NUCLEAR SAFETY

Arrangement Between the
UNITED STATES OF AMERICA
and KAZAKHSTAN

Signed at Vienna September 15, 2009

with

Addendum

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."

KAZAKHSTAN

Nuclear Safety

Arrangement signed at Vienna September 15, 2009;
Entered into force September 15, 2009.
With addendum.

ARRANGEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE ATOMIC ENERGY COMMITTEE OF THE MINISTRY OF ENERGY
AND MINERAL RESOURCES OF THE REPUBLIC OF KAZAKHSTAN

FOR THE EXCHANGE OF TECHNICAL INFORMATION
AND
COOPERATION IN NUCLEAR SAFETY MATTERS

SEPTEMBER 15, 2009

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The United States Nuclear Regulatory Commission (hereinafter called the NRC) and the Atomic Energy Committee of the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan (hereinafter called the KAEC), the two together hereinafter referred to as the Parties;

Having a mutual interest in a continuing exchange of information pertaining to regulatory matters and of standards required or recommended by their organizations for the regulation of safety, safeguards, physical security, waste management, spent fuel storage and transport, decommissioning, and environmental impact of nuclear facilities;

Having similarly cooperated under the terms of a five-year Arrangement for the Exchange of Technical Information and Cooperation in Nuclear Safety Matters, originally signed with the Atomic Energy Agency of the Republic of Kazakhstan on February 14,1994, such Arrangement including provision for its extension every five years as mutually agreed upon by the Parties;

Having twice signed such Arrangement for five-year periods, on December 20, 1999, and September 22, 2004, the Parties, indicating their mutual desire to continue the cooperation, so establish such Arrangement for another five years; and,

Have agreed as follows:

I. SCOPE OF THE ARRANGEMENT

A. Technical Information Exchange

To the extent that the NRC and the KAEC are permitted to do so under the laws, regulations, and policy directives of their respective countries, the Parties will continue the exchange of the following types of technical information relating to the regulation of safety, safeguards, physical security, waste management, spent fuel storage and transport, decommissioning, and environmental impact of designated nuclear facilities and to nuclear safety research programs:

1. Topical reports concerning technical safety, safeguards, physical security, waste management, spent fuel storage and transport, decommissioning, and environmental effects written by or for one of the Parties as a basis for, or in support of, regulatory decisions and policies.

2. Documents relating to significant licensing actions and safety and environmental decisions affecting nuclear facilities.

3. Detailed documents describing the NRC process for licensing and regulating certain U.S. facilities designated by the KAEC as similar to certain facilities being built or planned in Kazakhstan and equivalent documents on such Kazakhstan facilities.

4. Information in the field of nuclear safety research, including safety information from technical areas to be further agreed by the Parties. Cooperation in research areas may require a separate arrangement, as determined to be necessary by the research organizations of one or both of the Parties. Each Party will transmit immediately to the other information concerning research results that requires early attention in the interest of public safety, along with an indication of significant implications.

5. Reports on operating experience, such as reports on nuclear incidents, accidents and shutdowns, and compilations of historical reliability data on components and systems.

6. Regulatory procedures for the safety, safeguards, physical security, waste management, spent fuel storage and transport, decommissioning, and environmental impact evaluation of nuclear facilities.

7. Early advice of important events, such as serious operating incidents and government-directed reactor shutdowns that are of immediate interest to the Parties.

8. Copies of regulatory standards required to be used, or proposed for use, by the regulatory organizations of the Parties.

B. Cooperation in Nuclear Safety Research

The terms of cooperation for joint programs and projects of nuclear safety research, or those programs and projects under which activities are divided between the two Parties, including the use of test facilities and/or computer programs owned by either Party, will be considered on a case-by-case basis and may be the subject of a separate agreement, if determined to be necessary by the research organizations of one or both of the Parties. When not the subject of separate agreement, the terms of cooperation may be established by an exchange of letters between the research organizations of the Parties, and will be subject to the terms and conditions of the present Arrangement. Technical areas specified by such exchanges of letters may be modified subsequently by mutual consent. Temporary assignments of personnel by one Party in the other Party's agency will also be considered on a case-by-case basis and will, in general, require a separate letter of agreement.

