

**Draft Agreement Between the IAEA and XXY, XYX and YXX Regarding
the Establishment and Operation of a Commercial Enrichment Company
in the Multilateral Enrichment Sanctuary
(MESP Agreement)**

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Preamble

XXY,
XYX and
YXX

and

The International Atomic Energy Agency

[*Having regard* to the Agreement between the IAEA and the Host State Regarding the Establishment of a Multilateral Enrichment Sanctuary,]

Having considered the Statute of the IAEA of 26 October 1956, in particular Art. XI E and Art. III C thereof, and in compliance with these provisions,

Considering the adherence of the States of the Group of Interested States to the Statute of the IAEA of 26 October 1956, the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, the [Convention on the Physical Protection of Nuclear Material of 3 March 1980 as amended], [and XXXX,]

Recalling that each State of the Group of Interested States has entered into safeguard agreements with the IAEA,

Confirming their rights and obligations under those agreements,

Desiring to further the practical application of atomic energy for peaceful uses while ensuring that the Multilateral Enrichment Sanctuary will not be used to further military purposes,

Considering the right of each state to determine its sources of energy,

Exercising the rights of the Group of Interested States under Art. IV of the Non-Proliferation Treaty,

Considering that the application of atomic energy for peaceful uses requires compliance with the applicable IAEA safety standards,

Desiring to ensure the highest possible security of supply of nuclear fuel on a non-discriminatory basis,

Convinced that multilateral approaches to enrichment contribute to peace and stability,

Considering that the Group of Interested States intends to facilitate the establishment of a commercial, competitive, market-based Enrichment Company,

Desiring to enable the Group of Interested States and their national industries through this Enrichment Company to make use of efficient, modern and safe technologies for enrichment,

Desiring for these purposes to support a setting in which Technology Providers can supply the necessary equipment to the Enrichment Company without transfer of the enrichment technology in the context of this framework to the Enrichment Company, States or the IAEA,

Noting that the Host State [agreed / will agree] to establish a MES under full control of the IAEA on its territory,

Desiring for these purposes to locate the enrichment facilities of the Enrichment Company in the MES and thereby to limit undue influence of any government on the operation of the Enrichment Company,

Bearing in mind the obligations of non-nuclear-weapon States Party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,

Reaffirming that any cooperative arrangements will have to be consistent with the policies of the Parties in relation to the non-proliferation of nuclear weapons, to which they attach great importance,

Have agreed as follows:

Part I

Definitions and Purpose

Article 1

Definitions

In this Agreement the expression:

- a) “Director General” means the Director General of the IAEA or a person authorized by the Director General for the purpose of the provision in question;
- b) “Enrichment Company” means a company or group of companies the establishment of which is facilitated by the Group of Interested States and the purpose of which is to offer uranium enrichment services;
- c) “enrichment technology” means the technology necessary to enrich uranium;
- d) “facilities” means the enrichment facilities of the Enrichment Company located in the MES;
- e) “Group of Interested States” means the States XXY, XYX and YXX;
- f) “Host State” means X;
- g) “Host State Agreement” means the Agreement between the IAEA and the Host State Regarding the Establishment of a Multilateral Enrichment Sanctuary of XXX
- h) “IAEA” means the International Atomic Energy Agency;
- i) “MES” means the Multilateral Enrichment Sanctuary as [will be] defined in the Host State Agreement;
- j) “nuclear material” means “nuclear material” as defined in the 1997 Vienna Convention on Civil Liability for Nuclear Damage as amended;
- k) “Project” means the Multilateral Enrichment Sanctuary Project based on this Agreement and the Host State Agreement and pursuing the purposes noted in Article 2;
- l) “Technology Provider” means an entity which delivers, assembles, sets up, maintains and eventually decommissions and dismantles equipment using enrichment technology.

