India has the sovereign right to test

"Questions have been raised about India's right to test when the bilateral civil nuclear cooperation agreement with the US enters into force. The factual position is as follows:

India has the sovereign right to test and would do so if it is necessary in national interest. The only restraint in our voluntary unilateral moratorium on nuclear testing, declared by the previous government and being continued by the successor government. There is nothing in the bilateral agreement that would tie the hands of a future government or legally constrain its options. A decision to undertake a future nuclear test would be India's sovereign decision, resting solely with the Government of India.

Nowhere in the bilateral agreement on Cooperation for Peaceful Uses of Nuclear Energy with the United States of America is testing mentioned. The bilateral cooperation agreement contains elaborate provisions in Articles 5 and 14 to ensure the continuous operation of India's reactors. These include fuel supply assurances, the right to take corrective measures, and a strategic fuel reserve for the lifetime of India's reactors in case of cessation of cooperation."

(Statement given by External Affairs Minister Pranab Mukherjee in Parliament on August 16, 2007 relating to the Indo-US bilateral civil nuclear cooperation agreement)

AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF INDIA CONCERNING PEACEFUL USES OF NUCLEAR ENERGY (123 AGREEMENT)

The Government of India and the Government of the United States of America, hereinafter referred to as the Parties,

RECOGNIZING the significance of civilian nuclear energy for meeting growing global energy demands in a cleaner and more efficient manner;

DESIRING to cooperate extensively in the full development and use of nuclear energy for peaceful purposes as a means of achieving energy security, on a stable, reliable and predictable basis;

WISHING to develop such cooperation on the basis of mutual respect for sovereignty, non-interference in each other's internal affairs, equality, mutual benefit, reciprocity and with due respect for each other's nuclear programmes;

DESIRING to establish the necessary legal framework and basis for cooperation concerning peaceful uses of nuclear energy;

AFFIRMING that cooperation under this Agreement is between two States possessing advanced nuclear technology, both Parties having the same benefits and advantages, both committed to preventing WMD proliferation;

NOTING the understandings expressed in the India - U.S. Joint Statement of July 18, 2005 to enable full civil nuclear energy cooperation with India covering aspects of the associated nuclear fuel cycle;

AFFIRMING their support for the objectives of the International Atomic Energy Agency (IAEA) and its safeguards system, as applicable to India and the United States of America, and its importance in ensuring that international cooperation in development and use of nuclear energy for peaceful purposes is carried out under arrangements that will not contribute to the proliferation of nuclear weapons or other nuclear explosive devices;

NOTING their respective commitments to safety and security of peaceful uses of nuclear energy, to adequate physical protection of nuclear material and effective national export controls;

MINDFUL that peaceful nuclear activities must be undertaken with a view to protecting the environment;

MINDFUL of their shared commitment to preventing the proliferation of weapons of mass destruction; and

DESIROUS of strengthening the strategic partnership between them;

Have agreed on the following:

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement:

(A) "By-product material" means any radioactive material (except special fissionable material) yielded in or made radioactive by exposure to the

Historic Milestone

The United States and India have reached a historic milestone in their strategic partnership by completing negotiations on the bilateral agreement for peaceful nuclear cooperation, also known as the "123 agreement." This agreement will govern civil nuclear trade between our two countries and open the door for American and Indian firms to participate in each other's civil nuclear energy sector.

The conclusion of negotiations on this agreement marks a major step forward in fulfilling the promise of full civil nuclear cooperation as envisioned by President Bush and Prime Minister Manmohan Singh.

The successful completion of the text permits us to move forward on the U.S.-India Civil Nuclear Cooperation initiative, first announced by the two leaders on July 18, 2005, and reaffirmed on March 2, 2006. The next steps include India negotiating a safeguards agreement with the IAEA and support for nuclear trade with India from the forty-five member Nuclear Suppliers Group. Once these additional actions have been completed, President Bush will submit the text of the agreement to the U.S. Congress for final approval.

Civil nuclear cooperation between the United States and India will offer enormous strategic and economic benefits to both countries, including enhanced energy security, a more environmentally-friendly energy source, greater economic opportunities, and more robust nonproliferation efforts.

This achievement reinforces the growing bilateral relationship between two vibrant democracies. We are committed to the strategic partnership outlined by President Bush and Prime Minister Manmohan Singh, and look forward to working together to implement this historic initiative.

(Joint Statement by Shri Pranab Mukherjee, Minister for External Affairs and Dr. Condoleezza Rice, US Secretary of State - India and United States Complete Civil Nuclear Negotiations)

radiation incident to the process of producing or utilizing special fissionable material. By-product material shall not be subject to safeguards or any other form of verification under this Agreement, unless it has been decided otherwise by prior mutual agreement in writing between the two Parties.

(B) "Component" means a component part of equipment, or other item so designated by agreement of the Parties.

(C) "Conversion" means any of the normal operations in the nuclear fuel cycle, preceding fuel fabrication and excluding enrichment, by which uranium is transformed from one chemical form to another - for example, from uranium hexafluoride (UF6) to uranium dioxide (UO2) or from uranium oxide to metal.

(D) "Decommissioning" means the actions taken at the end of a facility's useful life to retire the facility from service in the manner that provides adequate protection for the health and safety of the decommissioning workers and the general public, and for the environment. These actions can range from closing down the facility and a minimal removal of nuclear material coupled with continuing maintenance and surveillance, to a complete removal of residual radioactivity in excess of levels acceptable for unrestricted use of the facility and its site.

(E) "Dual-Use Item" means a nuclear related item which has a technical use in both nuclear and non-nuclear applications.

(F) "Equipment" means any equipment in nuclear operation including reactor, reactor pressure vessel, reactor fuel charging and discharging equipment, reactor control rods, reactor pressure tubes, reactor primary coolant pumps, zirconium tubing, equipment for fuel fabrication and any other item so designated by the Parties.

(G) "High enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235.

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

(I) "Low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235.