C. Training and Assignments

Within the limits of available resources and subject to the availability of appropriated funds, the NRC will try to assist the KAEC in providing certain training and experience for KAEC safety personnel. Unless otherwise agreed, costs of salary, allowances, and travel of KAEC participants will be paid by the KAEC. The following are typical of, but not necessarily restricted to the kinds of training and experience that may be provided:

1. KAEC inspector accompaniment of NRC inspectors on reactor operation and reactor construction inspection visits in the U.S., including extended briefings at NRC regional inspection offices.

2. Participation by KAEC employees in NRC staff training courses.

3. Assignment of KAEC experts for 6-12 month periods within the NRC staff to work on NRC staff duties and gain on-the-job experience.

4. Possible training assignments within the radiation control programs of interested NRC Agreement States.

D. Additional Safety Advice

To the extent that the documents and other information provided by the NRC as described in SCOPE OF THE ARRANGEMENT, above, are not adequate to meet KAEC needs for technical advice, the Parties will consult on the best means for fulfilling such needs. The NRC will attempt, within the limits of appropriated resources and statutory authority, to assist the KAEC in meeting these needs. For example, within these limitations, the NRC will attempt to meet requests that come through the International Atomic Energy Agency (IAEA) for technical assistance missions to Kazakhstan by NRC safety experts.

II. ADMINISTRATION

A. The exchange of Information under this Arrangement will be accomplished through letters, reports, and other documents, and by visits and meetings arranged in advance on a case-by-case basis. A meeting will be held annually, or at such other times as mutually agreed, to review the exchange of information and cooperation under this Arrangement, to recommend revisions to the Arrangement, and to discuss topics coming within the scope of the cooperation. The time, place, and agenda for such meetings will be agreed upon in advance. Visits which take place under the Arrangement, including their schedules, will have the prior approval of the two administrators referred to in paragraph II.B.

B. An administrator will be designated by each Party to coordinate its participation in the overall exchange. The administrators will be the recipients of all documents transmitted under the exchange, including copies of all letters unless otherwise agreed. Within the terms of the exchange, the administrators will be responsible for developing the scope of the exchange, including agreement on the designation of the nuclear energy facilities subject to the exchange, and on specific documents and standards to be exchanged. The Parties may appoint one or more technical coordinators as direct contacts for specific disciplinary areas. These technical coordinators will assure that both administrators receive copies of all transmittals. These detailed arrangements are intended to assure, among other things, that a reasonably balanced exchange giving access to equivalent available information is achieved and maintained.

C. The administrators will determine the number of copies to be provided of the documents exchanged. Each document will be accompanied by an abstract in English, 250 words or less, describing its scope and content.

D. The application or use of any information exchanged or transferred between the Parties under this Arrangement will be the responsibility of the receiving Party, and the transmitting Party does not warrant the suitability of such information for any particular use or application.

E. Recognizing that some information of the type covered in this Arrangement is not available within the agencies which are Parties to this Arrangement, but is available from other agencies of the governments of the Parties, each Party will assist the other to the maximum extent possible by organizing visits and directing inquiries concerning such information to appropriate agencies of the government concerned. The foregoing will not constitute a commitment of other agencies to furnish such information or to receive such visitors.

III. EXCHANGE AND USE OF INFORMATION

The Parties support the widest possible dissemination of information provided or exchanged under this Arrangement, subject to the requirements of each party's national laws and regulations regarding the protection of proprietary or other confidential or privileged information as may be exchanged hereunder, and to the provisions of the Intellectual Property Addendum, which is an integral part of this Arrangement.

A. For the purposes of this Arrangement, the term "information" means nuclear energy-related regulatory, safety, safeguards, physical security, waste management, scientific, or technical data, results or methods of research and development, and any other knowledge intended to be provided or exchanged under this Arrangement.

