

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF UKRAINE ON COOPERATION IN THE  
PEACEFUL USES OF NUCLEAR ENERGY**

The Government of Australia and the Government of Ukraine (hereinafter referred to as the “Parties” and each a “Party”),

**CONFIRMING** the desire of the Parties to cooperate in the use of nuclear energy for peaceful purposes;

**REAFFIRMING** their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes will further the objective of the non-proliferation of nuclear weapons;

**MINDFUL** that both Australia and Ukraine are non-nuclear-weapon states and mindful of their respective rights and obligations under the *Treaty on the Non-Proliferation of Nuclear Weapons*, of 1 July 1968 and which entered into force on 5 March 1970 (hereinafter referred to as the “Treaty”);

**REAFFIRMING** their support for the objectives and provisions of the Treaty and their desire to promote universal adherence to the Treaty;

**REAFFIRMING** their support for the International Atomic Energy Agency (hereinafter referred to as the “Agency”) and the Agency’s safeguards system and their desire to work together to ensure its continued effectiveness;

**RECOGNISING** that Australia, a non-nuclear-weapon State Party to the Treaty, has undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, and has entered into the *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, signed on 10 July 1974, and the *Protocol Additional to the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, signed on 23 September 1997 (hereinafter collectively referred to as the “Australia-Agency Safeguards Agreement”);

**RECOGNISING** that Ukraine, a non-nuclear-weapon State Party to the Treaty, has undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, and has entered into the *Agreement between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, signed

on 21 September 1995, and the *Protocol Additional to the Agreement between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, signed on 15 August 2000, (hereinafter collectively referred to as the “Ukraine-Agency Safeguards Agreement”);

**RECALLING** their commitment to the secure use of nuclear material as parties to the *Convention on the Physical Protection of Nuclear Material*, done at Vienna and at New York on 3 March 1980 and which entered into force on 8 February 1987;

**BEARING IN MIND** that Australia and Ukraine are Contracting States to the *Amendment to the Convention on the Physical Protection of Nuclear Material*, done at Vienna on 8 July 2005;

**REAFFIRMING** their commitment to the safe use of nuclear material and facilities and the protection of people and the environment from the harmful effects of ionising radiation; the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound; and the importance of bilateral and multilateral cooperation for effective nuclear safety arrangements, and for enhancing such arrangements;

**DESIRING** to establish conditions consistent with their commitment to non-proliferation under which nuclear material, non-nuclear material, equipment, components and technology can be transferred between Australia and Ukraine for peaceful, non-explosive purposes;

**HAVE AGREED AS FOLLOWS:**

**Article I**  
**Definitions**

For the purposes of this Agreement:

- a. “component” means a component part of equipment or other item, so determined by the Parties in writing through diplomatic channels;

- b. “enrichment or reprocessing equipment or technology” means all equipment designed or used primarily for uranium enrichment, or reprocessing of nuclear fuel;
- c. “equipment” means those items listed in the Agency document INFCIRC/254/Rev.9/Part 1, as amended from time to time. Any such amendment shall have effect under this Agreement only when both Parties have informed each other in writing through diplomatic channels that they accept such amendment;
- d. “information” means scientific, commercial or technical data or information in any form, or any other data or information provided or exchanged under this Agreement;
- e. “intellectual property” shall have the meaning set out in Article 2 of the *Convention establishing the World Intellectual Property Organization*, done at Stockholm on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties;
- f. “military purpose” shall include, but it is not limited to, direct military applications of nuclear energy such as nuclear weapons, or other nuclear explosive devices (including research and development or production of tritium for use in nuclear weapons and other nuclear explosive devices). It shall also include military nuclear propulsion, munitions including depleted uranium munitions, military nuclear rocket engines or military nuclear reactors; but it shall not include indirect uses such as the provision of power for a military base drawn from any civil power network, the production of radioisotopes to be used for medical purposes in a military hospital, or other similar purposes as may be mutually determined by the Parties in writing through diplomatic channels;
- g. “non-nuclear material” means deuterium and heavy water and nuclear grade graphite listed in the Agency document INFCIRC/254/Rev.9/Part 1, as amended from time to time. Any such amendment shall have effect under this Agreement only when both Parties have informed each

other in writing through diplomatic channels that they accept such amendment;