Article 2

Purpose

- 1) This Agreement shall facilitate the establishment of an Enrichment Company and its operation in the MES to enrich uranium to a concentration of no more than [6] % for peaceful, non-military uses under supervision by the IAEA. The supervision includes the grant of im- and export licenses.
- 2) The Enrichment Company shall participate in the market for enrichment services under conditions of fair and undistorted competition. The Enrichment Company shall maintain a physical or virtual buffer stock to be able to fulfill its obligation under Art. 14 Paragraph 1 of this Agreement.
- 3) The facilities will use the enrichment technology of a Technology Provider that delivers, assembles, sets up, maintains and eventually decommissions and dismantles equipment using enrichment technology.

Part II

The Enrichment Company

Article 3

General

- 1) The Group of Interested States facilitates the establishment of a commercial, competitive, market-based Enrichment Company for the purposes of carrying out enrichment in the MES.
- 2) The Group of Interested States ensures that the Enrichment Company shall comply with all provisions relating to it in this agreement.
- 3) The Enrichment Company shall have legal personality in the MES.
- 4) The Enrichment Company shall cooperate with the IAEA and the Host State in all questions relating to its operation in the MES.
- 5) The Enrichment Company shall abide by the laws and regulations applicable in the MES and the rules on protection of and access to enrichment technology in Part VIII

of this Agreement. It shall oblige its sub-contractors to also abide by these laws, regulations and rules.

Article 4

Ownership of the Enrichment Company

- 1) Each State of the Group of Interested States or commercial entities nominated by such a State and not controlled directly or indirectly by states other than the States of the Group of Interested States may own shares of the Enrichment Company. No single State of the Group of Interested States shall, directly or indirectly, hold a majority interest in the Enrichment Company. It is understood that the States of the Group of Interested States fulfill the criteria relating to assurances of supply in Part VII of this Agreement. The Group of Interested States will determine the details concerning their ownership of the Enrichment Company, including voting rights, in a separate agreement.
- 2) A state that is not a member of the Group of Interested States or a commercial entity nominated by such other state or controlled directly or indirectly by such other state may acquire an interest in the Enrichment Company only with the permission of the Director General, which shall be granted only upon a consensual request by the States of the Group of Interested States and if
 - a) in the case of a state intending to acquire an interest in the Enrichment Company the state fulfils the criteria relating to assurances of supply in Part VII of this Agreement and has agreed to accede to this Agreement
 - b) in the case of a commercial entity intending to acquire an interest in the Enrichment Company the commercial entity is nominated by a state that fulfils the criteria relating to assurances of supply in Part VII of this Agreement, that state has agreed to accede to this Agreement and the commercial entity is not controlled directly or indirectly by states other than the States of the Group of Interested States or the nominating state.

Article 5

Financial Requirements for the Enrichment Company

- 1) The Enrichment Company shall be endowed with
 - a) An appropriate minimum capital given the importance of a secure energy supply and the risks involved in the activities of the Enrichment Company; and
 - b) The necessary funds and personnel to assure the effective execution of the enrichment project.
- 2) The Enrichment Company shall have and maintain insurance or other financial security to cover its liabilities.
- 3) The Enrichment Company shall set aside appropriate reserves for the decommissioning and dismantling of the facilities.

Article 6

Market Principles

- 1) The Enrichment Company shall abide by rules of fair competition; in particular it shall not join a cartel with other companies providing enrichment services.
- 2) With the permission of the Director General, the Enrichment Company may
 - a) enter into agreements with other companies providing enrichment services for the purposes of providing multilateral assurances of supply; or
 - b) take over other companies providing enrichment services.
- 3) The decisions of the Enrichment Company shall be based on commercial, not on political considerations.