B. For the purposes of this Arrangement, the term "proprietary information" means information made available under this Arrangement which contains trade secrets or other privileged or confidential information (such that the person having the information may derive an economic benefit from it or may have a competitive advantage over those who do not have it), and may only include information which:

(1) has been held in confidence by its owner;

(2) is of a type which is customarily held in confidence by its owner;

(3) has not been transmitted by the owner to other entities (including the receiving Party) except on the basis that it be held in confidence;

(4) is not otherwise available to the receiving Party from another source without restrictions on its further dissemination; and

(5) is not already in the possession of the receiving Party.

C. For the purposes of this Arrangement, the term "other confidential or privileged information" means information, other than "proprietary information," which is protected from public disclosure under the laws, policies, and regulations of the country providing the information and which has been transmitted and received in confidence, or is otherwise restricted by the provider.

D. A Party receiving documentary proprietary information pursuant to this Arrangement will respect the privileged nature thereof, provided such proprietary information is clearly marked with the following (or substantially similar) restrictive legend:

> This document contains proprietary information furnished in confidence under an Arrangement dated September 16, 2009, between the United States Nuclear Regulatory Commission and the Atomic Energy Committee of the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan and will not be disseminated outside these organizations, their consultants, contractors, and licensees, and concerned departments and agencies of the Government of the United States and the ministries of the Government of the Republic of Kazakhstan without the prior approval of (name of the transmitting Party).

This notice will be marked on any reproduction hereof, in whole or in part. These limitations will automatically terminate when this information is disclosed by the owner without restrictions.

This restrictive legend will be respected by the Parties to this Arrangement. Proprietary information bearing this restrictive legend will not be made public or otherwise disseminated in any manner unspecified by or contrary to the terms of this Arrangement without the prior written consent of the transmitting Party. Proprietary information bearing this restrictive legend will not be used by the receiving Party or its contractors and consultants for any commercial purposes without the prior written consent of the transmitting Party.

E. In general proprietary information received under this Arrangement may be freely disseminated by the receiving Party without prior consent to persons within or employed by the receiving Party, and to concerned Government departments and Government agencies, or Government ministries in the country of the receiving Party, provided:

(1) such dissemination is made on a case-by-case basis to persons, departments and agencies, or ministries, having a legitimate need for the proprietary information; and,

(2) such proprietary information shall bear the restrictive legend appearing in Section III.D. of this Arrangement.

F. In addition, proprietary information may be disseminated without prior consent to contractors or consultants of the receiving party located within the geographical limits of that Party's nation, provided:

(1) that the proprietary information is used by such contractors and consultants only for work within the scope of their contracts with the receiving Party in work relating to the subject matter of the proprietary or other confidential or privileged information, and shall not be used by such contractors and consultants for any other private commercial purposes; and,

(2) that such dissemination is made on a case-by-case basis to contractors and consultants having a legitimate need for the proprietary information and who have executed a non-disclosure agreement; and,

(3) that such proprietary information shall bear the restrictive legend appearing in Section III.D. of this Arrangement.

G. With the prior written consent of the Party furnishing proprietary information under this Arrangement, the receiving Party may disseminate such proprietary information more widely than otherwise permitted under the terms set forth in Section III.E. and F. of this Arrangement. The Parties will endeavor to grant such approval to the extent permitted by their respective national laws, regulations and policies, provided:

(1) that the entities receiving proprietary information under Section III.G. of this Arrangement, including domestic organizations permitted or licensed by the receiving Party to construct or operate nuclear production or utilization facilities,

or to use nuclear materials and radiation sources, provided that such proprietary or other confidential or privileged information is used only within the terms of the permit or license;

(2) that the entities receiving proprietary information under this Section III.G. of this Arrangement, including domestic organizations permitted or licensed by the receiving Party to construct or operate nuclear production or utilization facilities, shall not use such proprietary information for any private commercial purposes; and,

(3) that the entities receiving proprietary information under Section III.G. of this Arrangement that are domestic organizations permitted or licensed by the receiving Party, agree to use the proprietary information only for activities carried out under or within the terms of their specific permits or license.

