

Information Circular

INFCIRC/765

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Communication dated 9 July 2009 received from the Permanent Mission of Germany regarding the German proposal on a Multilateral Enrichment Sanctuary Project

The Director General received a letter dated 9 July 2009 from the Resident Representative of Germany to the IAEA, transmitting the text of two draft model agreements, which are necessary to implement a Multilateral Enrichment Sanctuary Project (MESP). One model agreement, to be concluded between the Agency and interested States, provides for the establishment of a Group of Interested States and, by them, of a market-oriented Enrichment Company. The other model agreement, to be concluded between the Agency and a host state, provides for the establishment of a Multilateral Enrichment Sanctuary (MES) on a territory to be administered by the Agency, in which the Enrichment Company would be located.

The letter, and as requested therein, the above mentioned draft model agreements attached thereto are herewith circulated for the information of all Member States.



Permanent Mission of the Federal Republic of Germany
to the Office of the United Nations and
to other International Organizations, Vienna

H. E. Dr. Mohamed El Baradei
Director General
International Atomic Energy Agency
VIC - A 2822
1400 Vienna

Rüdiger Lüdeking
Ambassador

Vienna, 9 July 2009

Excellency, *Dear Mohamed,*

As announced at the last meeting of the Board of Governors Germany would like to make available to the members of the Agency the text of two draft model agreements, which are necessary to implement a Multilateral Enrichment Sanctuary Project (MESP): One model agreement, to be concluded between the Agency and interested States, provides for the establishment of a Group of Interested States and, by them, of a market-oriented Enrichment Company. The other model agreement, to be concluded between the Agency and a host state, provides for the establishment of a Multilateral Enrichment Sanctuary (MES), the territory to be administered by the Agency, in which the Enrichment Company would be located.

The contents of the two model agreements was already outlined in documents INFCIRC/735 dated 25 September 2008 and GOV/2009/32 dated 22 May 2009. It is understood that the attached model agreements provide a template, whose features need to be adapted and further refined in the light of the circumstances of an individual case of application.

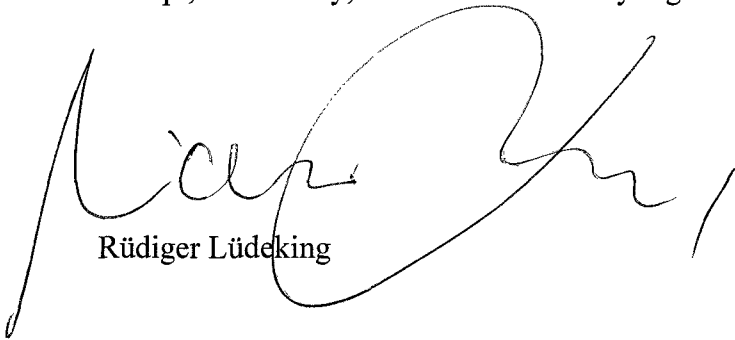
I would again like to thank the Secretariat for the assistance and advice it has provided us with in the course of the elaboration of our MESP-proposal. The proposal is fully developed. It provides for a market compatible option which allows for an independent access to nuclear

fuel cycle services. It is fully in line with the inalienable right of all parties to the NPT to develop research, production and use of nuclear energy for peaceful purposes. The proposal constitutes an offer; it is not an imposed solution.

In conclusion I would again like to reiterate Germany's readiness to provide assistance for and facilitate the implementation of the MESP proposal.

I would be grateful if the Secretariat could circulate this letter with the attached draft agreements as an INFCIRC document.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Rüdiger Lüdeking', with a large, sweeping flourish extending from the end of the signature.

Enclosures

**Draft Agreement Between the IAEA and XXY, YYX 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,
YYX 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

**Draft Agreement between the International Atomic Energy Agency and the
Host State Regarding the Establishment of a Multilateral Enrichment
Sanctuary
(Host State Agreement)**

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Preamble

The Host State

and

The International Atomic Energy Agency

Having considered the Statute of the IAEA of 26 October 1956 and in compliance with its provisions,

Considering the adherence of the Host State to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, the Agreement on the Privileges and Immunities of the IAEA of 1 July 1959, the Convention on the Physical Protection of Nuclear Material of 3 March 1980, and [...],

Recalling that the Host State has entered into safeguard agreements with the IAEA,

Confirming its 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,

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 Groups of Interested States will facilitate the establishment of commercial, competitive, market-based Enrichment Companies,

Desiring to enable the Groups of Interested States and their national industries through these Enrichment Companies 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 Companies without transfer of the enrichment technology in the context of this framework to the Enrichment Companies, States or the IAEA,

Desiring for these purposes to set up a Multilateral Enrichment Sanctuary in the territory of the Host State under control of the IAEA, to locate the enrichment facilities of the Enrichment Companies in the Multilateral Enrichment Sanctuary and thereby to limit undue influence of any government on the operation of the Enrichment Companies,

Taking note that the Host State Government has agreed to provide, [at its own expense, in accordance with its national procedures] the appropriate territory for these purposes,