(J) "Major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility or heavy water production facility.

(K) "Non-nuclear material" means heavy water, or any other material suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, as may be jointly designated by the appropriate authorities of the Parties.

Indian PM's statement in the Lok Sabha on Civil Nuclear Energy Cooperation with the US

1. "I rise to inform this august House that the Government of India has reached agreement with the Government of the United States of America on the text of the bilateral Agreement on Cooperation for Peaceful Uses of Nuclear Energy.

2. This Government has kept Parliament fully in the picture at various stages of our negotiations with the United States. We have never shied away from a full discussion in Parliament on this important issue. I have myself made statements on several previous occasions – on July 29, 2005 soon after my return from Washington; on February 27, 2006 during which I took Parliament into confidence regarding our ongoing discussions with the United States on the Separation Plan; and on March 7, 2006 following the visit of President Bush to India. I also made a detailed statement in the Rajya Sabha on August 17, 2006 conveying certain solemn commitments to which I shall return shortly.

   Our Government has adhered scrupulously to Parliamentary traditions and practices. We have in fact gone far beyond any previous Government.

3. After the conclusion of the Agreement we have also briefed many of the parties represented in Parliament on the details of the Agreement.

4. The Agreement is about civil nuclear energy cooperation. It is an Agreement between two States possessing advanced nuclear technologies, both parties having the same benefits and advantages. The significance of the Agreement lies in the fact that when brought into effect, it will open the way for full civil nuclear energy cooperation between India and the United States. We have negotiated this Agreement as an equal partner, precisely because of the achievements of our scientists and technologists in overcoming the barriers placed around us in the past. This is an Agreement based on the principle of mutual benefit.

5. There has been considerable public debate and discussion on various aspects of the Agreement. On August 17, 2006, I had given a solemn commitment to Parliament and to the country regarding what we can agree and cannot agree with the United States to enable civil nuclear energy cooperation with India. I had stressed that it must be within specific parameters, which I had shared with Parliament. This was an unprecedented measure of transparency on our part even in the midst of complex negotiations.

6. I had given Parliament my assurance that the Government will make every effort so that the vision of the Joint Statements of July, 2005 and March, 2006 becomes a living reality. I believe that we have redeemed that pledge. In concluding this Agreement, we have ensured that the autonomy of our strategic programme is fully maintained, and that Dr. Homi Bhabha's long-term vision remains our guiding principle.

7. With your permission, I wish to draw the attention of this august House to the main features of the Agreement in some detail. It would become evident that the commitments I had made to Parliament, including those on August 17, 2006, have been fully adhered to.

   (i) Full Civil Nuclear Cooperation

   - The concept of full civil nuclear cooperation has been clearly enshrined in this Agreement. The Agreement stipulates that such cooperation will include nuclear reactors and aspects of the associated nuclear fuel cycle, including technology transfer on industrial or commercial scale. It would also include development of a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of our reactors.

- A significant aspect of the Agreement is our right to reprocess US origin spent fuel. This has been secured upfront. We view our right to reprocess as a key element of a closed fuel cycle, which will enable us to make full use in our national facilities of the energy potential of the nuclear fuel used in our reactors. This important yardstick has been met by the permanent consent for India to reprocess.

- India will establish a new national reprocessing facility dedicated to reprocessing foreign nuclear material under IAEA safeguards. India and the US will mutually agree on arrangements and procedures under which such reprocessing will take place in the new facility. Consultations on arrangements and procedures will begin within six months of a request by either party and will be concluded within one year. There is no ambiguity with regard to the commitments of both countries.

- Any special fissionable material that may be separated may be utilized in national facilities under IAEA safeguards. Thus the interests of our three stage nuclear programme have been protected.

- The United States has a longstanding policy of not supplying to any country enrichment, reprocessing and heavy water production facilities. This Agreement provides for such transfers to India only through an amendment. Forward- looking language has been included for dual use transfers of enrichment, reprocessing and heavy water production facilities. We hope transfers will become possible as cooperation develops and expands in the future. It is important to note that no prohibition that is specifically directed against India has been included in the Agreement.

(ii) The Principle of Reciprocity:

- The principle of reciprocity, which was integral to the July 2005 Statement, has been fully safeguarded in this Agreement. There is no change in our position that we would accept only IAEA safeguards on our civilian nuclear facilities. This would also be in a phased manner and as identified for that purpose in the Separation Plan, and only when all international restrictions on nuclear trade with India have been lifted. India will not take any irreversible steps with the IAEA prior to this.

(iii) Certification:

- This Agreement emphasizes the desire of both countries to cooperate extensively in the use of nuclear energy for peaceful purposes as a means of achieving energy security on a stable, reliable and predictable basis. This Agreement further confirms that US cooperation with India is a permanent one.

  There is no provision that states that US cooperation with India will be subject to an annual certification process.

- Hon'ble Members may recall that the 18th July 2005 Joint Statement had acknowledged that India be regarded as a state with advanced nuclear technology enjoying the same advantages and benefits as other States with advanced nuclear technology, such as the US. This Agreement makes specific references to India and the United States as States possessing advanced nuclear technology, both parties having the same benefits and advantages, both committed to preventing WMD proliferation.

(iv) Safeguards:

- As agreed in the March Separation Plan, India has accepted only IAEA safeguards that will be reflected in an India-specific Safeguards Agreement with the IAEA.

  We have not consented to any provision that mandates scrutiny of our nuclear weapons programme or any unsafeguarded nuclear facilities. There are explicit provisions in the Agreement that make it clear that this Agreement does not affect our unsafeguarded nuclear facilities and that it will not affect our right to use materials, equipment, information or technology acquired

or developed independently. India and the United States have agreed that the implementation of the Agreement will not hinder or otherwise interfere with India's nuclear activities including our military nuclear facilities. Nothing in the Agreement would impinge on our strategic programme, our three-stage nuclear power programme or our ability to conduct advanced R&D.

