

**AGREEMENT BETWEEN
THE DEPARTMENT OF ENERGY
OF THE UNITED STATES OF AMERICA
AND THE
MINISTRY OF THE RUSSIAN FEDERATION ON ATOMIC ENERGY
REGARDING
A RUSSIAN-AMERICAN FUEL CELL CONSORTIUM**

The Department of Energy of the United States of America and the Ministry of the Russian Federation on Atomic Energy, hereinafter referred to as "the Parties";

Recognizing that one of the most promising directions for progress in the energy field is the development of power sources based on fuel cell technology;

Realizing that international cooperation in the field of fuel cell science and technology will strengthen the bonds of friendship and understanding between both countries;

Understanding that the creation of alternative, environmentally sound and highly efficient sources of energy, on the basis of fuel cell technology of different types, is a boon to all nations;

Sensitive to the fact that fuel cell technology development will encourage nuclear non-proliferation through redirection of nuclear weapons expertise toward peaceful research activities;

Being guided by the Joint Statement of the Russian-American Fuel Cell Consortium made at the sixth Session of the U.S.-Russian Commission on Economic and Technological Cooperation in Washington on January 30, 1996;

Guided by the principles of the Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in the Field of Science and Technology signed on December 16, 1993; and

Wishing to cooperate on the basis of equity and mutual benefit:

HAVE AGREED AS FOLLOWS:

**ARTICLE I
OBJECTIVE AND DEFINITION**

1. The objective of this Agreement is to establish science and technology cooperation between the Parties in the development of power sources based on fuel cell technology, including experimental facility creation and related operational activities.
2. For purposes of this Agreement a Russian-American Fuel Cell Consortium (hereinafter

referred to as "RAFCO") is established and it is defined as a form of international science and technology cooperation between the Parties.

3. The mission of RAFCO will be to coordinate cooperative research and development between the Parties on critical technical challenges identified by the Parties and by the fuel cell community and to provide research and development funding in both countries for this purpose while promoting defense conversion goals.

ARTICLE II FORMS OF COOPERATION

Cooperative activities undertaken by the Parties under this Agreement may include the following:

1. Research and development activities;
2. Exchange of information and data on scientific and technical activities, developments, practices, methods and results;
3. Exchange of scientists, engineers and other specialists for agreed periods of time for participation in experiments, analysis, design and other research and development activities at research centers, laboratories, engineering offices and other facilities and enterprises;
4. Organization of, and participation in, seminars, workshops, and other meetings;
5. Exchange and provision of samples, materials, instruments and components for experiments, testing, and evaluation;
6. Execution of joint studies, projects or experiments, including joint design, development of experimental installations, construction and operational activities; and
7. Such other forms of cooperation as may be mutually agreed.

ARTICLE III POLICY PRINCIPLES

RAFCO activities shall be conducted based on the following principles:

1. Shared responsibilities of the Parties and mutual and equitable contributions and benefits, as agreed by the parties;
2. Comparable access by the Parties to facilities for visiting researchers, and comparable access to and exchange of information in fuel-cell-related technological development; and
3. The widest dissemination possible of research results and related information, subject to

applicable laws and regulations of the United States of America and the Russian Federation and, where appropriate, to commercial interests.

ARTICLE IV JOINT COMMITTEE FOR RAFCO

1. The Parties will establish a Joint Committee for RAFCO. The Joint Committee will be co-chaired by designees of the Parties.
2. The co-chairs may by mutual agreement invite representatives from public and private organizations in countries of the Parties to serve as exofficio members of the Joint Committee, to attend meetings of the Joint Committee, and to assist the Joint Committee in evaluating opportunities for cooperation in fuel cell technology research and development.
3. The Joint Committee shall take such actions as are necessary for RAFCO cooperation, including the following: scheduling meetings, establishing and implementing RAFCO guidelines, designating priority areas, establishing subcommittees as appropriate, and review and approval of specific programs of cooperation.
4. The Joint Committee will meet on a semi-annual basis or more frequently with the location alternating between the United States of America and the Russian Federation, unless otherwise agreed by the Parties.

ARTICLE V PROJECT AGREEMENTS

1. Following recommendations by the Joint Committee, the Parties will determine whether to undertake, independently of this Agreement, Project Agreements for the development of fuel cell technologies and for research in technical barriers inhibiting such development. The Parties anticipate undertaking such Project Agreements with members of the fuel cell industry and government organizations, including research institutes, fuel cell consumers, and others with an interest in fuel cells.
2. The Joint Committee will receive proposals for Project Agreements, evaluate them, and recommend to the Parties which Projects should be agreed upon and funded.
3. Project proposals submitted to the Joint Committee shall include, as appropriate to the activity, a work plan, staffing requirements, cost estimates, funding sources, and any undertakings, obligations, or conditions applicable to the proposed activity.