[*Bearing in mind* the interest to develop the infrastructure of the Host State with the assistance of the Groups of Interested States,]

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 arrangement 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

Article 1

Definitions

In this Agreement the expression:

- a) “appropriate Host State Authorities” means the authorities of the Host State which are competent in the context in accordance with the laws and customs applicable in the Host State;
- b) “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;
- c) “Enrichment Company” or “Enrichment Companies” means one or several companies or groups of companies the establishment of which is facilitated by one or several Groups of Interested States and the purpose of which is to offer uranium enrichment services;
- d) “enrichment technology” means the technology necessary to enrich uranium;
- e) “facilities” means the enrichment facilities located in the MES;
- f) “Group of Interested States” means a group of states that facilitates the establishment of an Enrichment Company and for these purposes concludes an agreement between the states involved and an agreement between these states and the IAEA;
- g) “Host State” means X;
- h) “IAEA” means the International Atomic Energy Agency;
- i) “MES” means the Multilateral Enrichment Sanctuary as defined in Article 3;
- j) “MES-Companies” means the Enrichment Companies, the Technology Providers and any other companies working in the MES for or in connection with the Project;
- k) “nuclear material” means “nuclear material” as defined in the 1997 Vienna Convention on Civil Liability for Nuclear Damage as amended;
- l) “Project” means the Multilateral Enrichment Sanctuary Project based on this Agreement and the Agreements between the IAEA and Groups of Interested States and pursuing the purposes noted in Article 2;
- m) “Technology Provider” means an entity which delivers, assembles, sets up, maintains and eventually decommissions and dismantles equipment using enrichment technology.

Part II

Purpose

Article 2

Purpose of the Agreement

- 1) This Agreement shall facilitate the establishment and operation of facilities by Enrichment Companies 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 Companies shall participate in the market for enrichment services under conditions of fair and undistorted competition. Enrichment Companies shall maintain a buffer stock.
- 3) The facilities will use the enrichment technology of a Technology Provider that constructs, maintains and disassembles the facilities.

Part III

MES

Article 3

Definition [and use] of MES

- 1) The MES shall consist of the territory on land and sea including the ground below and the airspace above that territory as defined in Annex I.
- 2) Any building, part of a building or territory used with the concurrence of the Host State for meetings convened by the IAEA shall be considered as part of the MES for the time of that use.
- 3) [The Host State grants to the IAEA, and the IAEA accepts from the Host State, the permanent use and occupation of the MES.]
- 4) The IAEA shall not dispose of the MES or change its purpose without consent of the Host State.
- 5) The IAEA may lease the MES or parts of it to MES-Companies for the purpose of the Project.

Article 4

Inviolability of and Regulation of Sojourn in the MES

- 1) The MES shall be inviolable.
- 2) No officer or official of the Host State or any of its territorial sub-entities, or other person exercising any public authority within or on behalf of the Host State or any of its territorial sub-entities shall enter the MES except with the express and prior consent and under the conditions approved by the Director General. The service of legal process, including the seizure of private property, shall not take place within the MES except with the express consent of, and under the conditions approved by the Director General.
- 3) The IAEA has the right to expel or exclude persons from the MES.
- 4) The IAEA shall prevent the MES from becoming a refuge for persons avoiding arrest in the Host State or required by the Host State for extradition to another country or endeavoring to avoid service of legal process.
- 5) The Parties may conclude supplemental agreements in particular to regulate flight over the MES.

Part IV

Legal Personality of the IAEA

Article 5

Legal Personality of the IAEA

- 1) The Host State recognizes the international legal personality of the IAEA.
- 2) The IAEA shall possess legal personality in the territory of the Host State. It shall, in particular, have the capacity:
 - a) to contract;
 - b) to acquire, hold and dispose of movable and immovable property; and
 - c) to institute legal proceedings.

Part V

Law and Authority in the MES

Article 6

Control and Authority in the MES

- 1) The MES shall be under the control and authority of the IAEA as provided in this Agreement.
- 2) Any activity of the IAEA has to comply with the requirements of the Statute of the IAEA of 26 October 1956, in particular with respect to safety, security and safeguards.