(v) Fuel Supply Assurances:

- I would like to reiterate that the March 2006 Separation Plan provided for an India-specific Safeguards Agreement with the IAEA, with assurances of uninterrupted supply of fuel to reactors that would be placed under IAEA safeguards together with India's right to take corrective measures in the event fuel supplies are interrupted. An important assurance given is the commitment of support for India's right to build up strategic reserves of nuclear fuel to meet the lifetime requirements of India's reactors.

- This Agreement envisages, in consonance with the Separation Plan, US support for an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply for the lifetime of India's reactors. The Agreement reiterates in toto the corresponding portions of the Separation Plan.

  It has endorsed the right of India to take corrective measures to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supply.

  Hon'ble Members will agree that these provisions will ensure that there is no repeat of our unfortunate experience with Tarapur.

(vi) Integrity and reliability of our strategic programme, autonomy of decision making and future scientific research and development:

- In my statements of March 7 and August 17, 2006, I had assured Parliament that the Separation Plan would not adversely affect our strategic programme, the integrity of the three-stage nuclear programme and the autonomy of our Research and Development activity.

- This Agreement does not in any way impact on India's ability to produce and utilize fissile material for its current and future strategic needs.

  Our right to use for our own purposes our independent and indigenously developed nuclear facilities has been fully preserved. The Agreement also provides for non-hindrance and non-interference in our activities involving use of nuclear material, non-nuclear material, equipment, components, information or technology and military nuclear facilities produced, acquired or developed independently for our own purposes.

(vii) Cessation of cooperation:

- An elaborate multi-layered consultation process has been included with regard to any future events that may be cited as a reason by either Party to seek cessation of cooperation or termination of the Agreement. Both Parties have agreed to take a number of factors into account in their consultations so that the scope for precipitate or unilateral action is reduced.

  Cessation of cooperation can be sought by the US only if it is prepared to take the extreme step of termination of the Agreement. India's right to take "corrective measures" will be maintained even after the termination of the Agreement.

- In the case of termination of this Agreement and cessation of cooperation by either Party, each has the right to seek return of nuclear material and equipment supplied by it to the other. However, before the right of return is exercised, the Agreement commits the parties to consult and to take into account specific factors such as national security, ongoing contracts and projects, compensation at market value, physical protection and environmental issues. India and the United States have agreed to consider carefully the circumstances that may lead to termination,

including a party's concerns about a change in the security environment or a response to similar actions by other states that could impact on national security.

The Agreement stipulates that the two parties recognise that exercising the right of return would have profound implications and consequences for their relations.

- From India's point of view our primary objective is to ensure the uninterrupted operation of our nuclear reactors, in the context of the detailed fuel supply assurances provided in the Separation Plan and these are now reflected in full in the Agreement. The Agreement specifically states in regard to fuel supply assurances and India's right to take "corrective measures" that there will be no derogation of India's rights in this regard, including the right to take "corrective measures" to ensure the uninterrupted operation of its reactors. This reflects the balance of obligations consistent with the understandings of the July Statement and the March Separation Plan.

8. Among the significant and innovative features of this Agreement are specific mention of the right to run foreign supplied reactors 'without interruption' and to take 'corrective measures' in the event of fuel supply disruption. This has been made possible by crafting the provisions in a manner that provide for explicit linkages and interlocking of rights and commitments contained in the Agreement.

9. The Agreement does not in any way affect India's right to undertake future nuclear tests, if it is necessary in India's national interest. Let me hence reiterate once again that a decision to undertake a future nuclear test would be our sovereign decision, one that rests solely with the Government. There is nothing in the Agreement that would tie the hands of a future Government or legally constrain its options to protect India's security and defence needs.

10. If I might sum-up, this Agreement does not in any way inhibit, restrict or curtail our strategic autonomy or capabilities. Our rights to pursue our three-stage nuclear power programme remain undiluted.

    In the unlikely event of cessation of cooperation there is no derogation of our rights with regard to corrective measures. Our reprocessing rights are upfront and are permanent in nature. Advanced R&D programmes and IPR Protection are fully safeguarded.

11. As I have said, this is an Agreement for cooperation between India and the US on peaceful uses of nuclear energy. Its genesis is the shared perception between India and the US that both our countries need to address their energy challenges, and address them in a manner that is sensitive to concerns about the environment. For India, it is critically important to maintain our current GDP growth rate of 8 to 10% per annum if our goal of eradicating poverty is to be achieved. The energy implications of this growth rate over the next couple of decades are enormous. Even if we were to exploit all our known resources of coal, oil, gas and hydropower, we would still be confronted with a yawning demand and supply gap.

12. India's three-stage nuclear power programme holds immense promise for the future. The unique thorium-based technology would become an economically viable alternative over a period of time following sequential implementation of the three stages. We must, in the meantime, explore and exploit every possible source of energy. Nuclear energy is a logical choice for India. Indigenous supplies of uranium are highly inadequate and hence we need to source uranium supply from elsewhere. In a globalised world, technology is always a premium item and we look forward to expanding our horizons in this regard as well. We intend to carry forward our cooperation with other countries in civil nuclear energy, in particular with major nuclear suppliers such as Russia and France.

13. We already have a comprehensive nuclear infrastructure. We have a corps of skilled and technically qualified manpower in this sector. It makes sense for us to leverage this valuable asset. As Hon'ble Members are aware, our target for the year 2020 is 20,000 MW of nuclear power generation. It is quite modest.

    However, if international cooperation once again became available, we could hope to double this target.

14. On the basis of the Indo-US bilateral Agreement and the finalisation of an India-specific Safeguards Agreement with the IAEA, which is being taken up shortly, the Nuclear Suppliers Group is expected to adapt its guidelines to enable international commerce with India in civil nuclear energy and all dual use technologies associated with it. This would be the beginning of the end of the technology-denial regimes against India that have been in existence for over three decades.