H. A Party receiving under this Arrangement other confidential or privileged information will respect its confidential nature, provided such information is clearly marked so as to indicate its confidential or privileged nature and is accompanied by a statement indicating:

(1) that the information is protected from public disclosure by the Government of the transmitting Party, and,

(2) that the information is transmitted under the condition that it be maintained in confidence.

I. Other confidential or privileged information may be disseminated in the same manner as that set forth in paragraph E, F, and G., above.

J. Non-documentary proprietary or other confidential or privileged information provided in seminars and other meetings arranged under this Arrangement, or information arising from attachments of staff, use of facilities, or joint projects, will be treated by the Parties according to the principles specified for documentary information in this Arrangement; provided, however, that the Party communicating such proprietary or other confidential or privileged information has placed the recipient on notice as to the character of the information communicated.

K. If, for any reason, 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 will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action. Nothing contained in this Arrangement will preclude a Party from using or disseminating information received without restriction by a Party from sources outside of this Arrangement.

IV. FINAL PROVISIONS

A. This Arrangement will enter into force upon signature and, subject to paragraph B. of this Article, will remain in force for a period of five years. It may be extended for a further period of time by written agreement of the Parties.

B. Either Party may terminate this Arrangement after providing the other Party written notice at least 180 days prior to its intended date of termination.

C. Nothing contained in this Arrangement will require either Party to take any action which would be inconsistent with its country's existing laws, regulations, and policy directives. No nuclear information related to proliferation-sensitive technologies will be exchanged under this Arrangement. Should any conflict arise between the terms of this Arrangement and those laws, regulations, and policy directives, the Parties agree to consult before any action is taken.

D. Cooperation under this Arrangement will be governed by the laws and regulations of the respective countries. Any dispute or questions between the Parties concerning the interpretation or application of this Arrangement arising during its term will be settled by mutual agreement of the Parties.

E. Unless otherwise agreed, all costs resulting from cooperation pursuant to this Arrangement will be the responsibility of the Party that incurs them. The Parties obligations under this Arrangement are subject to the availability of appropriated funds and to laws and regulations applicable to the Parties.

F. All information protected by provisions of this Arrangement as proprietary or other confidential or privileged information will remain so protected for the duration of this Arrangement and after this Arrangement is expired or terminated, unless otherwise agreed by the Parties in writing.

DONE at Vienna this 15 day of September 2009, in the English language.

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION
THE UNITED STATES OF AMERICA:

Gregory B. Jaczko, Chairman

FOR THE MINISTRY OF ENERGY AND
MINERAL RESOURCES OF THE OF
REPUBLIC OF KAZAKHSTAN:

Asset Magauov, Vice Minister

INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Article III. of this Arrangement:

I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Arrangement and relevant implementing arrangements. Rights to such intellectual property shall be allocated as provided in this Annex.

II. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Arrangement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Arrangement, "intellectual property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967 and may include other subject matter as agreed by the Parties.

C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex. This Annex 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. Except as otherwise provided in this Arrangement, disputes concerning intellectual property arising under this Arrangement shall be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual arrangement 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 Arrangement shall not affect rights or obligations under this Annex.

III. 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 Arrangement. 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 III.A. above, shall be allocated as follows:

(1) Visiting researchers shall receive rights, awards, bonuses and royalties in accordance with the policies of the host institution.

(2) (a) Any intellectual property created by persons employed or sponsored by one Party under cooperative activities other than those covered by paragraph III.(B)(1) shall be owned by that Party. Intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.

(b) Unless otherwise agreed in an implementing or other arrangement, each Party shall have within its territory a right to exploit or license intellectual property created in the course of the cooperative activities.

(c) The rights of a Party outside its territory shall be determined by mutual arrangement considering the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property and such other factors deemed appropriate.

(d) Notwithstanding paragraphs III.B(2)(a) and (b) above, if either Party believes that a particular project is likely to lead to or has led to the creation of intellectual property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the intellectual property. If an arrangement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the project in question shall be terminated at the request of either Party. Creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties as provided in paragraph III.B(2)(a).

(e) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Arrangement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. 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, and 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.