Article 7

Applicable Law in the MES

- 1) Except as otherwise provided in this Agreement the laws and regulations of the Host State shall apply in the MES. The Host State shall inform the IAEA about all new laws and regulations it passes that enter into force in the MES.
- 2) The IAEA shall have the power to make regulations, operative within the MES, in all areas of law for the purpose of implementing this agreement and for the effective functioning of the Project. [The IAEA may also change the tax and customs rates imposed on MES-companies under Article 36.] The IAEA shall inform the Host State about all regulations passed under this provision.
- 3) Regulations passed by the IAEA take precedence over laws and regulations of the Host State. No laws and regulations of the Host State, which are inconsistent with a regulation of the IAEA authorized by this Article, shall, to the extent of such inconsistency, be applicable within the MES.
- 4) The IAEA shall ensure the compliance of the laws and regulations in the MES with
 - a) The most current IAEA safety standards;
 - b) The Convention on the Physical Protection of Nuclear Material of 3 March 1980 as amended.
 - c) [xxxxx]
- 5) The IAEA shall apply the relevant security and safeguards requirements in the MES. The IAEA shall be responsible for compliance with all safeguard obligations in the MES.
- 6) When passing regulations the IAEA shall take the interests of the Host State into account to the extent possible without endangering the purpose of this Agreement. In matters relevant to the security of the Host State the IAEA shall consult with the Host State before passing regulations.
- 7) Any dispute between the IAEA and the Host State as to whether a regulation of the IAEA is authorized by this Article or as to whether a law or regulation of the Host State is inconsistent with any regulation of the IAEA authorized by this Article, shall be promptly settled by the procedure set out in Part XVI of this Agreement. While the dispute is pending, the regulation of the IAEA shall apply and the Host State law or regulation in dispute shall be inapplicable in the MES to the extent that the IAEA claims it to be inconsistent with the regulation of the IAEA.

Article 8

Jurisdiction

- 1) Except as otherwise provided in this Agreement, in particular in Parts V, XI and XVI, or in laws and regulations passed by the IAEA according to Article 7, the courts or other appropriate organs of the Host State shall have jurisdiction over acts done and transactions taking place in the MES as provided in the laws of the Host State.
- 2) Where courts or other appropriate organs of the Host State have jurisdiction over acts done and transactions taking place in the MES they shall apply the law applicable in the MES according to Article 7.

Article 9**Licenses, inspection and enforcement**

- 1) The IAEA is responsible for licensing, inspection and enforcement concerning all activities in the MES.
- 2) The IAEA may delegate these tasks [except in so far as they relate to the daily operations of the facilities], in particular to appropriate Host State Authorities. It may revoke the delegation at any time.
- 3) Where a license requires access to the enrichment technology the IAEA shall negotiate with the Home State of the relevant Technology Provider with the aim of delegating the grant of the license to the Home State of the relevant Technology Provider.

Article 10**Import and Export Controls**

The IAEA is exclusively responsible for im- and export controls for goods entering and leaving the MES, including MESP bags as described in Article 30. [It may delegate these controls with the exception of controls for nuclear goods, depleted and natural uranium and MESP bags.]

Part VI**Protection of Enrichment Technology****Article 11****Protection of Enrichment Technology**

The IAEA shall take all necessary measures to protect the enrichment technology. It shall conclude agreements with 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 and the Host State shall have no access to areas and information so designated except under the terms and conditions of such agreements. The Host State shall respect and abide by such agreements and all other measures taken by the IAEA under this Article.

Part VII**Provision of Public Services in the MES****Article 12****Public Services in the MES**

- 1) The appropriate Host State Authorities shall exercise, to the extent requested by the Director General, their respective powers to ensure that the MES shall be supplied with the necessary public services on equitable terms, as laid down in Annex II.
- 2) In case of any interruption or threatened interruption of any such services, the appropriate Host State Authorities shall consider the needs of the IAEA and the MES-Companies as being of equal importance with those of essential agencies of the Host State Government, and shall take measures accordingly to ensure that the work of the IAEA and the MES-Companies is not prejudiced.

Part VIII**Protection of MES, Emergencies, Security of Host State**

Article 13

Protection of the MES

- 1) The appropriate Host State Authorities shall take whatever action may be necessary to insure that the IAEA shall not be dispossessed of all or any part of the MES for whatever reason without the express consent of the IAEA.
- 2) The appropriate Host State Authorities shall exercise due diligence to ensure that the tranquility of the MES is not disturbed by any person or group of persons attempting an unauthorized entry into or creating disturbances in the immediate vicinity of the MES, and shall provide on the boundaries of the MES such police protection as may be required for this purpose.
- 3) [If so requested by the Director General, the appropriate Host State Authorities shall provide a sufficient number of police for the preservation of law and order in the MES.]
- 4) The appropriate Host State Authorities shall take all reasonable measures to ensure that the amenities of the MES are not prejudiced and that the purpose of this Agreement is not obstructed by any use made of the land or buildings in the vicinity of the MES. The IAEA shall take all reasonable measures to ensure that amenities of the land in the vicinity of the MES are not prejudiced by any use made of the land in the MES insofar as such prejudice is not required to fulfill the purpose of this Agreement.

Article 14

Emergencies

Upon request by the IAEA the Host State shall assist the IAEA in case of an emergency.

Article 15

Security of the Host State

- 1) The IAEA shall cooperate with the Host State to avoid any prejudice to the Host State's security resulting from the activities in the MES [insofar as the prejudice is not required by the purpose of this Agreement.]
- 2) In case of incidents in the MES which may involve the risk of radioactive contamination of persons, property or the environment, the IAEA shall inform the appropriate Host State Authorities without delay.
- 3) If the Host State considers it necessary to take precautions for the security of the Host State affecting the operation of any Article of this agreement, it shall approach the IAEA as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interest of the IAEA and the MES-Companies.