15. Apart from its direct impact on our nuclear energy programme, this Agreement will have major spin-offs for the development of our industries, both public and private. High technology trade with the US and other technologically advanced countries will expand rapidly.

16. I wish to draw attention to another major gain for India from this initiative.

    We will be creating opportunities for our scientists to participate in the international exchange of scientific ideas and technical know-how and to contribute to the global effort to deal with the world-wide challenges of energy security and climate change. This includes the International Thermonuclear Research Reactor or ITER project, in which India has already joined as a full and equal member along with a handful of technologically advanced countries.

17. In discussions on this subject, questions have been raised about Government's commitment to an independent foreign policy. I have clearly spelt out the Government's position in this regard in my statements to Parliament in March and August 2006. I had specially underlined that the pursuit of a foreign policy that is independent in its judgement is a legacy of our founding fathers and an abiding commitment of my Government. India is too large and too important a country to have the independence of its foreign policy taken away by any power.

    Today, India stands on the world stage as an influential and respected member of the international community. There is independence in our thought and independence in our actions.

18. I would like to reiterate that our engagement today with all global powers like US, Russia, China, EU, UK, France, Germany and Japan is unprecedented. Engagement with West, East, South East and Central Asia has been significantly stepped up with visible results. We are building new frontiers in our ties with Africa and Latin America. In South Asia we seek to develop a peaceful environment, one that is conducive to ambitious developmental targets. I urge those who question our commitment to an independent foreign policy to display the same degree of confidence in India, as others from outside do.

19. Thus, there is no question that we will ever compromise, in any manner, our independent foreign policy. We shall retain our strategic autonomy.

    At the same time, we must not forget India's long-standing commitment to the noble ideas of nuclear disarmament and our refusal to participate in any arms race, including a nuclear arms race. Our commitment to universal, non-discriminatory and total elimination of nuclear weapons remains undiminished. It was this vision of a world free of nuclear weapons which Shri Rajiv Gandhi put before the UN in 1988 and this still has universal resonance.

20. We remain committed to a voluntary, unilateral moratorium on nuclear testing. We are also committed to negotiate a Fissile Material Cut-off Treaty or FMCT in the Conference on Disarmament. India is willing to join only a non-discriminatory, multilaterally negotiated, and internationally verifiable FMCT, as and when it is concluded in the Conference on Disarmament, subject to it meeting our national security interests.

21. Despite changes in government and changes in political leadership we have always tempered the exercise of our strategic autonomy with a sense of global responsibility and with a commitment to the ideals of general and complete disarmament, including global nuclear disarmament. This Government believes that our commitment to these ideals and our efforts to realize them must continue, and continue with even greater vigour, now that we are a nuclear weapon state. The possession of nuclear weapons only increases our sense of responsibility and does not diminish it.

22. Pending global nuclear disarmament, India has maintained an impeccable non-proliferation record. As a responsible nuclear power, India will not be the source of proliferation of sensitive technologies. We stand for the strengthening of the non-proliferation regime as the infirmities in this regime have affected our security interests. We will work together with the international community to advance our common objective of non-proliferation.

23. There are now other landmarks to cross before the goal of India joining the international mainstream as a full and equal partner becomes a reality. We have to finalise an India-specific Safeguards Agreement with the IAEA. Thereafter, the Nuclear Suppliers Group has to agree, by consensus, to adapt its guidelines, we expect without conditions, to enable nuclear commerce with India and to dismantle the restrictions on the transfer of dual use technologies and items to our country. The US Administration is to secure requisite approval from the US Congress. The completion of these next steps will mark the practical realization of this initiative.

24. Our negotiators deserve credit for delivering to the nation an Agreement, which can potentially transform the economic prospects of our country. It is an Agreement that will enable us to meet the twin challenges of energy security and environmental sustainability, and remove the technology denial regimes that have, for decades, been a major constraint on our development.

    At the same time, it will bring India the recognition it deserves thanks to the outstanding achievements of our scientists in nuclear and space sciences as well as other high technology areas.

25. This historic initiative has received the steadfast support of President Bush and senior members of his Administration. The strengthening and enhancement of our bilateral relations is an objective that has received his unstinting personal support and commitment. This Agreement is a shining example of how far we have progressed.

26. Finally, Sir, let me end by saying that we have achieved an Agreement that is good for India, and good for the world. I am neither given to exaggeration nor am I known to be self-congratulatory. I will let history judge; I will let posterity judge the value of what we have done through this Agreement. In days to come it will be seen that it is not just the United States but nations across the world that wish to arrive at a new equilibrium in their relations with India. This agreement with the United States will open new doors in capitals across the world. It is another step in our journey to regain our due place in global councils. When future generations look back, they will come to acknowledge the significance of this historic deal.

Thank you, Sir "

(Excerpts of the Prime Minister's statement on August 13, 2007. This is a preliminary transcript that is yet to be corrected and matched with the official transcription from the Lok Sabha. Source: Ministry of External Affairs, Government of India)

(L) "Nuclear material" means (1) source material and (2) special fissionable material. "Source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the IAEA shall from time to time determine; and such other materials as the Board of Governors of the IAEA may determine or as may be agreed by the appropriate authorities of both Parties. "Special fissionable material" means plutonium, uranium-233, uranium enriched in the isotope 233 or 235, any substance containing one or more of the foregoing, and such other substances as the Board of Governors of the IAEA may determine or as may be agreed by the appropriate authorities of both Parties. "Special fissionable material" does not include "source material". Any determination by the Board of Governors of the IAEA under Article XX of that Agency's Statute or otherwise that amends the list of materials considered to be "source material" or "special fissionable material" shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept such amendment.

(M) "Peaceful purposes" include the use of information, nuclear material, equipment or components in such fields as research, power generation, medicine, agriculture and industry, but do not include use in, research on, or development of any nuclear explosive device or any other military purpose. Provision of power for a military base drawn from any power network, production of radioisotopes to be used for medical purposes in military environment for diagnostics, therapy and sterility assurance, and other similar purposes as may be mutually agreed by the Parties shall not be regarded as military purpose.