Article 7

Allocation of Territory to the Enrichment Company

- 1) The IAEA shall collaborate with the Enrichment Company, the Group of Interested States and the Host State in allocating the necessary territory in the MES to the Enrichment Company taking into account the Host State Agreement, the obligations of the IAEA under that Agreement, and the applicable laws and regulations in the MES according to the Host State Agreement.
- 2) For the time of construction of the facilities the IAEA shall provide additional space for the Technology Provider.
- 3) The IAEA and the Enrichment Company shall negotiate appropriate terms for the lease of the territory allocated, including the additional space for the Technology Provider under paragraph 2 of this Article, and for the conditions in which the territory shall be returned to the IAEA after the expiration of the lease including decommissioning and dismantling of facilities. The cost for the lease and the decommissioning and dismantling of the facilities shall be born by the Enrichment Company. The rent under the lease agreement shall be paid to the IAEA. In the negotiations the Parties shall consider the cost of the administration of the MES by the IAEA.
- 4) The IAEA shall ensure access of the Enrichment Company to public services provided by the Host State to the MES under the Host State Agreement on equitable terms, as laid down in Annex III.

Part III

Operation of the Enrichment Company

Article 8

Separation of Technical and Management Side of Operations

- 1) The equipment using enrichment technology shall be delivered, assembled, set up, maintained and eventually decommissioned and dismantled by the Technology Provider under a contract between the Enrichment Company and the Technology Provider.
- 2) The facilities shall be managed by the Enrichment Company. The Enrichment Company may transfer the management to a management company formed and owned by the Enrichment Company or the Technology Provider, if the Enrichment Company agrees to cover any potential liability of the management company for the tasks transferred.
- 3) Construction and operation costs of the facilities shall be born by the Enrichment Company.

Article 9

Licenses

- 1) The Enrichment Company may begin operations upon having obtained the necessary licenses.
- 2) Licenses granted by the IAEA in the MES are granted if the Enrichment Company meets all of the legal prerequisites and conditions for the grant.
- 3) The IAEA shall support the Enrichment Company in meeting the prerequisites and conditions for the grant of the necessary licenses. [The unit of the IAEA assisting the Enrichment Company shall be different from the one competent for licensing, inspection and enforcement in the MES.]

Article 10

Services and Customers of the Enrichment Company

- 1) The Enrichment Company may provide enrichment services subject to the applicable law in the MES according to the Host State Agreement for the Group of Interested States and their power providers and third states fulfilling the criteria relating to assurances of supply in Part VII of this Agreement and their power providers.
- 2) The Enrichment Company shall notify any contract about the provision of enrichment services to the Director General. The contract shall enter into effect if the Director General does not object to it within three months of the notification. The Director General shall object to the contract if it is to be concluded with a state or a commercial entity other than those mentioned in paragraph 1 of this Article.
- 3) The Enrichment Company shall enrich only uranium, only in the isotope 235 and only for peaceful, non-military uses and it shall not enrich uranium to a concentration of more than [6] %.

Article 11

Conditions of Operation

- 1) The Director General shall release nuclear material, natural uranium or depleted uranium for import or export from or to the MES if the exporting or importing state
 - a) fulfils the criteria relating to assurances of supply in Part VII of this Agreement;
 - b) agrees to subject any further transfer, retransfer, reprocessing or alteration of the nuclear material, natural uranium or depleted uranium, or the transport of the spent fuel to prior approval by the IAEA; and
 - c) assures compliance with any criteria the compliance with which the IAEA assured the supplier of the nuclear material, natural uranium or depleted uranium.
- 2) The Enrichment Company shall commit to an annual audit by an impartial auditor appointed by the Enrichment Company and approved by the IAEA. The audit shall take into account the requirements of adequate funds for operation and the reserves for the decommissioning and dismantling of the facilities.

Article 12

Appointment of Staff

The Enrichment Company shall inform the Director General of its staff and the staff of its subcontractors appointed for work in the MES. The Director General may reject any member of the staffs of these companies upon the appointment or at any later date. A staff member so rejected must not enter or has to leave the MES.

Article 13

Taxes, customs duties, fees

As provided under the Host State Agreement the Enrichment Company shall be subject to taxation and imposition of customs duties by the Host State. The IAEA may charge fees for the provision of administrative services.