- h. “nuclear material” means any source material or special fissionable material as those terms are defined in Article XX of the *Statute of the International Atomic Energy Agency*, done at Geneva on 26 October 1956. Any determination by the Board of Governors of the Agency under Article XX of the Statute that amends the list of material considered to be “source material” or “special fissionable material”, shall only have effect under this Agreement when both Parties have informed each other in writing through diplomatic channels that they accept that determination;
- i. “peaceful purpose” includes the use of nuclear material, non-nuclear material, equipment, components and technology in such fields as electric power generation, medicine, agriculture and industry, but does not include research on or development of any explosive devices, or any military purpose;
- j. “technology” has the meaning provided in the Agency document INFCIRC/254/Rev.9/Part 1, as amended from time to time. Any such amendment shall have effect under this Agreement only when both Parties have informed each other in writing through diplomatic channels that they accept such amendment;
- k. “transfer” means any transfer including, where relevant, a retransfer; and
- l. “nuclear fuel cycle” shall have the meaning provided in paragraph 5.1 of the IAEA Safeguards Glossary of 2001.

## **Article II**

### **Scope of Cooperation**

1. The intent of the Parties is to cooperate in the use of nuclear energy for peaceful purposes in accordance with this Agreement and applicable international agreements and arrangements, and national laws and regulations in force in Australia and in Ukraine.

2. Cooperation under this Agreement may be undertaken directly between the Parties or through authorised legal entities of the Parties. Such cooperation shall be subject to this Agreement and to any additional terms and conditions as may be determined by the Parties or their authorised legal entities.
3. Cooperation under this Agreement shall require the application of Agency safeguards, as appropriate:
  - a. with respect to all nuclear activities within the territory of Australia, under its jurisdiction or carried out under its control anywhere, in accordance with the provisions of the Australia-Agency Safeguards Agreement; and
  - b. with respect to all nuclear activities as provided in the Ukraine-Agency Safeguards Agreement within the territory of Ukraine, under its sovereignty, sovereign rights, jurisdiction or control in compliance with international law.
4. The cooperation envisaged between the Parties under this Agreement may include, inter alia:
  - a. basic and applied research;
  - b. scientific, technical and industrial research and development;
  - c. development, design, construction, operation and decommissioning of research reactors, nuclear power plants and other nuclear fuel cycle facilities;
  - d. utilisation of nuclear reactors for electric power production, sea water desalination and heat production;
  - e. management of spent nuclear fuel and radioactive waste;
  - f. nuclear safety, radiation protection and protection of the environment;
  - g. safeguards, and physical protection of nuclear material and facilities;

- h. use of radioisotopes and radiation in agriculture, industry, medicine and environmental research;
  - i. geological and geophysical exploration, development, production, further processing and use of uranium resources;
  - j. regulatory aspects of the peaceful uses of nuclear energy;
  - k. transfer of nuclear materials; and
  - l. other areas of cooperation as may be mutually determined by the Parties in writing through diplomatic channels.
5. The cooperation referred to in paragraph 4 of this Article may be undertaken in the following forms:
- a. transfer of nuclear material, non-nuclear material, equipment, components and technology;
  - b. exchange of information and personnel;
  - c. training of personnel, including professional and advanced training for administrative, scientific and technical personnel;
  - d. organisation of symposia and seminars;
  - e. organisation of joint projects and establishment of joint ventures;
  - f. establishment of bilateral working groups for implementation of joint projects;
  - g. trade and commercial cooperation relating to the nuclear fuel cycle; and
  - h. other forms of cooperation as may be mutually determined by the Parties in writing through diplomatic channels.
6. The cooperation outlined in paragraphs 4 and 5 of this Article may be implemented as necessary through arrangements between authorised legal entities. The respective competent authorities of either Party shall, upon request

from the other Party's competent authority, confirm whether an entity which purports to be an authorised legal entity of such Party is indeed so authorised for the purpose of negotiating arrangements to implement such cooperation.

### **Article III Competent Authorities**

1. For the purpose of implementing this Agreement the Parties shall nominate competent authorities. For the Government of Ukraine the competent authority will be the Ministry of Energy and Coal Industry of Ukraine and for the Government of Australia the competent authority will be the Australian Safeguards and Non-Proliferation Office.
2. Notwithstanding paragraph 1 of this Article, the Parties may nominate other competent authorities for the coordination of cooperation in the specific areas referred to in Article II of this Agreement. A Party shall notify the other Party in writing through diplomatic channels where it nominates a competent authority for such a purpose. A Party shall notify the other Party in writing through diplomatic channels of any change to a competent authority.