(N) "Person" means any individual or any entity subject to the territorial jurisdiction of either Party but does not include the Parties.

(O) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium, or thorium or any combination thereof.

(P) "Sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, or fabrication of nuclear fuel containing plutonium.

(Q) "Sensitive nuclear technology" means any information that is not in the public domain and that is important to the design, construction, fabrication, operation, or maintenance of any sensitive nuclear facility, or other such information that may be so designated by agreement of the Parties.

ARTICLE 2 - SCOPE OF COOPERATION

1. The Parties shall cooperate in the use of nuclear energy for peaceful purposes in accordance with the provisions of this Agreement. Each Party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations, and license requirements concerning the use of nuclear energy for peaceful purposes.

2. The purpose of the Agreement being to enable full civil nuclear energy cooperation between the Parties, the Parties may pursue cooperation in all relevant areas to include, but not limited to, the following:

    a. Advanced nuclear energy research and development in such areas as may be agreed between the Parties;

    b. Nuclear safety matters of mutual interest and competence, as set out in Article 3;

    c. Facilitation of exchange of scientists for visits, meetings, symposia and collaborative research;

    d. Full civil nuclear cooperation activities covering nuclear reactors and aspects of the associated nuclear fuel cycleincluding technology transfer on an industrial or commercial scale between the Parties or authorized persons;

    e. Development of a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors;

    f. Advanced research and development in nuclear sciences including but not limited to biological research, medicine, agriculture and industry, environment and climate change;

    g. Supply between the Parties, whether for use by or for the benefit of the Parties or third countries, of nuclear material;

h. Alteration in form or content of nuclear material as provided for in Article 6;

i. Supply between the Parties of equipment, whether for use by or for the benefit of the Parties or third countries;

j. Controlled thermonuclear fusion including in multilateral projects; and

k. Other areas of mutual interest as may be agreed by the Parties.

3. Transfer of nuclear material, non-nuclear material, equipment, components and information under this Agreement may be undertaken directly between the Parties or through authorized persons. Such transfers shall be subject to this Agreement and to such additional terms and conditions as may be agreed by the Parties. Nuclear material, non-nuclear material, equipment, components and information transferred from the territory of one Party to the territory of the other Party, whether directly or through a third country, will be regarded as having been transferred pursuant to this Agreement only upon confirmation, by the appropriate authority of the recipient Party to the appropriate authority of the supplier Party that such items both will be subject to the Agreement and have been received by the recipient Party.

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

ARTICLE 3 - TRANSFER OF INFORMATION

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred between the Parties. Transfers of information may be accomplished through reports, data banks and computer programs and any other means mutually agreed to by the Parties. Fields that may be covered include, but shall not be limited to, the following:

   a. Research, development, design, construction, operation, maintenance and use of reactors, reactor experiments, and decommissioning;

   b. The use of nuclear material in physical, chemical, radiological and biological research, medicine, agriculture and industry;

   c. Fuel cycle activities to meet future world-wide civil nuclear energy needs, including multilateral approaches to which they are parties for ensuring nuclear fuel supply and appropriate techniques for management of nuclear wastes;

   d. Advanced research and development in nuclear science and technology;

   e. Health, safety, and environmental considerations related to the foregoing;

   f. Assessments of the role nuclear power may play in national energy plans;

   g. Codes, regulations and standards for the nuclear industry;

   h. Research on controlled thermonuclear fusion including bilateral activities and contributions toward multilateral projects such as the International Thermonuclear Experimental Reactor (ITER); and

   i. Any other field mutually agreed to by the Parties.

2. Cooperation pursuant to this Article may include, but is not limited to, training, exchange of personnel, meetings, exchange of samples, materials and instruments for experimental purposes and a balanced participation in joint studies and projects.

3. This Agreement does not require the transfer of any information regarding matters outside the scope of this Agreement, or information that the Parties are not permitted under their respective treaties, national laws, or regulations to transfer.

4. Restricted Data, as defined by each Party, shall not be transferred under this Agreement.

ARTICLE 4 - NUCLEAR TRADE

1. The Parties shall facilitate nuclear trade between themselves in the mutual interests of their respective industry, utilities and consumers and also, where appropriate, trade between third countries and either Party of items obligated to the other Party. The Parties recognize that reliability of supplies is essential to ensure smooth and uninterrupted operation of nuclear facilities and that industry in both the Parties needs continuing reassurance that deliveries can be made on time in order to plan for the efficient operation of nuclear installations.

2. Authorizations, including export and import licenses as well as authorizations or consents to third parties, relating to trade, industrial operations or nuclear material movement should be consistent with the sound and efficient administration of this Agreement and should not be used to restrict trade. It is further agreed that if the relevant authority of the concerned Party considers that an application cannot be processed within a twomonth period it shall immediately, upon request, provide reasoned information to the submitting Party. In the event of a refusal to authorize an application or a delay exceeding four months from the date of the first application the Party of the submitting persons or undertakings may call for urgent consultations under Article 13 of this Agreement, which shall take place at the earliest opportunity and in any case not later than 30 days after such a request.

ARTICLE 5 - TRANSFER OF NUCLEAR MATERIAL, NON-NUCLEAR MATERIAL, EQUIPMENT, COMPONENTS AND RELATED TECHNOLOGY

1. Nuclear material, non-nuclear material, equipment and components may be transferred for applications consistent with this Agreement. Any special fissionable material transferred under this Agreement shall be low enriched uranium, except as provided in paragraph 5.

2. Sensitive nuclear technology, heavy water production technology, sensitive nuclear facilities, heavy water production facilities and major critical components of such facilities may be transferred under this Agreement pursuant to an amendment to this Agreement. Transfers of dual-use items that could be used in enrichment, reprocessing or heavy water production facilities will be subject to the Parties' respective applicable laws, regulations and license policies.