Part IX

Transit, Residence and Laissez-Passer

Article 16

Transit and Residence

- 1) The Host State shall take all necessary measures to facilitate the entry into and sojourn (including the right of residence) in the territory of the Host State and shall place no impediment in the way of the departure from the Host State's territory of the persons listed below; it shall also ensure that no impediment is placed in the way of their transit to or from the MES and shall afford them any necessary protection in transit:
 - a) Officials of the IAEA;
 - b) Representatives of Member States of the IAEA working in the MES or being invited to any meeting convened by the IAEA;
 - c) Experts working in the MES [and representatives mentioned in Article 28 Paragraph 1];

- d) Staff of the MES-Companies working in the MES;
 - e) Other persons invited by the IAEA to the MES including journalists;
 - f) Spouses, dependant children and other members of households of the persons listed above;
 - g) Couriers of diplomatic bags or MESP bags as described in Article 30 as long as they are discharging their duties.
- 2) With regard to transportation this Article shall not apply in the case of general interruptions of transportation, which shall be dealt with as provided in Article 12 Paragraph 2. This Article shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.
 - 3) Visas which may be required by persons referred to in this Article shall be granted without charge and as promptly as possible.
 - 4) No activity performed by any person referred to in this Article in his capacity with respect to the Project as indicated in Paragraph 1 shall constitute a reason for preventing his entry into or his departure from the territory of the Host State or for requiring him to leave such territory.
 - 5) No person referred to in this Article shall be required by the Host State to leave the territory of the Host State except in the event of an abuse of the right of residence, in which case the following procedures shall apply:
 - a) No proceeding shall be instituted to require any such person to leave the Host State except with the prior approval of the Minister for Foreign Affairs of the Host State;
 - b) In the case of a representative of a Member State of the IAEA, such approval shall be given only after consultation with the Government of the Member State concerned;
 - c) In the case of any other person mentioned in Paragraph 1, such approval shall be given only after consultation with the Director General, and if expulsion proceedings are taken against any such person the Director General shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted; and
 - d) Persons who are entitled to diplomatic privileges and immunities under Article 26 shall not be required to leave the Host State otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic mission accredited to the Host State.
 - 6) This Article shall not prevent the requirements of reasonable evidence to establish that persons claiming the rights granted by this Article come within the classes described in Paragraph 1, or the reasonable application of quarantine and health regulations.

Article 17

Laissez-Passer

The Host State shall recognize and accept as a valid travel document the United Nations laissez-passer issued to officials of the IAEA.

Part X

Freedom of Assembly, Publications and Communications

Article 18

Freedom of Assembly

- 1) The Host State recognizes the right of the IAEA to convene meetings within the MES or, with the concurrence of the Host State, elsewhere in the territory of the Host State.
- 2) The Host State shall take all measures necessary to ensure that no impediment is placed in the way of conducting the proceedings of any meeting convened by the IAEA.
- 3) The Host State and the IAEA recognize the right of the MES-Companies to convene meetings within the MES.

Article 19

Freedom of Publications

- 1) The Host State recognizes the right of the IAEA freely to publish and broadcast within the Host State for purposes related to the Project.
- 2) The IAEA shall respect any laws of the Host State, or any international conventions to which the Host State is a party, relating to copyrights.
- 3) The importation of publications intended for the IAEA or the MES-Companies and the exportation of publications of the IAEA or the MES-Companies shall not be subject to any restrictions imposed by the Host State.

Article 20

Freedom of Communications

- 1) The Host State shall permit and protect free communication via all common technological means on the part of the IAEA for all official purposes.
- 2) The IAEA shall enjoy, as far as compatible with any international conventions, regulations and arrangements to which the Host State is a party, for its official communications, treatment not less favorable than that accorded by the Host State to any other organization or government, including diplomatic missions of such other government, in the matter of priorities, rates and taxes for data media, mails, cables, telegrams, radiograms, telephotos, television, telephone, Internet traffic and other communications, and press rates for information to press and radio.
- 3) All official communications directed to the IAEA, or to any of its officials in the MES, and all outward official communications of the IAEA, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy.
- 4) Such immunity shall extend, without limitations by reason of this enumeration, to publications, still and moving pictures, data media, films and sound recordings.
- 5) The IAEA shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.
- 6) [To enable the IAEA to participate in the United Nations network of short-wave communications and to communicate with the IAEA headquarters, the Host State shall, upon request, grant to the IAEA for official purposes appropriate radio and other telecommunication facilities in conformity with technical arrangements to be made with the International Telecommunication Union.]
- 7) The IAEA shall not be required to obtain approval for wire-based communications which it installs and operates exclusively within its buildings or parts of buildings or adjoining land. The communications equipment must be installed and operated in such a way as not to endanger persons or property and not to interfere with telecommunications or broadcasting.
- 8) The use of telecommunications equipment (wire-based and wireless communications) shall be coordinated at a technical level with the Host State.