ARTICLE VI RAFCO PARTICIPATION

The Parties shall encourage and facilitate, where appropriate, the development of direct contacts and cooperation between government agencies, universities, research centers, institutions, private companies and other entities of the two countries, and also third countries, with the approval of the Parties.

ARTICLE VII INTELLECTUAL PROPERTY

1. The protection and allocation of intellectual property rights, interests and royalties shall be in accordance with the terms and conditions specified in the ANNEX.
2. Information (including industrial, design, and technical) that belongs to any RAFCO participant and which embodies trade secrets developed at private and/or other expense, and commercial or financial information which is privileged or confidential (and bearing the marking "Proprietary Information") shall be defined as proprietary information and shall constitute the property in question.
3. The Parties agree not to disclose proprietary information provided as part of RAFCO activities to third parties.

ARTICLE VIII AVAILABLE INFORMATION

1. The Parties may make available to RAFCO participants information that is relevant to the subjects of cooperation and in their possession, to the extent the Parties are legally able to disclose such information.
2. Information disseminated under this Agreement shall be accurate to the best knowledge and belief of the Parties, but the Parties do not warrant the suitability of the information transmitted for any particular use or application.

ARTICLE IX FUNDING

1. Activities under this Agreement shall be conducted in accordance with each Party's applicable laws and regulations, and shall be funded subject to the availability of resources, personnel and appropriated funds.
2. The costs associated with RAFCO activities, and particularly those of the Joint Committee,

such as travel, meeting costs, mailings, and other administrative costs, shall be borne equally by the Parties to this Agreement, unless otherwise agreed by the Parties.

ARTICLE X Other Conditions

1. Each Party, guided by the principles of the Russian/American Agreement on Scientific and Technical Collaboration shall, in accordance with its international obligations, national laws and regulations, facilitate the entry into and exit from its territory of those persons engaged in activities under RAFCO, and facilitate duty-free entry for materials and equipment required for joint activities.
2. Each Party, consistent with its national laws and regulations, shall facilitate prompt and efficient access to officials of the other Party, including travel to relevant geographic areas, visits to institutions, access to relevant data and materials, and arrangement of contracts with individual scientists, specialists, and researchers of both sides as needed to carry out those activities.

ARTICLE XI FINAL PROVISIONS

1. This Agreement shall enter into force upon signature, shall remain in force for five years, and may be amended or extended by written agreement of the Parties.
2. The Parties may agree to continue until completion any or all activities initiated but not completed at the termination of this Agreement.
3. Either Party may terminate this Agreement at any time upon six (6) months' advance written notification to the other Party. Such termination shall be without prejudice to the rights that may have accrued to either Party under this Agreement to the date of termination.

DONE at Vienna, in duplicate, in the English and Russian languages, both texts being equally authentic, this day of 16 September 1996.


FOR THE DEPARTMENT OF ENERGY OF
THE UNITED STATES OF AMERICA:


FOR THE MINISTRY OF THE RUSSIAN
FEDERATION ON ATOMIC ENERGY

ANNEX

Intellectual Property Rights

Pursuant to Article VII of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant Project Agreements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.
- B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
- C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
- D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.
- E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. Allocation of Rights

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
- B. Rights to all forms of intellectual property, other than those rights described in Paragraph II.A above, shall be allocated as follows:
 - (1) Researchers and scientists visiting in furtherance of their education shall receive intellectual property rights under the existing rules of the host institution. In addition, each visiting researcher named as an inventor shall have the right to national treatment regarding awards, benefits or other compensation, including royalties, in accordance with the policies of the host institution.
 - (2)
 - (a) For intellectual property created by the participants during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own territory. The allocation of rights and interests in third countries will be determined in Project Agreements. The rights to intellectual property shall be allocated with due regard for the economic, scientific and technological contributions from each Party to the creation of intellectual property. If research is not designated as "joint research" in the relevant Project Agreement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B.(1) above. In addition, each person named as an inventor or author shall have the right to national treatment regarding awards, benefits and other compensation, including royalties, in accordance with the existing rules of the host institution.
 - (b) Notwithstanding paragraph II.B.(2)(a) above, if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests in all countries which provide rights to such intellectual property. In addition, each person named as an inventor or author of the property shall be entitled to awards, benefits and other compensation, including royalties, in accordance with the policies of the participating institution of the Party obtaining rights.

III. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is

furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.