establish bilateral cooperation for the development and use of nuclear energy for peaceful purposes with a view to achieving sustainable development and strengthening energy security on a reliable, stable and predictable basis;

HAVE AGREED as follows:

Article 1
DEFINITIONS

Definitions are given in the Annex, which shall form an integral part of the Agreement.

Article 2
OBJECTIVE AND SCOPE

1. The Parties shall cooperate in the use of nuclear energy for peaceful and non-explosive purposes in accordance with the provisions of this Agreement, having due regard for the principles of international law, in good faith, in accordance with the principles governing their respective nuclear policies as well as with their respective relevant international obligations.

2. Cooperation as referred to in paragraph 1 of this Article may cover the following areas:

- (a) basic and applied research regarding peaceful uses of nuclear energy;
- (b) design, construction, maintenance and decommissioning of nuclear reactors and other aspects as agreed between the Parties in conformity with appropriate regulatory requirements;
- (c) the development and use of nuclear energy applications in the fields of agriculture, health care, industry and environment;
- (d) nuclear fuel and nuclear fuel cycle management;
- (e) nuclear waste management;
- (f) nuclear safety, radiation and environment protection;
- (g) controlled thermonuclear fusion in particular in multilateral projects such as ITER;
- (h) the prevention of, and response to, emergency situations resulting from radioactive or nuclear accidents;

and any other field as jointly agreed by the Parties

3. Cooperation under the Agreement may take the following forms:

- (a) transfer of material, nuclear material, equipment, component, technology, facilities and services between the Parties or persons designated by them;
- (b) technology transfer on an industrial or commercial scale between the Parties or persons designated by them;
- (c) exchange and training of scientific and technical staff including students;
- (d) exchange of scientific and technical information;

- (e) participation by scientific and technical staff of one Party in research and development activities conducted by the other Party;
- (f) joint conduct of research and engineering activities, including joint research and experimentation based on balanced contributions;
- (g) organization of scientific and technical conferences, symposia and short term schools;
- (h) consultations and cooperation in relevant international fora;
- (i) nuclear cooperation projects in third countries;

and any other form of cooperation as jointly agreed by the Parties.

4. The Parties affirm that the purpose of this Agreement is to provide for peaceful nuclear cooperation and not to affect the unsafeguarded nuclear activities of either Party developed by them independent of this Agreement. Accordingly, nothing in this Agreement shall be interpreted as affecting the rights of the Parties to use for their own purposes nuclear material, material, equipment, components, information or technology produced, acquired or developed by them independent of any nuclear material, material, equipment, components, information or technology transferred to them pursuant to this Agreement. This Agreement shall be implemented in a manner so as not to hinder or otherwise interfere with any other activities involving the use of nuclear material, material, equipment, components, information or technology and unsafeguarded nuclear facilities produced, acquired or developed by them independent of this Agreement for their own purposes.

Article 3 IMPLEMENTING PROVISIONS

1. Cooperation between the Parties as defined in Article 2 shall be implemented in accordance with the provisions of this Agreement through:

- (a) specific agreements between the Parties or persons designated by the Parties with implementing this Agreement, intended in particular to detail scientific and technical programmes and arrangements for scientific and technical exchanges, and/ or
- (b) memoranda of understanding or contracts signed by the persons designated by the Parties on industrial realizations and the supply of material, nuclear material, services, equipment, setting up of facilities and localization issues and transfer of technology as appropriate.

2. Transfer of nuclear material, material, equipment, components and technology under this Agreement may be undertaken directly between the Parties or through persons designated by them. Such transfers shall be subject to this Agreement. Nuclear material, material, equipment, components and technology transferred from the territory of one Party to the territory of the

other Party, whether directly or through a third country, will be regarded as having been transferred pursuant to the Agreement only upon confirmation, by the appropriate authority of the recipient Party to the appropriate authority of the supplier Party, that such nuclear material, material, equipment, components and technology will be subject to this Agreement and have been received.

3. Each Party shall ensure that the material, nuclear material, equipment, components, facilities and technology subject to the provisions of this Agreement, as well as the nuclear material recovered or obtained as by-products, are exclusively held by persons under its jurisdiction and authorized by it to hold those items.