Part IV Emergency Mechanism

Article 14

Emergency Mechanism

- 1) The Enrichment Company shall provide once, upon notice by the Director General, up to one reactor load of enriched uranium to a recipient designated by the Director General. The uranium shall be delivered on the terms and conditions put down in Annex I.
- 2) The Director General may make use of the power under Paragraph 1 of this Article if a country has been cut off from supply despite its fulfilling the criteria relating to assurances of supply in Part VII of this Agreement.
- 3) With the permission of the Director General the Enrichment Company may host and manage other assurances of supply mechanisms.

Part V

Additional Rights and Obligations of the IAEA

Article 15

Non-Exclusivity

- 1) The IAEA may, at its sole discretion, conclude agreements permitting other companies providing enrichment services facilitated by other groups of interested states to operate in the MES.
- 2) Any favor, immunity or benefit granted to such other group of interested states above and beyond the benefits granted in this agreement shall immediately and unconditionally be extended to the Group of Interested States.

Article 16

Applicable Law and Administration

The applicable law in, and the administration of, the MES are subject to the provisions of the Host State Agreement.

Article 17

Additional Obligations of the IAEA

The IAEA shall, in the administration of the territory, act in good faith and take into account the interests of the Group of Interested States and the Enrichment Company insofar as compatible with the purposes of this agreement.

Part VI

Additional Rights and Obligations of the Group of Interested States

Article 18

Visits to MES

Any State of the Group of Interested States will notify the visit of any representative of that State to the MES in advance. Sentences 2 and 3 of Article 12 apply correspondingly.

Article 19

Costs

- 1) The cost of the administration of the territory shall be borne jointly by all the groups of interested states in accordance with Annex II, to the extent that it is not covered by fees or lease payments by companies operating in the MES.
- 2) If several companies providing enrichment services operate in the MES the contributions shall be allocated between groups of interested states on the basis of the [turnover / enrichment capacity] of the companies.

Article 20

Liability

- 1) The Parties agree to bring no claims or legal proceedings of any kind against another Party and its staff, citizens and residents for any loss or damage of whatsoever nature arising from activities undertaken pursuant to this Agreement or pursuant to the Host State Agreement [unless under the procedures provided for in these Agreements.]
- 2) The Group of Interested States agrees to indemnify and hold harmless the IAEA and the Host State from and against all claims and demands for compensation of nuclear damage made under any legal grounds, including the general rules of public international law, against the IAEA or the Host State in connection with activities undertaken pursuant to this Agreement or the Host State Agreement. Upon request, the IAEA shall involve the Group of Interested States in the defense against such claims and demands.
- 3) The Group of Interested States agrees to cover [all] liabilities of the Host State[, in its capacity as Installation State in accordance with Article 21 paragraph 3 of the Host State Agreement, under the 1997 Vienna Convention, particularly under its Article VII, and under the 1997 Convention on Supplementary Compensation, particularly under its Article III (1) (b),] if and to the extent the liabilities originate from activities undertaken pursuant to this Agreement or from activities undertaken by the Enrichment Company pursuant to the Host State Agreement.

Part VII

Criteria Relating to Assurances of Supply

Article 21

Criteria Relating to Assurances of Supply

A State fulfils the criteria relating to assurances of supply if it

- a) is a Member State of the IAEA in good standing;
- b) has in force a safeguards agreement that applies to the nuclear material, natural uranium and depleted uranium that could be supplied;
- c) was the subject of a conclusion drawn on the non-diversion of declared nuclear material, natural uranium or depleted uranium in the most recent Safeguards Implementation Report and there are no safeguards issues under current consideration by the Board of Governors with respect to the State;
- d) is not subject to any sanctions of the United Nations Security Council preventing its supply with enriched uranium;
- e) satisfies adequate nuclear security and nuclear safety requirements.

