NUCLEAR SAFETY

Arrangement Between the
UNITED STATES OF AMERICA
and VIETNAM

Signed at Washington June 25, 2008

with

Addenda

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."

VIETNAM

Nuclear Safety

Arrangement signed at Washington
June 25, 2008;
Entered into force June 25, 2008.
With addenda.

ARRANGEMENT

BETWEEN

THE NUCLEAR REGULATORY COMMISSION
OF THE
UNITED STATES OF AMERICA

AND

THE AGENCY FOR RADIATION AND NUCLEAR SAFETY
AND CONTROL OF
THE SOCIALIST REPUBLIC OF VIETNAM

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

June 25, 2008

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The Nuclear Regulatory Commission of the United States of America (hereinafter called the USNRC) and the Agency for Radiation and Nuclear Safety and Control of the Socialist Republic of Vietnam (hereinafter called the VARANSAC), the two together hereinafter referred to as the Parties;

Having a mutual interest in a an exchange of information pertaining to regulatory matters and of standards required or recommended by their organizations for the regulation of safety and environmental impact of nuclear facilities;

Recognizing the "Agreement on Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Socialist Republic of Vietnam" originally signed on November 17, 2000 and the two countries' interest in pursuing cooperation in nuclear safety matters;

Have agreed as follows:

I. SCOPE OF THE ARRANGEMENT

A. Technical Information Exchange

To the extent that the USNRC and VARANSAC are permitted to do so under the laws and regulations of their respective countries, the Parties will continue the exchange of the following types of technical information relating to the regulation of safety and environmental impact of designated nuclear facilities and to nuclear safety research programs:

1. Topical reports concerning technical safety 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 USNRC process for licensing and regulating certain U.S. facilities designated by the VARANSAC as similar to certain facilities being built or planned in Vietnam and equivalent documents on such Vietnam's facilities.

4. Information in the field of confirmatory safety research 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 from the technical areas described in Addenda "A" and "B", attached hereto and made a part hereof. Cooperation in these itemized safety research areas may require a separate agreement, 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 (materials accountancy and control and physical protection), waste management, 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. Training and Assignments

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

1. VARANSAC inspector accompaniment of USNRC inspectors on reactor operation and (if available) reactor construction inspections in the U.S., including extended briefings at USNRC regional inspection offices.

2. Participation by VARANSAC employees in USNRC staff training courses.

3. Assignment of VARANSAC employees for 6-24 month periods within the USNRC staff to work on USNRC staff duties and gain on-the-job experience.

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

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.

B. An administrator will be designated by each Party to coordinate its participation in the overall exchange under this Arrangement. 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. 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, 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

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 and the need to protect proprietary and other sensitive or privileged information, and subject to the provisions of the Intellectual Property Annex, hereby incorporated into this Arrangement.

B. Definitions

1. The term "information" means unclassified nuclear energy-related regulatory, safety, safeguards, waste management, scientific or technical data, including information on results or methods of assessment, research, and any other knowledge provided, created or exchanged under this Arrangement.

2. The term "proprietary information" means information provided, 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 confidence by its owner;
b. is of a type which is customarily held in confidence 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 confidence;
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 confidential or privileged information" means non-classified information, other than "proprietary information," which has been transmitted and received in confidence 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 Proprietary Information

A party receiving documentary proprietary information pursuant to this Arrangement will respect the privileged nature of such information, provided that 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 June 25, 2008 between the United States Nuclear Regulatory Commission and the Vietnam Agency for Radiation and Nuclear Safety and Control 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 Vietnam, 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 proprietary information is disclosed by the owner without restriction."

This restrictive legend shall be respected by the parties to this Arrangement. Proprietary 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. Proprietary 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 Proprietary Information

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

   b. such proprietary information shall bear the restrictive legend appearing in Section III.C. of this Arrangement.

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

   a. that the proprietary 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 proprietary information, and shall not be used by such contractors and consultants for any other private commercial purposes; and

   b. 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

   c. that such proprietary information shall bear the restrictive legend appearing in Section III.C. of this Arrangement.