Article 4 FACILITATION OF VISITS

The Parties will facilitate visits of students and experts to their territory for the implementation of the provisions of this Agreement on a reciprocal basis. When execution of an agreement or contract pursuant to this Agreement between the Parties or persons designated by them requires exchanges of experts, the Parties shall facilitate entry of the experts to their territory and their stay therein. When other cooperation pursuant to this Agreement or under the aegis of international organization requires visits of students and experts, the Parties shall facilitate entry of the students and experts to their territory and their stay therein.

Article 5 NUCLEAR TRADE

1. Both Parties shall cooperate in the design, construction and commissioning of and services for nuclear power plants to be set up by them in conformity with appropriate regulatory requirements.

2. The Parties shall facilitate nuclear trade between themselves in the mutual interests of their respective industry, utilities and consumers and also, where appropriate, trade between third countries and either Party of items obligated to the other Party.

3. A Party shall not use the provisions of this Agreement for the purpose of interfering with the commercial activities of the other Party with third parties.

4. The Parties shall fulfill the terms of this Agreement within the framework of their respective national legislations, international obligations and administrative, tax and customs regulations and procedures.

Article 6 REPROCESSING AND ENRICHMENT

1. Reprocessing and any other alteration in form or content of nuclear material transferred pursuant to this Agreement and nuclear material used in

or produced through the use of material, nuclear material, equipment or technology so transferred shall be carried out in a national nuclear facility under IAEA safeguards. Any special fissionable material that may be separated thereby may be stored and utilized in national facilities in the recipient country under IAEA safeguards.

2. Enrichment up to twenty percent in the isotope 235 of uranium transferred pursuant to this Agreement, as well as uranium used in or produced through the use of equipment so transferred, may be carried out.

Article 7

CONFIDENTIALITY OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

1. The Parties shall guarantee the security and preserve the confidentiality of technical data and information designated as confidential by the Party providing that data and information under this Agreement. The technical data and information exchanged shall not be communicated to third parties, whether public or private, without prior written approval from the Party providing that technical data or information.

2. The Parties or persons designated by the Parties for the implementation of this Agreement shall protect in an adequate and effective manner intellectual property created and technology transferred within the framework of the cooperation undertaken pursuant to this Agreement and the specific agreements, memoranda of understanding and contracts referred to in Article 3.

3. This Agreement shall not affect the right of use of intellectual property rights gained by persons prior to this Agreement. The conditions of use, conferment and transfer of intellectual property rights shall be specified on a case-by-case basis in the specific agreements and contracts referred to in Article 3 of this Agreement.

Article 8

PEACEFUL USE AND IAEA SAFEGUARDS

1. The Parties shall ensure that the material, nuclear material, equipment, components, facilities and technology transferred under this Agreement, as well as the nuclear material recovered or obtained as by-products, are used for peaceful and non-explosive purposes.

2. Material, nuclear material, equipment, components and facilities transferred under this Agreement and notified by the supplier Party to that end, and also successive generations of nuclear material recovered or obtained as by-products, shall remain subject to the following:

- (a) with regard to such items transferred to India, they will remain subject to IAEA safeguards in accordance with the Agreement between the Government of India and the International Atomic Energy

Agency for the Application of Safeguards to Civilian Nuclear Facilities' which entered into force on 11 May 2009 (INFCIRC/754) as supplemented by an additional protocol signed on 15 May 2009 when in force.

(b) with regard to such items transferred to the Republic of Korea, they will remain subject to IAEA safeguards in accordance with the 'Agreement between the Government of the Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons' which entered into force on 14 November 1975 (INFCIRC/236) as supplemented by the Additional Protocol (INFCIRC/236/Add. 1).

3. If the IAEA decides that the application of safeguards is not possible, the supplier and the recipient country may consult and agree on appropriate verification measures.

4. The material, nuclear material, equipment, components, facilities and technology subject to the provisions of this Agreement, as well as the nuclear material recovered or obtained as by-products shall remain subject to the provisions of this Agreement until:

- (a) they have been transferred or retransferred beyond the jurisdiction of the recipient Party in accordance with the provisions of Article 10 of this Agreement, or returned to the Party having initially transferred them, or until
- (b) the Parties decide by mutual agreement that they are no longer subject to this Agreement and withdraw them from that jurisdiction, or until
- (c) it has been established by the IAEA, in accordance with the provisions for the termination of safeguards in the agreements between the Government of the Republic of India and the IAEA or between the Government of the Republic of Korea and the IAEA that they have been consumed or diluted to the extent that they are no longer usable for any nuclear activity relevant from the point of view of IAEA safeguards, or that they are no longer practicably recoverable.