### **Article IV Items subject to the Agreement**

1. This Agreement shall apply to:
  - a. all nuclear material transferred between the Parties, whether transferred directly or through a third State;
  - b. all forms of nuclear material prepared by chemical or physical processes or isotopic separation from nuclear material subject to this Agreement, provided that if nuclear material subject to this Agreement is mixed with other nuclear material, the quantity of nuclear material so prepared which falls within the scope of this Agreement shall be an amount equivalent to the proportion which the nuclear material subject to this Agreement bears to the total quantity of nuclear material;
  - c. all generations of nuclear material produced by neutron irradiation of nuclear material subject to this Agreement, provided that if nuclear

- material subject to this Agreement is irradiated together with other nuclear material, the proportion of nuclear material so produced which falls within the scope of this Agreement shall be equal to the proportion of the nuclear material irradiated that is subject to this Agreement;
- d. non-nuclear material, equipment, components and technology as defined in Article I of this Agreement transferred between Australia and Ukraine, whether directly or through a third State provided that the supplying Party has notified the receiving Party in writing of the transfer, and the receiving Party has confirmed in writing that such non-nuclear material, equipment, components and technology has been transferred or will be held subject to this Agreement;
  - e. nuclear material, where non-nuclear material, equipment, components or technology subject to this Agreement have a direct and substantial connection to the production, processing or use of that nuclear material; and
  - f. equipment produced by the use or by the application of technology transferred in accordance with this Agreement.
2. Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement shall be transferred only to the legal entities identified by the competent authority of the receiving Party as being duly authorised to receive it.
3. Nuclear material, non-nuclear material, equipment, components and technology referred to in paragraph 1 of this Article shall remain subject to this Agreement until:
- a. it is no longer usable for any nuclear activity relevant from the point of view of safeguards;
  - b. it is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity;

- c. it has been transferred beyond the territory of Australia or beyond the territory of Ukraine in accordance with Article VII of this Agreement; or
  - d. the Parties otherwise mutually determine in writing through diplomatic channels that it should no longer be subject to this Agreement.
4. For the purpose of determining when nuclear material subject to this Agreement is no longer usable for any nuclear activity or is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity, both Parties shall apply any relevant determination made by the Agency in accordance with the Australia-Agency Safeguards Agreement or Ukraine-Agency Safeguards Agreement where applicable. In the absence of a determination by the Agency, a determination may be made by mutual decision of the competent authorities, in accordance with the principles applied by the Agency for this purpose.

#### **Article V** **Nuclear Safety**

1. Each Party shall take all necessary measures to ensure that nuclear safety and radioactive waste management is consistent, as appropriate, with the provisions of the *Convention on Nuclear Safety*, done at Vienna on 17 June 1994 and which entered into force on 24 October 1996 (IAEA INFCIRC/449), the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*, done at Vienna on 5 September 1997 and which entered into force on 18 June 2001 (IAEA INFCIRC/546), the *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, done at Vienna on 26 September 1986 and which entered into force on 26 February 1987 (IAEA INFCIRC/336), and the *Convention on Early Notification of a Nuclear Accident*, done at Vienna on 26 September 1986 and which entered into force on 27 October 1986 (IAEA INFCIRC/335).
2. Each Party recognises that there may be amendments to the Conventions referred to in paragraph 1 of this Article or additional international agreements or arrangements, which may come into force in the future. Any such amendment or additional agreement or arrangement shall have effect with respect to this Agreement only when both Parties have informed each other in

writing through diplomatic channels that they accept the application of the amendment or additional agreement or arrangement.

3. The Parties shall cooperate as necessary in the use of mechanisms and undertakings in the Conventions referred to in paragraph 1 of this Article and in additional international agreements or arrangements in accordance with paragraph 2 of this Article, and where appropriate to ensure the effective application of the nuclear and radiological safety arrangements in place in their respective jurisdictions, and on the safe use of nuclear material, non-nuclear material, equipment, components and technology supplied under this Agreement.

## **Article VI Physical Protection**

1. Each Party shall take all such measures necessary, commensurate with the assessed threat prevailing from time to time, to ensure the adequate physical protection of nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement within its jurisdiction or within the territory under its control and shall as a minimum, apply levels of physical protection as agreed under the *Convention on the Physical Protection of Nuclear Material*, including any amendments that are in force for each Party.
2. In addition, each Party shall apply measures of physical protection in accordance with its national legislation which meet levels not less than the recommendations of Agency document INFCIRC/225/Rev.5, as amended from time to time. Any amendment to or replacement of Agency document INFCIRC/225/Rev.5 shall have effect under this Agreement only when both Parties have informed each other in writing through diplomatic channels that they accept such amendment or replacement.
3. The adequacy of physical protection measures maintained pursuant to this Article with respect to material and equipment transferred pursuant to this Agreement and with respect to any special nuclear material used in or produced through the use of any material or equipment so transferred, shall be subject to review and consultation by the Parties periodically and whenever either Party is

of the view that revised measures may be required to maintain adequate physical security.

