NUCLEAR SAFETY

Arrangement Between the
UNITED STATES OF AMERICA
and JAPAN

Signed at Vienna September 22, 2010

with

Annex

NOTE BY THE DEPARTMENT OF STATE

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

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

JAPAN

Nuclear Safety

Arrangement signed at Vienna September 22, 2010;
Entered into force September 22, 2010.
With annex.

ARRANGEMENT

BETWEEN

THE NUCLEAR REGULATORY COMMISSION
OF THE UNITED STATES (NRC)

AND

THE MINISTRY OF ECONOMY, TRADE AND INDUSTRY OF
JAPAN (NISA)

FOR THE EXCHANGE OF TECHNICAL INFORMATION

AND

COOPERATION IN NUCLEAR SAFETY MATTERS

September 22, 2010

IMPLEMENTING ARRANGEMENT
BETWEEN
THE NUCLEAR REGULATORY COMMISSION (NRC)
OF THE UNITED STATES OF AMERICA
AND
THE NUCLEAR AND INDUSTRIAL SAFETY AGENCY
OF THE MINISTRY OF ECONOMY, TRADE AND INDUSTRY
OF JAPAN (NISA)
FOR COOPERATION IN THE FIELD OF NUCLEAR REGULATORY MATTERS

The Nuclear Regulatory Commission of the United States of America (hereinafter referred to as "the NRC") on the one hand, and the Nuclear and Industrial Safety Agency of The Ministry of Economy, Trade and Industry of Japan (hereinafter referred to as "the NISA") on the other hand (hereinafter jointly referred to as "the Parties");

Recognizing the "Agreement for Cooperation between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy" signed on November 4, 1987 (hereinafter referred to as "the Agreement"); and the Exchange of Notes between the Government of the United States of America and the Government of Japan concerning cooperation in the field of nuclear regulatory matters and nuclear safety research and development under the Agreement, effected at Washington on October 15, 1997 (hereinafter referred to as "the Exchange of Notes") and extended by the Notes exchanged between the two Governments on October 10, 2002 and October 12, 2007;

Recognizing also that the NRC and the Agency for Natural Resources and Energy of Japan (hereinafter referred to as "the ANRE") entered into the five-year Implementing Arrangement for cooperation in the field of nuclear regulatory matters and nuclear safety research and development signed in Tokyo on October 23, 1997 to set forth the detailed terms and conditions of the Exchange of Notes, and that the Notes effected at Washington on October 10, 2002 identified the NISA as the successor agency to the ANRE, with all of its rights and obligations under the Exchange of Notes; and

Acknowledging that the NRC and the ANRE cooperated for the exchange of technical information in the nuclear regulatory matters and nuclear safety research since May 30, 1974, and that the NRC and the NISA desire to continue their cooperation on regulatory matters,

Have agreed as follows pursuant to the provisions of paragraph 1 (a) (v) of Article 2 of the Agreement and paragraph 3 of the Exchange of Notes:

I. SCOPE OF THIS ARRANGEMENT

A. Information Exchange

To the extent that the NRC and the NISA 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 information relating to the regulation of safety, physical protection, waste management, radiation protection, and environmental effect of designated nuclear facilities and to nuclear safety research programs on an equal and reciprocal basis:

1. Topical reports concerning technical safety, physical protection, waste management, radiation protection, 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, physical protection, waste management, radiation protection, and environmental decisions affecting nuclear facilities.

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

4. Information in the field of nuclear safety research and development which the Parties have the right to disclose, either in the possession of one of the Parties or available to it, including nuclear safety information. 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 including security issues, accidents and shutdowns, and compilations of historical reliability data on components and systems.

6. Regulatory procedures for the safety, physical protection, waste management, radiation protection, and environmental effect 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. (It is confirmed that the exchange of the above mentioned types of information shall not be construed to prejudice the rights and obligations of the United States of America and Japan under the Convention on Early Notification of a Nuclear Accident to which the two States are 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

1. This Arrangement will facilitate the joint cooperation between the Parties in the areas of nuclear safety research and development conducted by the Parties to confirm and improve the safety of nuclear facilities and nuclear waste disposal and to support the regulatory process.

2. The execution of joint programs and projects of nuclear safety research and development, or those programs and projects under which activities are divided between the 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 agreements or exchanges of letters between the Parties or their designees as defined in paragraph I.D., subject to the terms and conditions of this Arrangement.