Part XI

Liability

Art. 21

Liability for Nuclear Damage

- 1) Compensation for nuclear damage caused by a nuclear incident in the Facilities or involving nuclear material coming from, originating in, or sent to, the Facilities shall be governed by the 1997 Vienna Convention on Civil Liability for Nuclear Damage as amended and by the 1997 Convention on Supplementary Compensation for Nuclear Damage as amended.
- 2) The Host State agrees to become a Contracting Party to the international instruments referred to in Paragraph 1 of this Article and to the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, and to all of their amendments. It shall not terminate the said instruments unless the IAEA agrees to the termination.
- 3) The Parties confirm that the facilities are situated in the territory of the Host State. The Host State shall be the Installation State as defined in the said international instruments and shall be competent, in cooperation with the IAEA, to exercise the rights granted to the Installation State under those instruments. The courts of the Host State shall exclusively be competent to hear claims for compensation of nuclear damage if the said international instruments provide for the jurisdiction of the Installation State.
- 4) The Host State shall, in consultation with the IAEA, enact and maintain an appropriate legislative and regulatory framework to implement the international instruments referred to in Paragraphs 1 and 2 of this Article in the MES and make them applicable to nuclear incidents covered by those instruments.
- 5) The Host State shall designate or recognize the Enrichment Company as operator in relation to the nuclear installation in the meaning of the international instruments referred to in Paragraphs 1 and 2 of this Article.
- 6) The IAEA shall, through the conclusion of agreements with the Groups of Interested States whereby the Groups of Interested States shall indemnify the Host State and hold it harmless, ensure that the Groups of Interested States indemnify and hold harmless 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 Host State in connection with activities undertaken pursuant to this Agreement, the Agreements between the IAEA and Groups of Interested States, or any supplemental Agreement to these Agreements. Upon request, the Host State shall involve the IAEA and the Group of Interested States in the defense against such claims and demands.
- 7) The IAEA and the Host State shall cooperate in furthering and facilitating the implementation and application of the international instruments referred to in Paragraphs 1 and 2 of this Article. [Jurisdictional immunities granted under this Agreement shall, to the extent necessary, not be invoked if the competent courts request the IAEA, including its staff, or the staff of the Technology Providers to provide evidence for a claim for compensation of nuclear damage. The IAEA shall grant access to the MES to representatives of the competent court, to the parties of a suit for compensation of nuclear damage and to those other persons participating in the suit and nominated by the court.]

Article 22

International Responsibility

The Host State shall not incur by reason of the location of the MES within its territory any international responsibility for acts or omissions of the IAEA or of its officials acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Host State would incur as a Member of the IAEA.

Part XII

Privileges and Immunities, MESP Bags

Article 23

Immunity of the IAEA, its Property, Funds and Assets

- 1) The IAEA, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
- 2) The IAEA shall not enjoy immunity from legal process
 - a) In respect of civil actions by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the IAEA, or in respect of a motor traffic offence involving such a vehicle; this shall include the prevention and investigation of accidents involving motor vehicles belonging to, or operated on behalf of the IAEA or
 - b) In respect of the enforcement of an arbitration award made under Part XVI of this Agreement.
- 3) The property and assets of the IAEA, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- 4) The archives of the IAEA, and in general all documents including any data media belonging to it or held by it, shall be inviolable, wherever located.
- 5) The IAEA, its assets, income and other property shall be:
 - a) Exempt from all forms of taxation, it is understood, however, that the IAEA will not claim exemptions from taxes which are, in fact, no more than charges for public utility services;
 - b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported and exported by the IAEA for its official use, including any functions involved in the Project. It is understood however, that articles imported under such exemptions will not be sold in the Host State except under conditions agreed with the Host State;
 - c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.
- 6) All transactions to which the IAEA is a party and all documents recording such transactions shall be exempt from all taxes, recording fees, and documentary taxes.
- 7) Without being restricted by financial controls, regulations or moratoria of any kind:
 - a) The IAEA may hold funds, gold or currency of any kind and operate accounts in any currency;
 - b) The IAEA may freely transfer its funds, gold and currency from any country to the Host State or from the Host State to any country or within the Host State and convert currency held by it into any other currency.

In exercising these rights the IAEA will respect its obligations under the Agreement on Privileges and Immunities of the IAEA of 1 July 1959.

Article 24

Pension Fund and Social Security

- 1) The United Nations Joint Staff Fund and any pension or provident fund established by or conducted under the authority of the IAEA shall enjoy legal capacity in the Host State if the IAEA so requests and shall enjoy the same exemptions, privileges and immunities as the IAEA itself. The legal status enjoyed by the United Nations Joint Staff Pension Fund in the Host State by virtue of other international agreements shall not be affected by this provision.
- 2) The IAEA shall be exempt from all compulsory contributions to, and officials of the IAEA shall not be required by the Host State to participate in, any social security scheme of the Host State.
- 3) The Host State shall make such provision as may be necessary to enable any official of the IAEA who is not afforded social security coverage by the IAEA to participate, if the IAEA so requests, in any social security scheme of the Host State. The IAEA shall, in so far as possible, arrange, under conditions to be agreed upon, for the participation in the Host State social security system of those locally recruited members of its staff to whom it does not grant social security protection at least equivalent to that offered under Host State Law.

