

INTERNATIONAL ENERGY AGENCY

**IMPLEMENTING AGREEMENT
FOR A PROGRAMME OF RESEARCH,
DEVELOPMENT AND DEMONSTRATION
ON ADVANCED FUEL CELLS**

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IMPLEMENTING AGREEMENT FOR A PROGRAMME OF RESEARCH, DEVELOPMENT AND DEMONSTRATION ON ADVANCED FUEL CELLS

The Contracting Parties

CONSIDERING that the Contracting Parties, being either governments of International Energy Agency (Agency) countries, governments of other countries invited by the Governing Board of the Agency to be Contracting Parties, international organisations or parties designated by their respective governments, wish to take part in the establishment and operation of a Programme of Research and Development on Advanced Fuel Cells (the Programme) as provided in this agreement;

CONSIDERING that the Contracting Parties which are governments of Agency countries and the governments of Agency countries which have designated Contracting Parties (referred to collectively as the Governments) have agreed in Article 41 of the Agreement on an International Energy Program (the I.E.P. Agreement) to undertake national programmes in the areas set out in Article 42 of the I.E.P. Agreement, including energy research and development and agreed in Chapter IV of the Long-Term Co-operation Program, adopted by the Governing Board of the Agency on 30 January, 1976, to undertake co-operative activities including jointly financed programmes and projects in energy research and development;

CONSIDERING that in a meeting of the Governing Board of the Agency on 28 April, 1989 the Government approved the Programme as a special activity under Article 65 of the I.E.P. Agreement;

CONSIDERING that the Agency has recognised the establishment of the Programme as an important component of international co-operation in the field of advanced fuel cell research and development;

HAVE AGREED as follows:

Article 1

OBJECTIVES

(a) *Scope of Activity.* The Programme to be carried out by the Contracting Parties within the framework of this Agreement shall consist of co-operative research, development, demonstrations and exchanges of information regarding advanced fuel cells.

(b) *Method of Implementation.* The Contracting Parties shall implement the Programme by undertaking the one or more tasks (the ~~Task~~ or Tasks~~)~~) each of which will be open to participation by two or more Contracting Parties as provided in Article 2 hereof. The Contracting Parties which participate in a particular Task are, for the purposes of that Task, referred to in this Agreement as ~~Participants~~.

(c) *Task Co-ordination and Co-operation.* The Contracting Parties shall co-operate in co-ordinating the work of the Task and shall endeavour, on the basis of an appropriate sharing of burdens and benefits, to encourage co-operation among Participants engaged in the Tasks with the objective of advancing the state of understanding of all Contracting Parties in the field of advanced fuel cells.

Article 2

IDENTIFICATION AND INITIATION OF TASKS

(a) *Initial Task.* The Contracting Parties identified in Annexes I and II at the time of their respective signatures are the initial Participants in the Tasks established in those Annexes. Other Contracting Parties which wish to participate in them shall communicate to the Executive Director of the Agency an appropriate Notice of Participation.

(b) *Initiation of Additional Tasks.* Additional Tasks may be initiated by any Contracting Party according to the following procedure:

- (1) A Contracting Party wishing to initiate a new Task shall present to one or more Contracting Parties for approval a draft Annex, similar in form to the Annex or Annexes attached hereto, containing a description of the scope of work and conditions of the Task proposed to be performed;
- (2) Whenever two or more Contracting Parties agree to undertake a new Task, they shall submit the draft Annex for adoption by the Executive Committee pursuant to

Article 3(e)(2) hereof; the adopted Annex shall become part of this Agreement;

- (3) A Contracting Party shall become a Participant in each Task for which the Participant is identified in the applicable Annex when the Annex is adopted. A Contracting Party identified as the Operating Agent in an Annex when adopted shall be deemed to have accepted the designation as Operating Agent for that Annex. Notice of Participation in the Task by other Contracting Parties which wish to participate and Notice of Acceptance by other Operating Agents shall be communicated to the Executive Director;
- (4) In carrying out the various Tasks, Participants shall co-ordinate their activities in order to avoid duplication of activities.

(c) *Application of Task Annexes.* Each Annex shall be binding only upon the Participants therein and upon the Operating Agents for that Task, and shall not affect the rights or obligations of other Contracting Parties.