Part VIII

Protection of and Access to Enrichment Technology

Article 22

Protection of Enrichment Technology

The IAEA shall take all necessary measures to protect the enrichment technology. It shall conclude agreements with the Technology Providers or their Home States on the protection of and access to enrichment technology in connection with the Project. Such agreements shall designate areas in the MES and information as restricted, allowing for access only to the extent necessary for the Project. The IAEA, the Enrichment Company, the Group of Interested States and its States shall have no access to areas and information so designated except under the terms and conditions of such agreements. The IAEA, the Group of Interested

States, its States and the Enrichment Company shall respect and abide by such agreements and all other measures taken by the IAEA under this Article.

Part IX Dispute Settlement

Article 23

Consultations, Settlement of Disputes

- 1) Regular consultations shall be held between the Group of Interested States and the IAEA.
- 2) [In between any such consultations the Group of Interested States empowers the Enrichment Company to speak on its behalf to the IAEA in all matters relating to the Project.]
- 3) Any dispute between the Parties of this Agreement or the IAEA and a State of the Group of Interested States concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the Project or the relationship between the Parties of this Agreement or the IAEA and a State of the Group of Interested States, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Director General, one to be chosen by the Group of Interested States or, in case the Group of Interested States cannot agree upon an arbitrator within one month, chosen by the President of the International Court of Justice, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six month following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the president of the International Court of Justice at the request of the IAEA or the Group of Interested States.

Part X Change of the Parties, Accession, Withdrawal

Article 24

Change of the Parties, Accession, Withdrawal

- 1) Only states acquiring an interest in the Enrichment Company or nominating a commercial entity acquiring such an interest may accede to the Agreement. They may only do so if they fulfill the requirements of Article 4 Paragraph 2 of this Agreement.
- 2) Accession shall be effected by the deposit with the Director General of an instrument of acceptance. The Agreement shall come into force as regards that State on the date of deposit of that State's instrument of acceptance. It is understood that, when an instrument of acceptance is deposited on behalf of the State, the State will be in a position under its own law to give effect to the terms of this Agreement. The Director General shall transmit a certified copy of this Agreement to the Government of every State acceding to the Agreement and shall inform the Group of Interested States of the deposit of each instrument of acceptance.
- 3) A State that has acceded to the Agreement shall upon accession for the purposes of this Agreement be part of the Group of Interested States.
- 4) A State may only withdraw from this agreement if it and, where applicable, the commercial entity nominated by it cede any and all interest in the Enrichment Company. It may withdraw by notice in writing to that effect to the Director General. The Parties shall negotiate as to the consequences of the withdrawal.

Part XI Final Provisions

Article 25**Reservations**

No reservations may be made to this Agreement.

Article 26**Interpretation**

The provisions of this Agreement shall in no way limit or prejudice the Host State Agreement or the Statute of the IAEA and shall be read so that they do not contradict those agreements.

Article 27**Amendments**

Any Party may at any time propose amendments to this Agreement. Any such proposals shall be submitted for acceptance to the other Parties. Any amendment so submitted shall require acceptance in writing deposited with the Director General by each State of the Group of Interested States and the IAEA and shall enter into force 30 days after the receipt by the Director General of the last such instrument of acceptance.

Article 28**Entry into Force and Termination**

- 1) This Agreement is subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall be deposited with the Director General.
- 2) The Agreement shall enter into force on the deposit with the Director General of XXX. The Director General shall inform the States of the Group of Interested States of the deposit of each instrument of acceptance and of the date of entry into force of this Agreement.
- 3) This Agreement may at any time be terminated by the unanimous consent of the States of the Group of Interested States and the IAEA. In this event the Parties shall negotiate the consequences of such termination.

Article 29**Authentic Texts, Depository**

The original of this Agreement, of which the XXX, English, XXX texts are equally authentic, shall be deposited with the Director General.

Annex I Terms and Conditions for Delivery of Uranium under Emergency Mechanism**Annex II Payment of Costs by the Group of Interested States****Annex III Public Services**