3. Natural or low enriched uranium may be transferred for use as fuel in reactor experiments and in reactors, for conversion or fabrication, or for such other purposes as may be agreed to by the Parties.

4. The quantity of nuclear material transferred under this Agreement shall be consistent with any of the following purposes: use in reactor experiments or the loading of reactors, the efficient and continuous conduct of such reactor experiments or operation of reactors for their lifetime, use as samples, standards, detectors, and targets, and the accomplishment of other purposes as may be agreed by the Parties.

5. Small quantities of special fissionable material may be transferred for use as samples, standards, detectors, and targets, and for such other purposes as the Parties may agree.

6. (a) The United States has conveyed its commitment to the reliable supply of fuel to India. Consistent with the July 18, 2005, Joint Statement, the United States has also reaffirmed its assurance to create the necessary conditions for India to have assured and full access to fuel for its reactors. As part of its implementation of the July 18, 2005, Joint Statement the United States is committed to seeking agreement from the U.S. Congress to amend its domestic laws and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international fuel market, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations.

   (b) To further guard against any disruption of fuel supplies, the United States is prepared to take the following additional steps:

   i) The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.

   ii) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement.

iii) The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.

iv) If despite these arrangements, a disruption of fuel supplies to India occurs, the United States and India would jointly convene a group of friendly supplier countries to include countries such as Russia, France and the United Kingdom to pursue such measures as would restore fuel supply to India.

(c) In light of the above understandings with the United States, an India-specific safeguards agreement will be negotiated between India and the IAEA providing for safeguards to guard against withdrawal of safeguarded nuclear material from civilian use at any time as well as providing for corrective measures that India may take to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies. Taking this into account, India will place its civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate safeguards agreement to this end with the IAEA.

ARTICLE 6 - NUCLEAR FUEL CYCLE ACTIVITIES

In keeping with their commitment to full civil nuclear cooperation, both Parties, as they do with other states with advanced nuclear technology, may carry out the following nuclear fuel cycle activities:

i) Within the territorial jurisdiction of either Party, enrichment up to twenty percent in the isotope 235 of uranium transferred pursuant to this Agreement, as well as of uranium used in or produced through the use of equipment so transferred, may be carried out.

ii) Irradiation within the territorial jurisdiction of either Party of plutonium, uranium-233, high enriched uranium and irradiated nuclear material transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred may be carried out.

iii) With a view to implementing full civil nuclear cooperation as envisioned in the Joint Statement of the Parties of July 18, 2005, the Parties grant each other consent to reprocess or otherwise alter in form or content nuclear material transferred pursuant to this Agreement and nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment so transferred. To bring these rights into effect, India will establish a new national reprocessing facility dedicated to reprocessing safeguarded nuclear material under IAEA safeguards and the Parties will agree on arrangements and procedures under which such reprocessing or other alteration in form or content will take place in this new facility. Consultations on arrangements and procedures will begin within six months of a request by either Party and will be concluded within one year. The Parties agree on the application of IAEA safeguards to all facilities concerned with the above activities. These arrangements and procedures shall include provisions with respect to physical protection standards set out in Article 8, storage standards set out in Article 7, and environmental protections set forth in Article 11 of this Agreement, and such other provisions as may be agreed by the Parties. Any special fissionable material that may be separated may only be utilized in national facilities under IAEA safeguards.

iv) Post-irradiation examination involving chemical dissolution or separation of irradiated nuclear material transferred pursuant to this Agreement or irradiated nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred may be carried out.

ARTICLE 7 - STORAGE AND RETRANSFERS

1. Plutonium and uranium 233 (except as either may be contained in irradiated fuel elements), and high enriched uranium, transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred, may be stored in facilities that are at all times subject, as a minimum, to the levels of physical protection that are set out in IAEA document INFCIRC 225/REV 4 as it may be revised and accepted by the Parties. Each Party shall record such facilities on a list, made available to the other Party. A Party's list shall be held confidential if that Party so requests. Either Party may make changes to its list by notifying the other Party in writing and receiving a written acknowledgement. Such acknowledgement shall be given no later than thirty days after the receipt of the notification and shall be limited to a statement that the notification has been received. If there are grounds to believe that the provisions of this sub-Article are not being fully complied with, immediate consultations may be called for. Following upon such consultations, each Party shall ensure by means of such consultations that necessary remedial measures are taken immediately. Such measures shall be sufficient to restore the levels of physical protection referred to above at the facility in question. However, if the Party on whose territory the nuclear material in question is stored determines that such measures are not feasible, it will shift the nuclear material to another appropriate, listed facility it identifies.

2. Nuclear material, non-nuclear material, equipment, components, and information transferred pursuant to this Agreement and any special fissionable material produced through the use of nuclear material, non-nuclear material or equipment so transferred shall not be transferred or re-transferred to unauthorized persons or, unless the Parties agree, beyond the recipient Party's territorial jurisdiction.

ARTICLE 8 - PHYSICAL PROTECTION

1. Adequate physical protection shall be maintained with respect to nuclear material and equipment transferred pursuant to this Agreement and nuclear material used in or produced through the use of nuclear material, non-nuclear material or equipment so transferred.

2. To fulfill the requirement in paragraph 1, each Party shall apply measures in accordance with (i) levels of physical protection at least equivalent to the recommendations published in IAEA document INFCIRC/225/Rev.4 entitled "The Physical Protection of Nuclear Material and Nuclear Facilities," and in any subsequent revisions of that document agreed to by the Parties, and (ii) the provisions of the 1980 Convention on the Physical Protection of Nuclear Material and any amendments to the Convention that enter into force for both Parties.

3. The Parties will keep each other informed through diplomatic channels of those agencies or authorities having responsibility for ensuring that levels of physical protection for nuclear material in their territory or under their jurisdiction or control are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this Article. The Parties will also keep each other informed through diplomatic channels of the designated points of contact within their national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

4. The provisions of this Article shall be implemented in such a manner as to avoid undue interference in the Parties' peaceful nuclear activities and so as to be consistent with prudent management practices required for the safe and economic conduct of their peaceful nuclear programs.