3. The joint programs and projects in nuclear safety research and development may include the following forms:

   a. Temporary assignments of personnel by one Party or its designees to the other Party or its designees, or other facility that the other Party owns or in which it sponsors research. These will be considered on a case-by-case basis and may be the subject of an agreement between the Parties or their designees, or between one Party and the designee of the other Party.

   b. In addition, the use by one Party or its designees of facilities which are owned by the other Party or its designees, or in which research is being sponsored by the other Party or its designees will also be considered on a case-by-case basis. Such use of facilities may be the subject of an agreement between the Parties or their designees, or between one Party and a designee of the other Party. The use of facilities owned by a designee of a Party may be subject to commercial terms and conditions, as determined to be necessary by the Parties.

   c. If either Party wishes to visit, assign personnel, or use the facilities owned or operated by entities other than the Parties, the Parties recognize that the approval of such entities will, in general, be required in respect to the terms upon which such visit, assignment or use will be made.

C. Exchange of Experts

The exchange of experts between the Parties and other organizations to be designated by each Party may be enhanced, insofar as it is permitted under the laws, regulations, or policy directives of their respective countries, by mutual agreement of the Parties with a view to facilitating the exchange of information under this Arrangement. Within the limits of available resources and subject to the availability of appropriated funds, the Parties will try

to assist each other by providing certain training and experience for nuclear regulators and/or nuclear safety personnel. Unless otherwise agreed, costs of salary, allowances, and travel of participants will be paid by the Party that incurs them.

D. Designees

Subject to the approval of the other Party, each Party may designate non-governmental institutes or organizations (hereinafter referred to as "the designees") which assist in the implementation of cooperation under this Arrangement, provided that each Party ensures by contract with its own designees or otherwise that its own designees are under its control with respect to the implementation of cooperation under this Arrangement.

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. Meetings will be held at such times as mutually agreed to review the exchange of information and cooperation under this Arrangement, to recommend revisions to the provisions of 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 administrators referred to in paragraph II.B. of this Arrangement.

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 facilitating the exchange, including agreement on the designation of the nuclear facilities subject to the exchange, and on specific documents and standards to be exchanged. One or more technical coordinators may be appointed 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 describing its scope and content.

D. The application or use of any information exchanged or transferred between the Parties under this Arrangement will be under 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.

F. Nothing contained in this Arrangement will require either Party to take any action which would be inconsistent with its existing laws, regulations, and policy directives. No restricted data and sensitive nuclear technology specified in Article 1 (i) and (j) of the Agreement will be exchanged under this Arrangement.

III. EXCHANGE AND USE OF INFORMATION

A. General

The Parties support the widest possible dissemination of information provided, created or exchanged under this Arrangement, subject to the requirements of each Party's national laws, regulations and policies, the need to protect business confidential and other sensitive or privileged information, and subject to the provisions of the Intellectual Property Rights in Annex, hereby incorporated into this Arrangement. Each Party undertakes to maintain confidentiality of information provided from a Party pursuant to this Arrangement, respecting the nature of the information. Each Party also undertakes not to use information for criminal investigation, prosecution or judicial proceedings without prior consent of relevant authorities of the Transmitting Party's country.

B. Definitions

1. The term "information" means unclassified information relating to the regulation of safety, physical protection, waste management, radiation protection, and environmental effect of designated nuclear energy facilities and to nuclear safety research programs.

2. The term "business confidential information" means information created or exchanged under this Arrangement which contains trade secrets or other privileged or sensitive commercial information (such that the person having the information may derive a commercial benefit from it or may have a commercial advantage over those who do not have it), and may only include information which:

   a. has been held in a protected manner by its owner;

   b. is of a type which is customarily held in a protected manner by its owner;

c. has not been transmitted by the owner to other entities (including the Receiving Party) except on the basis that it be held in a protected manner;

d. is not otherwise available to the Receiving Party from another source without restriction on its further dissemination; and

e. is not already in the possession of the Receiving Party.

3. The term "other sensitive or privileged information" means information other than "business confidential information", which has been transmitted and received in a protected manner under this Arrangement and is protected from public disclosure under the laws, regulations, or policies of the country of the Party providing the information, or is otherwise restricted by the provider.

C. Marking Procedures for Documentary Business Confidential Information

A Party receiving documentary business confidential information pursuant to this Arrangement will respect the privileged nature of such information, provided that such business confidential information is clearly marked with the following (or substantially similar) restrictive legend:

> "This document contains business confidential information furnished in a protected manner under the Implementing Arrangement dated (the last date of signature to this Arrangement)between the Nuclear Regulatory Commission of the United States of America and the Nuclear and Industrial Safety Agency of Japan and will not be disseminated outside these organizations, their consultants, contractors, and licensees, or concerned departments and agencies of the Government of the United States and the Government of Japan, without the prior written approval of (name of Transmitting Party). This notice will be marked on each page of any reproduction hereof, in whole or in part. These limitations will automatically terminate when the business confidential information is disclosed by the owner without restriction."