3. 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 this Arrangement. The parties will endeavor to grant such approval to the extent permitted by their respective national laws, regulations and policies, provided:

a. that the entities receiving proprietary information under Section III.D.3. 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 and materials radiation sources, have a legitimate need for the proprietary information and have executed a non-disclosure agreement; and

b. that the entities receiving proprietary information under Section III.D.3. 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

c. that those entities receiving proprietary information under Section III.D.3. 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 permit or license.

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

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.

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

Other confidential or privileged information may be disseminated in the same manner as that set forth in Section III.D, "Dissemination of Documentary Proprietary Information."

G. Non-Documentary Proprietary or Other Confidential or Privileged Information

Non-documentary proprietary or other confidential 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 proprietary or other confidential 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 a Party from sources outside of this Arrangement.

IV. FINAL PROVISIONS

A. 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 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.

B. Unless otherwise agreed, 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.

C. Any dispute or questions among the Parties concerning the interpretation or application of this Arrangement arising during its term will be settled by mutual agreement of the Parties.

D. This Arrangement will enter into force upon signature and, subject to paragraph E of this Section, 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.

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

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 indefinitely therafter unless otherwise agreed by the Parties in writing.

DONE at Washington, this 25th day of June, 2008, in the English and Vietnamese languages, both texts being equally authentic.

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

Dale E. Klein, Chairman

FOR THE AGENCY FOR
RADIATION AND NUCLEAR SAFETY
CONTROL OF THE
SOCIALIST REPUBLIC
OF VIETNAM:

Ngo Dang Nhan, Director General

Note: At the present time, the Treaty Office does not have the Vietnamese text of this Arrangement. If the Vietnamese text becomes available, it will be added to this publication.

Addendum "A"

USNRC –VARANSAC Safety Research Exchange
Areas In Which the USNRC Is Performing or Sponsoring Safety Research

1. Digital Instrumentation and Control;
2. Reactor Equipment Qualification
3. Environmental Transport;
4. Fire Safety Research;
5. Nuclear Fuel Analysis
6. Operating Experience and Generic Issues;
7. Human effects on nuclear safety;
8. Radionuclide Transport and Waste Management
9. Probabilistic Risk Assessments
10. Radiation Protection and Health Effects;
11. Seismic Safety
12. State of the Art Risk Consequences;
13. Containment Structural Integrity
14. Regulatory Guide Update;
15. New and Advanced Reactor Designs
16. Decommissioning
17. Thermal Hydraulic Code Applications and Maintenance
18. Severe Accident Analysis

ADDENDUM "B"

USNRC – VARNSAC Nuclear Safety Research Exchange Areas
in Which the VARNSAC is Performing or Sponsoring Safety Research

1. Safety Regulation of Nuclear Facilities
2. Licensing procedure and Regulatory Inspection
3. Assessment of SAR
4. Radiological Safety Controls
5. Safety culture
6. Nuclear Reactor Safety Research
7. Nuclear Reactor Materials Safety Research
8. Computer Codes, and
9. Others

INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Section III of this Arrangement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Arrangement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Arrangement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Addendum.

I. SCOPE

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

2. 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.

3. This Addendum addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain rights to intellectual property allocated in accordance with this Addendum by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Addendum 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.

4. Disputes concerning intellectual property arising under this Arrangement should 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.

5. Termination or expiration of this Arrangement shall not affect rights or obligations under this Addendum.

II. ALLOCATION OF RIGHTS

1. 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 copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

2. Rights to all forms of intellectual property, other than those rights described in Section II.1., above, shall be allocated as follows:

   a. 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 share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

   b. (1) 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 will be determined in implementing arrangements. If research is not designated as "joint research," rights to intellectual property arising from the research will be allocated in accordance with paragraph II.2.a, above. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

   (2) Notwithstanding paragraph II.2.b. (1), above, if a type of intellectual property is available under the laws of one Party but not of the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph II.2.b. (1), above.

III. BUSINESS CONFIDENTIAL

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, 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.