ARTICLE 9 - PEACEFUL USE

Nuclear material, equipment and components transferred pursuant to this Agreement and nuclear material and by-product material used in or produced through the use of any nuclear material, equipment, and components so transferred shall not be used by the recipient Party for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose.

ARTICLE 10 - IAEA SAFEGUARDS

1. Safeguards will be maintained with respect to all nuclear materials and equipment transferred pursuant to this Agreement, and with respect to all special fissionable material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating Party.

2. Taking into account Article 5.6 of this Agreement, India agrees that nuclear material and equipment transferred to India by the United States of America pursuant to this Agreement and any nuclear material used in or produced through the use of nuclear material, non-nuclear material, equipment or components so transferred shall be subject to safeguards in perpetuity in accordance with the India-specific Safeguards Agreement between India and the IAEA [***identifying data***] and an Additional Protocol, when in force.

3. Nuclear material and equipment transferred to the United States of America pursuant to this Agreement and any nuclear material used in or produced through the use of any nuclear material, non-nuclear material, equipment, or components so transferred shall be subject to the Agreement between the United States of America and the IAEA for the application of safeguards in the United States of America, done at Vienna November 18, 1977, which entered into force on December 9, 1980, and an Additional Protocol, when in force.

4. If the IAEA decides that the application of IAEA safeguards is no longer possible, the supplier and recipient should consult and agree on appropriate verification measures.

5. Each Party shall take such measures as are necessary to maintain and facilitate the application of IAEA safeguards in its respective territory provided for under this Article.

6. Each Party shall establish and maintain a system of accounting for and control of nuclear material transferred pursuant to this Agreement and nuclear material used in or produced through the use of any material, equipment, or components so transferred. The procedures applicable to India shall be those set forth in the India-specific Safeguards Agreement referred to in Paragraph 2 of this Article.

7. Upon the request of either Party, the other Party shall report or permit the IAEA to report to the requesting Party on the status of all inventories of material subject to this Agreement.

8. The provisions of this Article shall be implemented in such a manner as to avoid hampering, delay, or undue interference in the Parties' peaceful nuclear activities and so as to be consistent with prudent management practices required for the safe and economic conduct of their peaceful nuclear programs.

ARTICLE 11 - ENVIRONMENTAL PROTECTION

The Parties shall cooperate in following the best practices for minimizing the impact on the environment from any radioactive, chemical or thermal contamination arising from peaceful nuclear activities under this Agreement and in related matters of health and safety.

ARTICLE 12 - IMPLEMENTATION OF THE AGREEMENT

1. This Agreement shall be implemented in a manner designed:

   a) to avoid hampering or delaying the nuclear activities in the territory of either Party;

   b) to avoid interference in such activities;

   c) to be consistent with prudent management practices required for the safe conduct of such activities; and

   d) to take full account of the long term requirements of the nuclear energy programs of the Parties.

2. The provisions of this Agreement shall not be used to:

   a) secure unfair commercial or industrial advantages or to restrict trade to the disadvantage of persons and undertakings of either Party or hamper their commercial or industrial interests, whether international or domestic;

   b) interfere with the nuclear policy or programs for the promotion of the peaceful uses of nuclear energy including research and development; or

   c) impede the free movement of nuclear material, non nuclear material and equipment supplied under this Agreement within the territory of the Parties.

3. When execution of an agreement or contract pursuant to this Agreement between Indian and United States organizations requires exchanges of experts, the Parties shall facilitate entry of the experts to their territories and their stay therein consistent with national laws, regulations and practices. When other cooperation pursuant to this Agreement requires visits of experts, the Parties shall facilitate entry of the experts to their territory and their stay therein consistent with national laws, regulations and practices.

ARTICLE 13 - CONSULTATIONS

1. The Parties undertake to consult at the request of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy on a stable, reliable and predictable basis. The Parties recognize that such consultations are between two States with advanced nuclear technology, which have agreed to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology.

2. Each Party shall endeavor to avoid taking any action that adversely affects cooperation envisaged under Article 2 of this Agreement. If either Party at any time following the entry into force of this Agreement does not comply with the provisions of this Agreement, the Parties shall promptly hold consultations with a view to resolving the matter in a way that protects the legitimate interests of both Parties, it being understood that rights of either Party under Article 16.2 remain unaffected.

3. Consultations under this Article may be carried out by a Joint Committee specifically established for this purpose. A Joint Technical Working Group reporting to the Joint Committee will be set up to ensure the fulfillment of the requirements of the Administrative Arrangements referred to in Article 17.

ARTICLE 14 - TERMINATION AND CESSATION OF COOPERATION

1. Either Party shall have the right to terminate this Agreement prior to its expiration on one year's written notice to the other Party. A Party giving notice of termination shall provide the reasons for seeking such termination. The Agreement shall terminate one year from the date of the written notice, unless the notice has been withdrawn by the providing Party in writing prior to the date of termination.

2. Before this Agreement is terminated pursuant to paragraph 1 of this Article, the Parties shall consider the relevant circumstances and promptly hold consultations, as provided in Article 13, to address the reasons cited by the Party seeking termination. The Party seeking termination has the right to cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations. The Parties agree to consider carefully the circumstances that may lead to termination or cessation of cooperation. They further agree to take into account whether the circumstances that may lead to termination or cessation resulted from a Party's serious concern about a changed security environment or as a response to similar actions by other States which could impact national security.

3. If a Party seeking termination cites a violation of this Agreement as the reason for notice for seeking termination, the Parties shall consider whether the action was caused inadvertently or otherwise and whether the violation could be considered as material. No violation may be considered as being material unless corresponding to the definition of material violation or breach in the Vienna Convention on the Law of Treaties. If a Party seeking termination cites a violation of an IAEA safeguards agreement as the reason for notice for seeking termination, a crucial factor will be whether the IAEA Board of Governors has made a finding of non-compliance.