This restrictive legend shall be respected by the Parties. Business confidential information bearing this restrictive legend shall not be made public or otherwise disseminated in any manner unspecified or contrary to the terms of this Arrangement without the prior written consent of the Transmitting Party. Business confidential information bearing this restrictive legend shall 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.

D. Dissemination of Documentary Business Confidential Information

1. In general, business confidential information received under this Arrangement may be 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 in the country of the Receiving Party, provided:

a. that such dissemination is made on a case-by-case basis to persons or departments and agencies having a legitimate need for the business confidential information; and

b. that such business confidential information shall bear the restrictive legend appearing in paragraph III. C. of this Arrangement.

2. Business confidential information received under this Arrangement may be disseminated by the Receiving Party without prior consent to contractors and consultants of the Receiving Party located within the geographical limits of that Party's nation, provided:

a. that the business confidential information is used by such contractors and consultants only for work within the scope of their contracts with the Receiving Party relating to the subject matter of the business confidential information, and shall not be used for any other private commercial purposes;

b. that such dissemination is made on a case-by-case basis to such contractors and consultants having a legitimate need for the business confidential information and who have executed a non-disclosure agreement; and

c. that such business confidential information shall bear the restrictive legend appearing in Paragraph III.C. of this Arrangement.

3. With the prior written consent of the Party furnishing business confidential information under this Arrangement, the Receiving Party may also disseminate such proprietary information to domestic organizations of the Receiving Party located within the geographical limits of that Party's nation. The Parties will endeavor to grant such approval to the extent permitted by their respective national laws, regulations and policies, provided:

a. that such domestic organizations are permitted or licensed by the Receiving Party to construct or operate nuclear installations, or to use nuclear materials and radiation sources, and have a legitimate need for the business confidential information and have executed a non-disclosure agreement;

b. that such domestic organizations shall not use such business confidential information for any private commercial purposes; and

c. that such domestic organizations are permitted or licensed by the Receiving Party, and agree to use the business confidential information only for activities carried out under or within the terms of their specific permit or license.

E. Marking Procedures for Other Sensitive or Privileged Information of a Documentary Nature

A Party receiving under this Arrangement other sensitive or privileged information will respect its protected nature, provided such information is clearly marked so as to indicate its protected 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.

F. Dissemination of Other Sensitive or Privileged Information of a Documentary Nature

Other sensitive or privileged information may be disseminated in the same manner as that set forth in paragraph III. A."General" and D."Dissemination of Documentary Business Confidential Information".

G. Non-Documentary Business Confidential or Other Sensitive or Privileged Information

Non-documentary business confidential or other sensitive or privileged information provided in seminars and other meetings organized under this Arrangement, or information arising from the 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 business confidential or other sensitive or privileged information has placed the recipient on notice as to the character of the information communicated.

H. Consultation

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 Arrangement, it will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.

I. Other

Nothing contained in this Arrangement will preclude a Party from using or disseminating information received without restriction by the Party from sources outside of this Arrangement.

IV. COSTS

Except when otherwise specifically agreed upon by the Parties, all costs resulting from cooperation pursuant to this Arrangement will 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.

V. DISPUTE RESOLUTION

Cooperation under this Arrangement will be undertaken subject to the Agreement, the Exchange of Notes and 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.

VI. FINAL PROVISIONS

A. This Arrangement will enter into force upon the last date of signature and, subject to paragraph VI. B., will remain in force for a period of five years provided that the Agreement and the Exchange of Notes remain in force. 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 180 days prior to its intended date of termination.

C. This Arrangement may be amended at any time by written agreement of the Parties, provided the amendments are not contrary to the Agreement, the Exchange of Notes and the laws and regulations of the respective countries. The amending instrument shall specify the date upon which the amendment shall become effective.

D. All information protected by provisions of this Arrangement as business confidential or other sensitive or privileged information will remain so protected for the duration of this Arrangement and after this Arrangement has expired or been terminated, unless otherwise specifically agreed by the Parties in writing.

DONE at Vienna, Austria, on this 22nd day of September 2010, in the English language.

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

Gregory B. Jaczko, Chairman

FOR THE NUCLEAR AND INDUSTRIAL SAFETY AGENCY OF THE MINISTRY OF ECONOMY, TRADE AND INDUSTRY OF JAPAN:

Nobuaki Terasaka, Director-General

Annex

PROTECTION AND DISTRIBUTION OF INTELLECTUAL PROPERTY RIGHTS AND OTHER RIGHTS OF A PROPRIETARY NATURE

1. Business Confidential Information

A. For the purpose of this Annex, "Business Confidential Information" means any know-how, technical data, or technical, commercial, or financial information that meets all of the following conditions:

(i) It is of a type customarily held in a protected manner for commercial reasons;

(ii) It is not generally known or publicly available from other sources;

(iii) It has not been previously made available by the owner to others without an obligation concerning its confidentiality; and

(iv) It is not already in the possession of the recipient without an obligation concerning its confidentiality.