Article 25

Immunity of Officials of the IAEA

Officials of the IAEA shall enjoy within and with respect to the Host State the following privileges and immunities:

- a) Immunity from legal process of any kind in respect of acts performed by them in the discharge of their official functions, including words spoken or written; such immunity shall continue notwithstanding that the persons concerned may have ceased to be officials of the IAEA;
- b) Immunity from seizure of their official and personal baggage;
- c) Immunity from inspection of official baggage;
- d) Exemption from taxation in respect of salaries, emoluments, indemnities and pensions paid to them by the IAEA or by one of the pension or provident funds supported by the IAEA;
- e) Exemption from any form of taxation on income derived by them from sources outside the Host State;
- f) Exemption, with respect to themselves, their spouses, their dependant relatives and other members of their households from immigration restrictions, alien registration and national service obligations;
- g) Freedom to acquire or maintain within the Host State or elsewhere foreign securities, foreign currency accounts and other movable and immovable property; and at the termination of their IAEA employment the right to take out of the Host State through authorized channels without prohibition, or restriction, their funds in the same currency and up to the same amounts as they had brought into the Host State;
- h) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic mission accredited to the Host State;
- i) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:
 - i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same;
 - ii) One automobile every four years; and

- iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; the IAEA may establish a commissary for the sale of such articles to its officials; a supplemental agreement shall be concluded between the Host State and the IAEA to regulate the exercise of these rights.

Article 26

Additional Privileges and Immunities of certain Officials of the IAEA

- 1) In addition to the privileges and immunities granted in Article 25 the Director General and a Deputy Director General or a senior official, acting on behalf of the Director General, shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of missions in the Host State.
- 2) The Deputy Director General and other officials having the professional grade of P-5 and above, and such additional categories of officials as may be designated, in agreement with the Host State, by the Director General, in consultation with the Board of Governors, on the grounds of the responsibilities of their positions in the IAEA, shall be accorded the same privileges and immunities, exemptions and facilities as the Host State accords to members, having comparable rank, of the staffs of chiefs of diplomatic mission accredited to the Host State.

Article 27

Immunity of Representatives to the IAEA

- 1) Representatives of Member States of the IAEA to any meeting convened by the IAEA shall, without prejudice to any other privileges and immunities which they may enjoy while exercising their functions and during their journeys to and from the MES, enjoy within and with respect to the Host State the following privileges and immunities:
 - a) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their official and personal baggage;
 - b) Immunity from legal process of any kind in respect of acts performed by them in the discharge of their official functions, including words spoken or written; such immunity shall continue notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;
 - c) Inviolability of all papers, documents and other official material including data media;
 - d) The right to use codes and to dispatch or receive papers, correspondence or other official material including data media by courier or in sealed bags;
 - e) Exemption with respect to themselves, their spouses, their dependent relatives and other members of their household from immigration restrictions, alien registration and national service obligations;
 - f) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic mission accredited to the Host State;
 - g) The same privileges with respect to currency and exchange restrictions as the Host State accords to representatives of foreign Governments on temporary official mission; and
 - h) The same immunities and facilities with respect to their official and personal baggage as the Host State accords to members, having comparable

rank, of the staffs of chiefs of diplomatic mission accredited to the Host State.

- 2) Clerical and other auxiliary personnel attached to a delegation of a Member State shall be accorded the same privileges and immunities as clerical and other auxiliary personnel of diplomatic missions.
- 3) Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in this Article may be present in the Host State for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their salaries and emoluments during such periods of duty and shall be exempt from all tourist taxes.

Article 28

Immunity of Experts

- 1) Experts, other than officials of the IAEA coming within the scope of Article 28, performing missions authorized by, serving on committees or other subsidiary bodies of, or consulting at its request in any way with, the IAEA [and representatives of organizations with which the IAEA has established relationship pursuant to Article XVI.A of its Statute, or representatives of organizations invited by the Board of Governors or the General Conference to the MES on official business], shall enjoy, within and with respect to the Host State, the following privileges and immunities so far as may be necessary for the effective discharge of their official functions and during their journeys in connection with service on such missions, committees or other subsidiary bodies, and during attendance at the MES and at such meetings:
 - a) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their official and personal baggage;
 - b) Immunity from legal process of any kind in respect of acts performed by them in the discharge of their official functions, including words spoken or written; such immunity shall continue notwithstanding that the persons concerned may no longer be engaged in the performance of such functions or may no longer be present in the MES or attending meetings convened by the IAEA;
 - c) Inviolability of all papers, documents and other official material including data media;
 - d) The right to use, for the purpose of all communication with the IAEA, codes and to dispatch or receive papers, correspondence or other official material including data media by courier or in sealed bags;
 - e) Exemptions with respect to themselves, their spouses and their dependent children from immigration restrictions, alien registration and national service obligations;
 - f) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic mission accredited to the Host State;
 - g) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
 - h) The same immunities and facilities with respect to their official and personal baggage as the Host State accords to members, having comparable

rank, of the staffs of chiefs of diplomatic mission accredited to the Host State.