Article 9 PHYSICAL PROTECTION

1. Each Party shall make sure that, within its territory, or outside its territory to the point where that responsibility is taken over by the other Party or by a third State, adequate measures to ensure the physical protection of the material, nuclear material, equipment and facilities referred to in this Agreement are adopted, in accordance with its national legislation and the international commitments to which it is a Party, in particular the Convention on the

Physical Protection of Nuclear Material of 26 October 1979 (hereinafter referred to as "the Convention")

2. In regard to nuclear material, the minimum levels of physical protection shall be those specified in annex I of the Convention. Each Party reserves the right, where necessary and in accordance with its applicable national laws and regulations, to apply stricter physical protection criteria.

3. Implementing measures of physical protection is the responsibility of each Party within its jurisdiction. In the implementation of those measures, each Party will be guided by the IAEA recommendations contained in the IAEA document INFCIRC 225/Rev.4.

4. Amendments to the IAEA recommendations on physical protection will only be effective under the terms of this Agreement following mutual written notification by the two Parties of their approval of these amendments.

Article 10 RETRANSFERS

A Party considering retransferring material, nuclear material, equipment, components, facilities and technology subject to the provisions of this Agreement to a third State, or transferring material, nuclear material, equipment, components, facilities and technology retrieved from equipment and facilities transferred originally or obtained from transferred equipment, components, facilities and technology, subject to the provisions of this Agreement, that Party shall only do so after a written consent for that purpose by the other Party and a commitment by the recipient of retransfers that:

- (a) such retransfers shall be used for peaceful and non-explosive purposes only,
- (b) IAEA safeguards shall be implemented on such retransfers, and
- (c) adequate physical protection measures shall be implemented on all such retransfers.

Article 11 CONSULTATIONS

1. [The Parties undertake to consult at the request of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy on a stable, reliable and predictable basis. The Parties shall consult in a manner and through arrangement specified in paragraph 2 of this Article in order to realize full cooperation envisaged under Articles 2 and 3 and effective implementation of this Agreement.]

2. Representatives of the Parties shall meet at the request of either Party with a view to consulting on matters arising from the application of this Agreement.

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3. Each Party shall endeavour to avoid any action that affects cooperation specified under Article 2 of this Agreement. If either Party, at any time following the entry into force of this Agreement decides that the other Party does not comply with any of the provisions of this Agreement, the Parties shall promptly hold consultations with a view to resolving the matter in a way that protects the legitimate interests of both Parties, it being understood that rights of either Party under Articles 13.4, 13.5 and 13.6 remain unaffected.

4. The dispute settlement procedures resulting from contractual obligations relating to the implementation of this Agreement may be specified in the concerned commercial contracts between the persons designated by the respective Parties. - Article

Article 12 AMENDMENTS

1. Both Parties agree that amendments to the terms and provisions contained in this Agreement shall be carried out by mutual consent through written agreement between the Parties.

2. Any amendment to this Agreement shall be subject to ratification, acceptance or approval by the Parties, in accordance with their respective constitutional provisions. Each Party shall notify the other of the completion of these procedures. Amendments shall enter into force on the date the later of these notifications is received.

Article 13 RATIFICATION, DURATION AND TERMINATION

1. Each Party shall notify the other of the completion of the procedures it requires for the entry into force of this Agreement. - Article

2. This Agreement shall enter into force on the date the later of these notifications is received.

3. This Agreement shall remain in force for a period of forty (40) years and it shall be automatically renewable for periods of twenty (20) years. A Party that does not wish to renew this Agreement shall notify the other Party by giving a six months' written notice. - (20)

4. Either Party shall have the right to terminate this Agreement prior to its expiration on one year's written notice to the other Party. A Party giving notice of termination shall provide the reasons for seeking such termination. Both Parties consider it extremely unlikely that actions would be taken by either Party which would cause the other Party to terminate this Agreement. If a Party seeking termination cites a violation of the Agreement as the reason for notice for seeking termination, the Parties shall promptly hold consultations and consider whether the action was caused inadvertently or otherwise and whether the violation could be considered as material.