B. Any business confidential information will be furnished or, when created in the course of the cooperation under this Arrangement, transferred only by mutual written agreement of the Parties and will be given full protection in accordance with the laws and regulations of their respective countries.

C. Any business confidential information will be appropriately identified before it is furnished in the course of the cooperation under this Arrangement or, unless otherwise provided in the mutual written agreement of the Parties, immediately upon being created. Responsibility for identifying such information will fall on the Party which furnishes it or asserts that it is to be protected. Unidentified information will be assumed not to be information to be protected, except that a Party 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 subparagraph B above.

2. Ownership of Intellectual Property Rights

It is confirmed that between each Government and nationals of its country, the ownership of intellectual property rights will be determined in accordance with its national laws, regulations and practices.

3. Inventions

A. For the purpose of this Annex, the "Invention" means any invention made in the course of the cooperation under this Arrangement which is or may be patentable or otherwise protectable under the laws of Japan, the United States of America or any third country.

B. As to an Invention, the Parties will take appropriate steps, in accordance with the national laws and regulations of the respective countries, with a view to realizing the following:

(i) If an Invention is made as a result of cooperation under this Arrangement that involves only the transfer or exchange of information between the Parties, such as by joint meeting, seminars, or the exchange of technical reports or papers, unless otherwise provided in an applicable mutual written agreement of the Parties:

(a) the Party whose personnel make the Invention (hereinafter referred to as "the Inventing Party") or the personnel who make the Invention (hereinafter referred to as "the Inventor") have the rights to obtain all rights and interests in the Invention in all countries, and

(b) in any country where the Inventing Party or the Inventor decides not to obtain such rights and interests, the other Party has the right to do so.

(ii) If the Invention is made by an Inventor of a Party ("the Assigning Party") while assigned to another Party ("the Receiving Party") in the course of programs of cooperation that involve only the visit or exchange of scientists and engineers, and:

(a) in the case where the Receiving Party is expected to make a major and substantial contribution to the programs of the cooperation:

i) the Receiving Party has the right to obtain all rights and interests in the Invention in all countries, and

ii) in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so;

(b) in the case where the provision in subparagraph (a) above is not satisfied:

i) the Receiving Party has the right to obtain all rights and interests in the Invention in its own country and in third countries,

ii) the Assigning Party or the Inventor has the right to obtain all rights and interests in the Invention in its own country, and

iii) in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so.

(iii) Specific arrangement for joint research projects with an agreed research work scope and other forms of the cooperation within the scope of this Arrangement will provide for the mutually agreed upon disposition, on an equitable basis, of rights to the Invention made as a result of such cooperation.

(iv) The Inventing Party will disclose promptly the Invention to the other Party and furnish any documentation or information necessary to enable the other Party to establish rights to which it may be entitled. The Inventing 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 or the rights of the Inventor related to the Invention. Unless otherwise agreed in writing, such restrictions will not exceed a period of six months from the date of communication of such documentation or information.

4. Copyrights

Disposition of rights to copyright-protected works created in the course of the cooperation under this Arrangement will be determined in the relevant mutual written agreement of the Parties. The Parties will take appropriate steps to secure copyrights to works created in the course of the cooperation under this Arrangement in accordance with the national laws and regulations of the respective countries.

5. Rights to Semiconductor Chip Layout Designs

Disposition of rights to semiconductor chip layout designs created in the course of the cooperation under this Arrangement will be determined in the relevant mutual written agreement of the Parties. The Parties will take appropriate steps to secure rights to semiconductor chip layout designs created in the course of the cooperation under this Arrangement in accordance with the national laws and regulations of the respective countries.

6. Other Forms of Intellectual Property

For those other forms of intellectual property created in the course of the cooperation under this Arrangement which are protected under the laws of either country, disposition of rights will be determined on an equitable basis, in accordance with the laws and regulations of the respective countries.

7. Cooperation

Each Party will take all necessary and appropriate steps, in accordance with the laws and regulations of is country, to provide for the cooperation of its authors and inventors which are required to carry out the provisions of this Annex. Each Party assumes the sole responsibility for any award or compensation that may be due to its personnel in accordance with the laws and regulations of its country, provided, however, that this Annex creates no entitlement to any such award or compensation.