- 2) Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in this Article may be present in the Host State for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their salaries and emoluments received from the IAEA during such periods of duty and shall be exempt from all tourist taxes.

Article 29

Immunity of Staff of Technology Providers

The non-domestic, non-clerical staff of Technology Providers shall be accorded the same privileges and immunities as those accorded to officials of the IAEA under Article 25 of this Agreement insofar as these privileges and immunities are necessary to ensure the proper and independent work of these persons.

Article 30

MESP Bags

- 1) Documents, articles, equipment or goods intended for the purpose of the Project shall be transported in sealed containers marked "MESP bag" by a Technology Provider / by the Home State of a Technology Provider / The Details, in particular which entities have the right to mark containers as "MESP bag" shall be determined in a supplementary Agreement.
- 2) MESP bags shall be inviolable wherever located and by whomsoever held and enjoy immunity from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- 3) MESP bags shall not be opened or detained.
- 4) In case a MESP bag is found unattended in the territory of the Host State outside the MES, the Host State Authorities shall immediately inform the IAEA and provide for the necessary protection of the bag until the bag can be retrieved by the IAEA or the Technology Provider.
- 5) The Host State shall facilitate the transport of MESP bags in its territory. Upon request of the IAEA the Host State shall guarantee police protection and safe transit of the MESP bags through its territory.

Article 31

Notification

The IAEA shall inform the Host State on a regular basis about the names of persons within the scope of Articles 25 to 29. The Host State shall furnish persons within the scope of these Articles with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Host State Authorities.

Article 32

Object of Privileges and Immunities

- 1) The Privileges and Immunities granted in this Part are conferred in the interest of the IAEA and not for the personal benefit of individuals themselves, they can be waived by the IAEA.
- 2) The IAEA shall waive any immunity granted under this Part in any case where, in the opinion of the IAEA, the immunity would impede the course of justice and can be waived without prejudice to the interests of the IAEA and the functioning of the Project.

- 3) Immunities under Article 29 shall be waived if there is a reasonable suspicion that the staff member violated the criminal law applicable in the MES and the IAEA receives assurances that the penalties imposed will not be in violation of the International Covenant on Civil and Political Rights. Immunities shall not be waived if the relevant crime consists of the possession, use, transportation or similar activities related to sensitive substances and goods and such action was necessary for the Project.

Article 33

Abuse of Privileges

The Director General shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur. If the Host State considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the Host State and the IAEA to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Host State and the IAEA, the question whether an abuse of a privilege or immunity has occurred shall be settled by recourse to the procedure set out in Part XVI.

Part XIII MES-Companies

Article 34

Legal Personality of MES-Companies

The MES-companies shall possess legal personality in the territory of the Host State. They shall, in particular, have the capacity:

- a) to contract;
- b) to acquire, hold and dispose of movable and immovable property;
- c) to obtain licenses; and
- d) to institute legal proceedings.

.Article 35

Appointment of Staff of MES-Companies

- 1) The MES-Companies shall inform the Director General of their staff appointed for work in the MES; the Director General may reject any member of the staff upon the appointment or at any later date. A staff member so rejected may not enter or has to leave the MES.
- 2) The IAEA shall inform the Host State on a regular basis about the names of persons within the scope of this Article.

Article 36

Taxes and Duties

MES-Companies shall be taxed in the Host State on terms and conditions not less favorable than domestic companies in the Host State. MES-Companies shall be subject to customs duties of the Host State, which shall not exceed an adequate rate.

Part XIV Joint Committee

Article 37**Joint Committee**

In order to provide for effective supervision by the Parties of the functioning of this Agreement the Parties shall establish a Joint Committee. The Committee shall be composed of a representative of the IAEA, a representative of the Host State and, for discussions on topics where interests of the Enrichment Companies are concerned, a representative of each Enrichment Company. The Joint Committee shall discuss matters of implementation of the agreement on the request of a participant. It shall decide by consensus, its decisions are binding. The Joint Committee shall pass its own rules of procedure.

Part XV

Miscellaneous

Article 38**Other Agreements**

- 1) The IAEA and the Host State may enter into such supplemental agreements as may be necessary.
- 2) This Agreement is complementary to the Agreement on the Privileges and Immunities of the IAEA to which the Host State is a party. Wherever possible the obligations in both Agreements shall be treated as complementary. In case of absolute conflict, the provisions of this agreement shall prevail.
- 3) If and to the extent that the Host State shall enter into any agreement with any intergovernmental organization containing terms or conditions more favorable to that organization than similar terms or conditions of this Agreement, the Host State shall extend such more favorable terms or conditions to the IAEA by means of a supplemental agreement.

Article 39**Facilitation**

The Parties shall facilitate the Project at all times. Facilitation by the Host State includes the facilitation of the transport of nuclear material, natural uranium or depleted uranium through its territory for the purposes of the project.