4. Each Party shall identify those agencies or authorities responsible for ensuring that levels of physical security are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorised use or handling of material subject to this Article. Each Party shall also designate points of contact within its national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.
5. Each Party shall ensure that nuclear material, non-nuclear material, equipment, components and technology in international transport and sent from its jurisdiction are adequately protected until that responsibility is properly transferred to the receiving State.

#### **Article VII Retransfers**

1. Nuclear material subject to this Agreement shall not be transferred to a third State without the prior written consent of the supplier Party, except in accordance with paragraph 3 of this Article.
2. Non-nuclear material, equipment, components and technology subject to this Agreement shall not be transferred by the receiving Party to a third State except when the receiving Party has obtained the prior written consent of the supplier Party and an assurance from the third State of:
  - a. peaceful use;
  - b. the implementation of Agency safeguards; and
  - c. measures of physical protection at a level not lower than that imposed on the Parties under Article VI of this Agreement.
3. Transfers of nuclear material subject to this Agreement from Ukraine to a third State which has an agreement in force with Australia concerning nuclear material transfers can take place, unless the Australian competent authority has

advised the Ukraine competent authority in writing that Australia has found it necessary to suspend, cancel or refrain from making nuclear material transfers. The Ukraine competent authority shall promptly notify the Australian competent authority of any such transfers, in accordance with procedures set out in the administrative arrangements concluded pursuant to Article XIV of this Agreement.

4. The Australian competent authority shall provide the Ukraine competent authority with, and keep up to date, the list of countries to which transfers may be made and the nuclear fuel cycle processes that may apply in the third State to the nuclear material transferred in accordance with paragraph 3 of this Article.

#### **Article VIII Nuclear Fuel Cycle List**

Nuclear material subject to this Agreement in Ukraine shall only be processed, used or stored at facilities that are included in a designated Ukrainian Nuclear Fuel Cycle List, which shall be mutually determined by the Parties.

#### **Article IX Enrichment and Reprocessing**

1. Nuclear material subject to this Agreement shall not be:
  - a. enriched to 20% or greater in the isotope uranium 235; or
  - b. reprocessed;

without the prior written consent of the Parties.

2. Plutonium, uranium 233, high enriched uranium or irradiated source or special nuclear material subject to this Agreement shall not, unless mutually determined by the Parties, be altered in form or content, except by irradiation, further irradiation, or post-irradiation examination.

**Article X**  
**Explosive or Military Application**

Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement shall only be used for peaceful purposes and shall not be used for the manufacture of nuclear weapons or other nuclear explosive devices, for research on or development of nuclear weapons or any other nuclear explosive device, or be used in any way to further any military purpose.

**Article XI**  
**Safeguards**

1. Where nuclear material, non-nuclear material, equipment, components or technology subject to this Agreement is within the territory of Ukraine, or under its jurisdiction or control anywhere, compliance with Article X of this Agreement shall be ensured by a system of safeguards in accordance with the Ukraine-Agency Safeguards Agreement.
2. Where nuclear material, non-nuclear material, equipment, components or technology subject to this Agreement is within the territory of Australia or under its jurisdiction or control anywhere, compliance with Article X of this Agreement shall be ensured by a system of safeguards in accordance with the Australia-Agency Safeguards Agreement.
3. If, notwithstanding the efforts of both Parties, the Agency fails to administer its functions under the agreements referred to in paragraphs 1 and 2 of this Article to ensure the application of safeguards, in the territory of either of the Parties, the Parties shall immediately arrange for the application of safeguards satisfactory to both Parties which conform with Agency safeguards principles and procedures and which provide reassurance equivalent to the safeguards system they replace. The Parties shall consult and assist each other in the application of such a safeguards system.

**Article XII**  
**Intellectual Property**

The Parties shall ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to the co-operation under this Agreement in accordance with written arrangements between the Parties and with applicable international agreements and arrangements, and the national laws and regulations in force in Australia and in Ukraine.

**Article XIII**  
**Confidentiality of Information**

1. The Parties shall take appropriate precautions to preserve the confidentiality of information received as a result of the operation of this Agreement.
2. Information transferred under this Agreement shall be used exclusively in accordance with this Agreement and not for any other purpose.
3. This Agreement does not require the transfer of any information by the Parties that is not permitted under their respective international agreements, national laws and regulations.

