

# Model Implementation Agreement for the Moon Treaty (August 2020)

## Preface

The provisions of this Implementation Agreement (“Agreement”) and the underlying Agreement Governing The Activities Of States On The Moon And Other Celestial Bodies (“Treaty”) shall be interpreted and applied together as a single instrument. In the event of any inconsistency between the Treaty and the Agreement, the provisions of the Agreement shall prevail. After the adoption of the Agreement, any instrument of ratification or formal confirmation of or accession to the Treaty shall also represent consent to be bound by the Agreement. No State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Treaty.

## 1. Administration; Creation of Agency

The States Parties agree to create as soon as is practicable an agency (“Agency”) to administer the provisions of the Treaty and this Agreement. The Agency shall be ministerial and shall have only such authority as is provided by the States Parties.

## 2. Licenses for Private Activity; Exploitation of Resources

The States Parties agree to authorize the Agency to issue licenses to non-governmental entities (“NGE”) for the priority exploitation of resources. Exploitation of resources shall include but is not limited to: (a) the extraction of materials, (b) the use of a location for any other commercial activity [e.g., tourism, solar farms], and (c) the use of a location for noncommercial private activity [e.g., science, settlements]. Licenses shall describe the nature, extent, and duration of the activity and shall maximize free access for all in accordance with Article I of the Treaty On Principles Governing The Activities Of States In The Exploration And Use Of Outer Space, Including The Moon And Other Celestial Bodies (“Outer Space Treaty”). Activity by governments is authorized under Treaty Articles 8 and 9.

## 3. Requirements for License; Obligations

The States Parties agree that the Agency shall issue a license for any NGE activity that is authorized and supervised by a State Party to this agreement. The States Parties further agree that they and their nationals accept the obligations of the Treaty and this Agreement, the Outer Space Treaty, the Convention On Registration Of Objects Launched Into Outer Space (“Registration Convention”), the Convention On International Liability For Damage Caused By Space Objects (“Liability Convention”), and the Agreement On The Rescue Of Astronauts, The Return Of Astronauts And The Return Of Objects Launched Into Outer Space (“Rescue Agreement”). The license shall be revoked if, at any time, a licensed NGE fails to comply with its obligations.

## 4. Public Policy Obligations

The States Parties agree that the obligations of the Treaty and this Agreement include the following:

1. Use outer space exclusively for peaceful purposes (Treaty Article 3.1);
2. Provide co-operation and mutual assistance (4.2);
3. Inform the public of:
  - Activities (5.1)
  - Scientific discoveries (5.1)
  - Any phenomena which could endanger human life or health (5.3)
  - Any indication of organic life (5.3)
  - The discovery of resources (11.6)
4. Protect the environment and preserve areas of “special scientific interest” such as historic landing sites (7.1-7.3);
5. Allow free access to all areas by other parties (9.2).

## **5. Registration of Activities**

The States Parties agree to register their activities on the Moon in accordance with the Registration Convention\* when applicable, and to create and/or designate another process when not applicable.

## **6. Standards and Recommended Practices; Registry**

The States Parties, in consultation with non-governmental entities, agree to develop standards and recommended practices for the safe use and development of space resources by all interested countries, irrespective of their degree of economic or scientific development. Such standards or practices shall not require technology that is subject to export controls. The Agency and/or other designated entities shall maintain a registry of such standards and recommended practices.

## **7. Protection of Natural Environment; Cultural Heritage Sites**

The States Parties, in accordance with Treaty Article 7, agree to develop standards and recommended practices to prevent the disruption of the existing balance of a celestial body's environment and to protect natural and cultural heritage sites, and/or to designate another entity/process for making such determinations that will be binding on the States Parties. The States Parties agree to prohibit the use or disturbance of any location on the Moon or other celestial body that is the site of a mission that occurred more than 20 years prior to the authorization of a new activity pending a final determination of the site's status as a protected Heritage Site. This prohibition applies to the location of any equipment and any evidence of presence (e.g., footprints, tracks).

## **8. Governance; Fees**

The States Parties agree to create a process of governance for making ongoing substantive decisions, as authorized under Articles 11 and 18 of the Treaty. The States Parties are financially responsible for the Agency, which shall be operated in a cost-effective manner. The collection and use of fees for administration or any other purpose is a substantive decision to be made using the governance process.

## **9. Dispute Resolution**

The States Parties agree that any dispute concerning this Agreement or the Treaty shall be addressed using the consultation process detailed in Treaty Article 15. As an alternative, the States Parties hereby authorize the voluntary use of binding arbitration in accordance with the 2011 Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Outer Space Activities. The results of such arbitration shall be enforceable under The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). The Agency shall facilitate and inform the arbitration.

## **10. Controlling Law; Rights of Individuals, Settlements**

In accordance with Treaty Article 12, the States Parties agree that the controlling law at any location shall be the law of the country that authorized/supervises the activity at that location, subject to this Agreement and Treaty. Relations between locations of different States Parties will be governed by current international law, including the Liability Convention, until such time as new substantive rules are created under the governance process in Agreement Paragraph 8, as authorized by Treaty Article 18. Nothing in this Agreement or in the Treaty shall be interpreted as denying or limiting the rights guaranteed to individuals by the Universal Declaration of Human Rights, or the right of settlements to seek autonomy and/or recognition as sovereign nations.

\*The Registration Convention may be updated per recommendations in UNOOSA's 2019 Guidelines for the Long-term Sustainability of Outer Space Activities.

The proposed Implementation Agreement is based on **four organizational principles**:

1. The legal framework must be **comprehensive** in scope and support **all private activity**.
2. **The Grand Bargain**: Trade private property rights for public policy obligations.
3. **Defer** issues currently at impasse (e.g., monetary sharing of benefits) by creating a governance process for making future decisions (adaptive governance, when feasible).
4. **Build** upon and integrate current institutions and processes.

### **Automatic License for Priority Use**

If a sovereign state

(1) ratifies or accedes to the five space treaties, and

(2) requires its nationals to abide by the treaties,

then any national activity on the Moon that is authorized and supervised by the state shall have priority use of the location of the activity, including the right to use or remove materials in situ.