Part XVI

Disputes

Article 40**Disputes between the Parties**

- 1) Any dispute between the Parties concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the MES or the relationship between the IAEA and the Host State, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators.
- 2) One arbitrator shall be chosen by the Director General, one by the Minister for Foreign Affairs of the Host State, and the third, who shall be chairman of the tribunal, shall be agreed upon by the first two arbitrators.
- 3) Should the first two arbitrators fail to agree upon a chairman of the arbitral tribunal within six month following the appointment of the first two arbitrators, the chairman of the tribunal shall be appointed by the President of the International Court of Justice at the request of the IAEA or the Host State.

- 4) In case one party does not nominate an arbitrator according to Paragraph 2 of this Article within six month after receiving a notification of the other party requesting the initiation of arbitration, the President of the International Court of Justice shall nominate the missing arbitrator.

Article 41

Disputes Between the IAEA and MES-Companies

- 1) All disputes between the IAEA and the MES-Companies arising out of or in connection with the Project which are not settled by negotiation or other agreed mode of settlement shall be finally settled by an arbitral tribunal consisting of three arbitrators, except for cases under Article 21 Paragraph 3 in which the IAEA is the plaintiff.
- 2) One arbitrator shall be chosen by the Director General, one by the MES-Company, and the third, who shall be the chairman of the tribunal, shall be agreed upon by the first two arbitrators.
- 3) Should the first two arbitrators fail to agree upon a chairman of the arbitral tribunal within six months following the appointment of the first two arbitrators, the chairman of the tribunal shall be appointed by the President of the International Court of Justice at the request of the IAEA or the MES-Company.
- 4) In case one party does not nominate an arbitrator according to Paragraph 2 of this Article within six month after receiving a notification of the other party requesting the initiation of arbitration, the President of the International Court of Justice shall nominate the missing arbitrator.

Article 42

Disputes Between MES-Companies and the Host State

- 1) Except as otherwise provided in Article 21 Paragraph 3, all disputes between the Host State and the MES-Companies arising out of or in connection with the Project which are not settled by negotiation or other agreed mode of settlement shall be finally settled by an arbitral tribunal consisting of three arbitrators.
- 2) Each party to the dispute has the right to nominate one arbitrator. The third arbitrator, who shall be the chairman of the tribunal, shall be agreed upon by the first two arbitrators.
- 3) Should the first two arbitrators fail to agree upon a chairman of the arbitral tribunal within six month following the appointment of the first two arbitrators, the chairman of the tribunal shall be appointed by the President of the International Court of Justice.
- 4) In case one party does not nominate an arbitrator according to Paragraph 2 of this Article within six months after receiving a notification of the other party requesting the initiation of arbitration, the President of the International Court of Justice shall nominate the missing arbitrator.

Article 43

Other Disputes Involving MES-Companies, Host State Citizens, MES-Company Staff, the Host State

Except as otherwise provided in Article 21 Paragraph 3, all disputes arising between MES-Companies and citizens of the Host State, between members of the staff of MES-Companies and the Host State or its citizens, between MES-Companies, or between staff members of MES-Companies out of or in connection with the Project which are not settled by negotiation shall be finally settled by a single arbitrator named by the Director General within one month of notification of one party of the dispute to the IAEA, unless the parties to the dispute have agreed on an alternative mode of dispute settlement.

Article 44**Effect of Arbitration Awards**

The IAEA and the Host State recognize the decisions of arbitral tribunals under this Part as final and binding arbitral awards made in the territory of the Host State. The decisions shall be enforceable in the territory of the Host State in the same manner as judgments or orders of the highest court of the Host State. The decision shall be enforceable in the MES by the IAEA.

Article 45**Other Disputes involving the IAEA**

The IAEA shall make provision for appropriate methods of settlement of:

- a) Disputes arising out of contracts and disputes of a private law character to which the IAEA is a party; and
- b) Disputes involving an official of the IAEA or other individual who, by reason of his official position or involvement in the Project, enjoys immunity, if such immunity has not been waived by the IAEA

insofar as the resolution of those disputes is not provided for otherwise in this Part or insofar as the protected individual is not a plaintiff in cases under Article 21 Paragraph 3.

Part XVII

Final Provisions

Article 46**Interpretation**

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

Article 47**Entry into Force and Termination**

- 1) This Agreement shall enter into force upon an Exchange of Notes between the Director General duly authorized thereto and the duly authorized representative of the Host State [and the ratification of an Agreement between the Group of Interested States and the IAEA by all the parties thereto].
- 2) This Agreement shall cease to be in force
 - a) By mutual consent of the IAEA and the Host State; and
 - b) If the MES is removed from the territory of the Host State, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Project in the MES and the disposal of the facilities as well as any equipment or infrastructure therein.

Article 48**Modifications of this Agreement, Supplemental Agreements**

Consultations with respect to modifications of this Agreement or the conclusion of Supplemental Agreements shall be entered into at the request of the IAEA or the Host State.

Article 49**Authentic Texts**

The English, XXXX texts are equally authentic.

Annex I: Description of MES**Annex II: Public Services**