**Article XIV**  
**Administrative Arrangements**

1. The competent authorities of both Parties shall establish administrative arrangements to ensure the effective implementation of this Agreement. Such arrangements may be amended by the mutual determination of the competent authorities of both Parties in writing.
2. Each Party shall establish and maintain a system of accounting for and control of all nuclear material, material, equipment, components and technology subject to this Agreement. Each party shall provide reporting of all transfers and receipts, and an annual report on all transactions and inventories.

3. If nuclear material subject to this Agreement is present in the territory of Australia or Ukraine, that Party shall, upon the request of the other Party, provide the other Party in writing with any conclusions which the Agency has drawn from its safeguards activities, insofar as they relate to nuclear material subject to this Agreement.

#### **Article XV Consultation**

1. The Parties shall consult regularly, or at any time at the request of either Party, in order to ensure the effective implementation of this Agreement, or to further cooperation in the peaceful uses of nuclear energy.
2. The Parties may jointly invite the representatives of the Agency to participate in such consultations.

#### **Article XVI Cessation of Cooperation and Transfers**

1. Each Party has the right to suspend or cancel further transfers of nuclear material, non-nuclear material, equipment, components and technology and to require the receiving Party to take corrective steps if the receiving Party is in material non-compliance with Agency safeguards arrangements or is in material non-compliance with this Agreement.
2. Before either Party decides to exercise any of the rights specified in subparagraphs (a) and (b) of this paragraph, the Parties shall consult each other to mutually determine corrective measures. If following consultation between the Parties, such corrective measures are not implemented within a reasonable period of time (not to exceed ninety days following the end of such consultation, or a longer period of time as mutually determined by the Parties), the supplier Party shall thereupon have the right to:
  - a. suspend or cancel further transfers of nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement; and

- b. require the return of nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement.
3. In determining whether to exercise any of its rights under paragraph 2 of this Article, a Party shall consider the facts giving rise to these rights, including whether the non-compliance was caused wilfully and deliberately. In the event that it finds such non-compliance not to be wilful and deliberate, and to the extent that it judges that such material non-compliance can be rectified, the non-breaching Party shall endeavour, subject to its national laws and regulations, to afford the breaching Party an opportunity to rectify the non-compliance within a reasonable period of time.
4. Both Parties agree that detonation of a nuclear explosive device by either Party would constitute non-compliance with the provisions of this Agreement.
5. In respect of the safeguards obligations described in Article XI, a determination of material non-compliance with this Agreement shall be based on a finding of non-compliance made by the Board of Governors of the Agency as described in Article XII.C of the *Statute of the International Atomic Energy Agency*, done at Geneva on 26 October 1956.
6. Nothing in this Article shall preclude recourse to good faith negotiations and dispute settlement under Article XVII of this Agreement.

#### **Article XVII Settlement of Disputes**

1. Any dispute arising out of the interpretation or application of this Agreement which is not settled by good faith negotiation shall, at the request of either Party, be submitted to an arbitral tribunal, which shall be composed of three arbitrators appointed in accordance with the provisions of this Article.
2. Each Party shall designate one arbitrator who may be its national, and the two arbitrators so designated shall appoint a third arbitrator, who is a national of a third Treaty member State, who shall be the Chairman of the arbitral tribunal. The arbitration rules of the United Nations Commission on International Trade

Law shall govern the arbitration, except as may be modified by mutual determination of the Parties in writing.

3. If within thirty days of the request for arbitration either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been appointed.
4. The arbitral tribunal award shall be executed in compliance with applicable legislation of the Parties and international law.

#### **Article XVIII Amendments**

1. The Parties may consult, at the request of either Party, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards.
2. This Agreement may be amended at any time by agreement between the Parties in writing through diplomatic channels. Such amendment shall enter into force on the last date upon which the Parties advise each other in writing through diplomatic channels that their respective internal procedures necessary for its entry into force have been completed.

#### **Article XIX Entry into Force and Duration**

1. This Agreement shall enter into force on the last date upon which the Parties advise each other in writing through diplomatic channels that their respective internal procedures necessary for its entry into force have been completed.
2. This Agreement shall remain in force for an initial period of thirty years. If neither Party has notified the other at least one year prior to the expiry of such a period, this Agreement shall continue in force thereafter until one year after notice of termination has been given by either Party to the other Party.

3. Unless otherwise agreed in writing through diplomatic channels between the Parties, termination, suspension or expiration of this Agreement or any cooperation under it for any reason shall not release the Parties from obligations under Articles IV to XVII in respect of nuclear material, non-nuclear material, equipment, components and technology transferred while the Agreement was in force.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised by their respective Governments, have signed this Agreement

Done in duplicate at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,  
in the English and Ukrainian languages, each text being equally authentic.

**For the Government of Australia:**

**For the Government of Ukraine:**