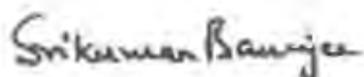
5. The Agreement shall terminate after one year from the date of the written notice, unless the notice has been withdrawn by the providing Party in writing prior to the date of termination. The Party seeking termination has the right to cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of reasons for seeking termination under this Agreement has not been possible or cannot be achieved through consultation. The termination of cooperation shall be without prejudice to the implementation of contracts, ongoing projects and fuel supply commitments made under this Agreement prior to the termination of cooperation.

6. In the event this Agreement is not renewed in accordance with the procedure referred to in paragraph 3 of this Article or is terminated in accordance with the procedure referred to in paragraph 4 of this Article:

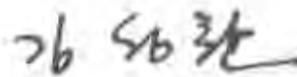
- (a) the relevant provisions of this Agreement shall remain applicable to the specific agreements and contracts in force signed under Article 3;
- (b) the relevant provisions of Articles 6, 8, 9, 10 and 11 shall continue to apply, when applicable, to the material, nuclear material, equipment, facilities and technology subject to the provisions of this Agreement and transferred pursuant to this Agreement, as well as to the nuclear material recovered or obtained as by-products.

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

DONE at Seoul on 25th day of July, 2011, in duplicate, in the English, Hindi and Korean languages, all texts being equally authentic. In case of divergence in interpretation, the English text will prevail.



(Dr. Srikumar Banerjee)
Secretary
Department of Atomic Energy
For the Government of
the Republic of India



(Kim Sung-hwan)
Minister of Foreign Affairs & Trade
For the Government of
the Republic of Korea

ANNEX

This Annex is an integral part of the Agreement.

For the purposes of this Agreement:

- (a) "Component" means a component part of equipment, or other item so designated by the Parties;
- (b) "Person" means any natural person or legal entity subject to the territorial jurisdiction of either Party but does not include the Parties;
- (c) "Material" means non-nuclear material for reactors such as heavy water or any other material usable in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, as may be jointly designated by the appropriate authorities of the Parties;
- (d) "Nuclear Material" means any "source material" or "special fissionable material" as those terms are defined in Article XX of the Statute of the IAEA;
- (e) "Nuclear material recovered or obtained as by-products" means nuclear material obtained from nuclear material transferred under this Agreement, or by processing or reprocessing it once or several times with the help of equipment or facilities transferred under this Agreement or with the help of equipment and facilities based upon technology transferred under this Agreement;
- (f) "Equipment" means any equipment in nuclear operation including nuclear reactor, nuclear pressure vessel, reactor fuel charging and discharging equipment, reactor control rods, reactor pressure tubes, reactor primary coolant pumps, zirconium tubing, nuclear reactor internals, equipment for fuel fabrication and any other item as identified by the Parties in accordance with their national control lists and included in this Agreement by mutual consent of the Parties;
- (g) "Facility" means a nuclear reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation;
- (h) "Technology" means the specific information necessary for the "development", "production" or "use" of items such as material, nuclear material and equipment with the exception of data "In the public domain" or of "Basic scientific research";
- (i) "Development" refers to all stages prior to "production", such as design, design research, design analysis, design concepts, assembly and testing of

prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design and layouts;

(j) "Production" means all production phases such as construction, production engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance;

(k) "Use" means operation, installation (including on-site installation), maintenance, repairs, overhaul and refurbishing;

(l) "Basic scientific research" means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena and observable facts, not primarily directed towards a specific practical aim or objective;

(m) "In the public domain" – "in the public domain", as it applies herein, means technology that has been made available without restrictions upon its further dissemination (Copyright restrictions do not remove technology from being in the public domain.);

(n) "Information" means any information that is not in the public domain and is transferred in any form pursuant to this Agreement and is so designated and documented in hard copy or digital form by agreement of the Parties that it shall be subject to this Agreement, but will cease to be information whenever the Party transferring the information or any third party legitimately releases it in the public domain;

(o) "Intellectual property" has the meaning given by Article 2 of the constituent instrument of the World Intellectual Property Organization (WIPO) signed in Stockholm on 14 July 1967.