

KS

Final

Agreement between the
UNITED STATES DEPARTMENT OF ENERGY
and the
JAPAN ATOMIC ENERGY RESEARCH INSTITUTE
Concerning Research and Development
in
Nuclear Material Control, Accountancy, Verification
and
Physical Protection

The United States Department of Energy (hereafter "DOE") and the Japan Atomic Energy Research Institute (hereafter "JAERI") (hereafter called "the Parties"), sharing a desire to cooperate on research, development, testing, and evaluation of technology, equipment, and procedures in order to improve nuclear material control, accountancy, verification, and physical protection, hereby agree as follows:

ARTICLE I

Cooperation under this Agreement may include but is not limited to:

- A. Exchange of information, equipment, or personnel.
- B. Exchange or loan of samples, materials, equipment, and components for evaluation and testing.
- C. Joint projects for the research, development, testing, and evaluation of equipment, techniques, or procedures.

ARTICLE II

- A. A Permanent Coordinating Group (PCG) shall be established, with each Party designating two officials to serve as Coordinators, to supervise the implementation of this Agreement. As mutually agreed, the PCG shall meet to evaluate all aspects of the cooperation under this Agreement. These meetings shall be held once a year, alternately in the United States and Japan.
- B. All cooperative activities to be carried out under this Agreement shall be approved and monitored by the PCG. Each cooperative activity shall be described in a document defined as an Action Sheet which shall be approved by the PCG in writing and shall be annexed to this Agreement.
- C. Technical management of the cooperation under this Agreement shall be carried out by Project Leaders designated by the Coordinators. Project Leaders shall be responsible for the working contacts between the Parties in their respective areas of cooperation.

ARTICLE III

The following provisions shall apply concerning exchanges of equipment pursuant to this Agreement:

- A. By mutual agreement, a Party may provide equipment to be utilized in a joint activity. In such cases, the sending Party shall supply, as soon as possible, a detailed list of the equipment to be provided, together with the relevant specifications and appropriate technical and informational documentation related to use, maintenance, and repair of the equipment.
- B. Title to the equipment and necessary spare parts supplied by the sending Party for use in joint activities shall remain in the sending Party, and the property shall be returned to the sending Party upon completion of the joint activity, unless otherwise agreed.
- C. Equipment provided pursuant to this Agreement shall be brought into operation at the host establishment only by mutual agreement between the Parties.
- D. The host establishment shall provide the necessary premises for the equipment, shall provide for utilities such as electric power, water and gas, and normally shall provide materials to be tested, in accordance with the technical requirements which shall be as mutually agreed upon.
- E. The responsibility and expenses for the transport of equipment and materials from the United States of America by plane or ship to an authorized port of entry in Japan convenient to the ultimate destination, and also responsibility for its safekeeping and insurance en route shall rest with DOE.
- F. The responsibility and expenses for the transport of equipment and materials from Japan by plane or ship to an authorized port of entry in the United States convenient to the ultimate destination, and also responsibility for its safekeeping and insurance en route shall rest with JAERI.
- G. Equipment provided pursuant to this Agreement for use in joint activities shall be considered to be scientific, not having a commercial character and each Party shall make its best effort to obtain duty free entry.

ARTICLE IV

The following provisions shall apply concerning exchanges of personnel under this Agreement:

- A. Whenever an exchange of personnel is contemplated, each Party shall ensure the selection of adequate personnel with skills and competence necessary to conduct the activities planned under this Agreement. Each such exchange of personnel shall be mutually agreed in advance by an exchange of letters between the Parties, referencing this Agreement and including appropriate intellectual property provisions.

- B. Each Party shall be responsible for the salaries, insurance, and allowances to be paid to its staff or its contractors.
- C. Each Party shall pay for the travel and living expenses of its staff or its contractors when staying at the establishment of the host Party, unless otherwise agreed.
- D. Each Party shall arrange for adequate accommodations for the other Party's staff or its contractors (and their families) on a mutually agreeable, reciprocal basis.
- E. Each Party shall provide all necessary assistance to the staff of the other Party or its contractors as regards administrative formalities.
- F. The staff of each Party or its contractors shall conform to the general rules of work and safety regulations in force at the host establishment.

ARTICLE V

- A. The Parties shall support the widest possible dissemination of information provided or exchanged under this Agreement subject to the need to protect business-confidential information, and subject to patent and to copyright restrictions.
- B. Definitions:
 - (1) For the purpose of this Agreement, the term "information" means scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under this Agreement.
 - (2) For the purpose of this Agreement, "business-confidential information" means any know-how, technical data, or technical, commercial, or financial information, that is developed outside this agreement and that meets all of the following conditions:
 - (a) It is of a type customarily held in confidence for commercial reasons;
 - (b) It is not generally known or publicly available from other sources;
 - (c) It has not been previously made available by the owner to others without an obligation concerning its confidentiality, and
 - (d) It is not already in the possession of the recipient without an obligation concerning its confidentiality.
- C. Any business-confidential information furnished or transferred will be given full protection by the Parties in accordance with the laws and regulations of their respective countries.