4. Following the cessation of cooperation under this Agreement, either Party shall have the right to require the return by the other Party of any nuclear material, equipment, non-nuclear material or components transferred under this Agreement and any special fissionable material produced through their use. A notice by a Party that is invoking the right of return shall be delivered to the other Party on or before the date of termination of this Agreement. The notice shall contain a statement of the items subject to this Agreement as to which the Party is requesting return. Except as provided in provisions of Article 16.3, all other legal obligations pertaining to this Agreement shall cease to apply with respect to the nuclear items remaining on the territory of the Party concerned upon termination of this Agreement.

5. The two Parties recognize that exercising the right of return would have profound implications for their relations. If either Party seeks to exercise its right pursuant to paragraph 4 of this Article, it shall, prior to the removal from the territory or from the control of the other Party of any nuclear items mentioned in paragraph 4, undertake consultations with the other Party. Such consultations shall give special consideration to the importance of uninterrupted operation of nuclear reactors of the Party concerned with respect to the availability of nuclear energy for peaceful purposes as a means of achieving energy security. Both Parties shall take into account the potential negative consequences of such termination on the on-going contracts and projects initiated under this Agreement of significance for the respective nuclear programmes of either Party.

6. If either Party exercises its right of return pursuant to paragraph 4 of this Article, it shall, prior to the removal from the territory or from the control of the other Party, compensate promptly that Party for the fair market value thereof and for the costs incurred as a consequence of such removal. If the return of nuclear items is required, the Parties shall agree on methods and arrangements for the return of the items, the relevant quantity of the items to be returned, and the amount of compensation that would have to be paid by the Party exercising the right to the other Party.

7. Prior to return of nuclear items, the Parties shall satisfy themselves that full safety, radiological and physical protection measures have been ensured in accordance with their existing national regulations and that the transfers pose no unreasonable risk to either Party, countries through which the nuclear items may transit and to the global environment and are in accordance with existing international regulations.

8. The Party seeking the return of nuclear items shall ensure that the timing, methods and arrangements for return of nuclear items are in accordance with paragraphs 5, 6 and 7. Accordingly, the consultations between the Parties shall address mutual commitments as contained in Article 5.6. It is not the purpose of the provisions of this Article regarding cessation of cooperation and right of return to derogate from the rights of the Parties under Article 5.6.

9. The arrangements and procedures concluded pursuant to Article 6(iii) shall be subject to suspension by either Party in exceptional circumstances, as defined by the Parties, after consultations have been held between the Parties aimed at reaching mutually acceptable resolution of outstanding issues, while taking into account the effects of such suspension on other aspects of cooperation under this Agreement.

ARTICLE 15 - SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or implementation of the provisions of this Agreement shall be promptly negotiated by the Parties with a view to resolving that dispute.

ARTICLE 16 - ENTRY INTO FORCE AND DURATION

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that they have completed all applicable requirements for its entry into force.

2. This Agreement shall remain in force for a period of40 years. It shall continue in force thereafter for additional periods of 10 years each. Each Party may, by giving 6 months written notice to the other Party, terminate this Agreement at the end of the initial 40 year period or at the end of any subsequent 10 year period.

3. Notwithstanding the termination or expiration of this Agreement or withdrawal of a Party from this Agreement, Articles 5.6(c), 6, 7, 8, 9, 10 and 15 shall continue in effect so long as any nuclear material, non-nuclear material, by-product material, equipment or components subject to these articles remains in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards.

4. This Agreement shall be implemented in good faith and in accordance with the principles of international law.

5. The Parties may consult, at the request of either Party, on possible amendments to this Agreement. This Agreement may be amended if the Parties so agree. Any amendment shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal legal procedures necessary for the entry into force have been completed.

ARTICLE 17 - ADMINISTRATIVE ARRANGEMENT

1. The appropriate authorities of the Parties shall establish an Administrative Arrangement in order to provide for the effective implementation of the provisions of this Agreement.

2. The principles of fungibility and equivalence shall apply to nuclear material and non-nuclear material subject to this Agreement. Detailed provisions for applying these principles shall be set forth in the Administrative Arrangement.

3. The Administrative Arrangement established pursuant to this Article may be amended by agreement of the appropriate authorities of the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at , this day of , 200 , in duplicate.

FOR THE GOVERNMENT OF THE

UNITED STATES OF AMERICA:

FOR THE GOVERNMENT

OF INDIA:

AGREED MINUTE

During the negotiation of the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy ("the Agreement") signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

Proportionality

For the purposes of implementing the rights specified in Articles 6 and 7 of the Agreement with respect to special fissionable material and by-product material produced through the use of nuclear material and non-nuclear material,

respectively, transferred pursuant to the Agreement and not used in or produced through the use of equipment transferred pursuant to the Agreement, such rights shall in practice be applied to that proportion of special fissionable material and by-product material produced that represents the ratio of transferred nuclear material and non-nuclear material, respectively, used in the production of the special fissionable material and by-product material to the total amount of nuclear material and non-nuclear material so used, and similarly for subsequent generations.

By-product material

The Parties agree that reporting and exchanges of information on by-product material subject to the Agreement will be limited to the following:

(1) Both Parties would comply with the provisions as contained in the IAEA document GOV/1999/19/Rev.2, with regard to by-product material subject to the Agreement.

(2) With regard to tritium subject to the Agreement, the Parties will exchange annually information pertaining to its disposition for peaceful purposes consistent with Article 9 of this Agreement.

FOR THE GOVERNMENT OF THE

UNITED STATES OF AMERICA:

FOR THE GOVERNMENT

OF INDIA:

*** The text of the Agreement for Cooperation between the Government of the United States of America and the Government of India concerning peaceful uses of nuclear energy (123 Agreement)**