D. Procedures.

- (1) Any business-confidential information will be appropriately identified before it is furnished in the course of the cooperative activities under this Agreement. Responsibility for identifying such information will fall on the Party which furnishes it. Unidentified information will be assumed not to be information to be protected, except that a Party to the cooperative activity may notify the other Party in writing, within a reasonable period of time after furnishing or transferring such information, that such information is business-confidential information under the laws and regulations of its country. Such information will thereafter be protected in accordance with paragraph C of this Article. Any document which contains business-confidential information shall be clearly marked by the providing Party with the following (or substantially similar) restrictive legend:

"This document contains business-confidential information furnished in confidence under an agreement dated _____ between the U.S. Department of Energy and the Japan Atomic Energy Research Institute and shall not be disseminated outside of these organizations, their contractors, and the concerned departments and agencies of the Governments of the United States and Japan without prior approval of _____. This notice shall be marked on any reproduction hereof, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction."

- (2) Business-confidential information received under this Agreement may be disseminated by the receiving Party to:
 - (a) persons within or employed by the receiving Party and to concerned Government departments and Government agencies of the receiving Party; and
 - (b) prime contractors or subcontractors of the receiving Party located within the geographical limits of the Party's nation, for use only within the framework of their contracts with the receiving Party in work relating to the subject matter of the business-confidential information; provided that any business-confidential information so disseminated shall be pursuant to an agreement of confidentiality and shall be marked with a restrictive legend substantially identical to that appearing in subparagraph D.(1) of this Article.
- (3) With the prior written consent of the transmitting Party, the receiving Party may disseminate such business-confidential information more widely than otherwise permitted in subparagraph D.(2) of this Article. The Parties shall cooperate with each other in developing procedures for requesting and obtaining the prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its national laws and regulations.

- E. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of this Article, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.
- F. Information arising from seminars and other meetings arranged under this Agreement and information arising from the exchange of staff shall be treated by the Parties according to the principles of this Agreement provided, however, no business-confidential information communicated orally shall be subject to the limited disclosure requirements of this Article unless that individual communicating such information places the recipient on notice as to the business-confidential character of the information communicated at the time of or prior to such communication.

ARTICLE VI

- A. For the purpose of this Agreement, "Invention" means any invention made in the course of the cooperative activities under this Agreement which is or may be patentable or otherwise protectable under the laws of the Parties or any third country.
- B. As to an Invention, the Parties to the cooperative activity concerned will take appropriate steps, in accordance with the national laws and regulations of the respective countries, to realize the following:
- (1) If an Invention is made as a result of a cooperative activity under this Agreement that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars, or the exchange of technical reports or papers, unless otherwise provided in an applicable implementing arrangement:
 - (a) the Party whose personnel made the Invention (hereinafter referred to as "the Inventing Party") shall have the right to obtain all rights and interests in the Invention in all countries, and
 - (b) in any country where the Inventing Party decides not to obtain such rights and interests, the other Party has the right to do so.
 - (2) If the Invention is made by an Inventor of a Party ("the Assigning Party") while assigned to another Party ("the Receiving Party") in the course of programs of a cooperative activity that involve only the visit or exchange of scientists and engineers, and
 - (a) in the case where the Receiving Party is expected to make a major and substantial contribution to the programs of the cooperative activity:
 - (i) the Receiving Party has the right to obtain all rights and interests in the Invention in all countries, and
 - (ii) in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or

the Inventor has the right to do so;

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

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

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

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

(3) If an Invention is made as a result of other forms of cooperative activities, such as joint research projects with an agreed research work scope, the Parties will provide for the mutually agreed upon disposition, on an equitable basis, of rights to the Invention made as a result of such activities.

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

C. Disposition of rights to copyright-protected works created in the course of the cooperative activities under this Agreement will be determined on a case by case basis as necessary or in a relevant implementing arrangement. The Parties may take appropriate steps to secure copyright to works created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

D. Disposition of rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement will be determined on a case by case basis as necessary or in a relevant implementing arrangement. The Parties may take appropriate steps to secure rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

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

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

ARTICLE VII

Unless otherwise agreed, all costs resulting from cooperation pursuant to this Agreement shall be the responsibility of the Party that incurs them. The ability of the Parties to carry out their obligations is subject to the appropriation of funds by the appropriate governmental authority, and to laws and regulations applicable to the Parties.

ARTICLE VIII

This agreement is without prejudice to other agreements which exist or could be concluded between the United States and Japan. The provisions of this Agreement shall not affect the rights or duties of the Parties specified under other agreements or arrangements, and shall not preclude the Parties from engaging in activities with other governments or persons, except that industrial property of a business-confidential nature shall have limited dissemination as set forth in Article V of this Agreement.

ARTICLE IX

All information or equipment transmitted by one Party to the other Party under this Agreement shall be appropriate and accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information or equipment transmitted for any particular use or application by the receiving Party or by any third party. Information or equipment developed jointly by the Parties shall be appropriate and accurate to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly developed information or the appropriateness of equipment nor its suitability for any particular use or application by either Party or by any third party.

ARTICLE X

All questions related to the interpretation or application of this Agreement shall be settled by the Parties by mutual agreement.

ARTICLE XI

This Agreement shall enter into force upon signature by each Party and shall remain in force for five (5) years. This Agreement may be modified or extended by mutual written agreement of the Parties. This Agreement may be terminated upon one (1) year advance notification in writing by the Party seeking to terminate. Such termination shall be without prejudice to any rights and interests which may have accrued under this Agreement to either Party up to the date of termination.

Done at _____ this second of July, 1990.

For the United States
Department of Energy

For the Japan Atomic Energy
Research Institute

Signature: Richard A. Claytor

Name: Richard A. Claytor

Title: Asst. Secretary of Energy
U.S. Dept. Energy

Signature: Yoshinori Ihara

Name: Yoshinori Ihara

Title: President