(d) *Extension of Task Annexes.*

- (1) Voting Rules on the Extension of Task Annexes.
 - (i) Taking into account any recommendation of the Agency's Committee on Energy Research and Technology concerning their term, Task Annexes may be extended at any time by the Executive Committee acting by unanimity.
 - (ii) Notwithstanding the above, when the Objective of a Task is modified, Task Annexes may only be extended by the Executive Committee acting by unanimity of all the Contracting Parties.
- (2) Task Annexes shall be extended on the condition that all the Participants to the Task agree to continue their participation during the extension period. The Chairman of the Executive Committee shall obtain confirmation in writing, by all Participants to the Task, of their intention to continue their participation during the extension period.

Article 3

THE EXECUTIVE COMMITTEE

(a) *Supervisory Control.* Control of the Programme shall be vested

in the Executive Committee constituted under this Article.

(b) *Membership.* The Executive Committee shall consist of one member designated by each Contracting Party; each Contracting Party shall also designate an alternate member to serve on the Executive Committee in the event that its designated member is unable to do so.

(c) *Responsibilities.* The Executive Committee shall:

- (1) Adopt for each year, acting by unanimity, the Programme of Work and Budget, if foreseen, for each Task, together with an indicative programme of work and budget for the following two years; the Executive Committee may, as required, make adjustments within the framework of the Programme of Work and Budget;
- (2) Make such rules and regulations as may be required for the sound management of the Tasks, including financial rules as provided in Article 7 hereof;
- (3) Carry out the other functions conferred upon it by this Agreement and the Annexes hereto; and
- (4) Consider any matters submitted to it by any of the Operating Agents or by any Contracting Party.

(d) *Procedure.* The Executive Committee shall carry out its responsibilities in accordance with the following procedure:

- (1) The Executive Committee shall every two years elect a Chairman and one or more Vice-Chairmen;
- (2) The Executive Committee may establish such subsidiary bodies and rules of procedure as are required for its proper functioning;
- (3) A representative of the Agency and a representative of each Operating Agent (in its capacity as such) may attend meetings of the Executive Committee and its subsidiary bodies in an advisory capacity;
- (4) The Executive Committee shall meet in regular session not more than twice each year; a special meeting shall be convened upon the request of any Contracting Party which can demonstrate the need therefor;
- (5) Meetings of the Executive Committee shall be held at such time and in such office or offices as may be designated by the Committee;
- (6) At least twenty-eight days before each meeting of the Executive Committee, notice of the time, place and purpose of the meeting shall be given to each

Contracting Party and to other persons or entities entitled to attend the meeting; notice need not be given to any person or entity otherwise entitled thereto if notice is waived before or after the meeting;

- (7) The quorum for the transaction of business in meetings of the Executive Committee shall be one-half of the members plus one (less any resulting fraction) provided that any action relating to a particular Task shall require a quorum as aforesaid of members or alternate members designated by the Participants in that Task;
- (8) The Executive Committee shall ensure that minutes of each meeting are distributed promptly after the meeting to each person or entity entitled to attend the meeting.

(e) *Voting*

- (1) When the Executive Committee adopts a decision or recommendation for or concerning a particular Task, and subject to Article 2(d)(1)(ii), the Executive Committee shall act:
 - (i) When unanimity is required under this Agreement: by agreement of those members or alternate members which were designated by the Participants in that Task and which are present and voting;
 - (ii) When no express voting provision is made in this Agreement: by majority vote of those members or alternate members which were designated by the Participants in that Task and which are present and voting.
- (2) In all other cases in which this Agreement expressly requires the Executive Committee to act by unanimity, this shall require the agreement of each member or alternate member present and voting, and in respect of all other decisions and recommendations for which no express voting provision is made in this Agreement, the Executive Committee shall act by a majority vote of the members or alternate members present and voting.
- (3) If a government has designated more than one Contracting Party to this Agreement, those Contracting Parties together may cast only one vote under this paragraph.

- (4) The decisions and recommendations referred to in sub-paragraphs (1) and (2) above may, with the agreement of each member or alternate member entitled to act thereon, be made by mail, telefax, telex, cable or other means of electronic transmission without the necessity for calling a meeting. Such action shall be taken by unanimity or majority of such members as in a meeting. The Chairman of the Executive Committee shall ensure that all members are informed of each decision or recommendation made pursuant to this sub-paragraph.

(f) *Reports.* The Executive Committee shall, by 31st January each year, provide the Agency with 30 copies of reports containing technically substantive, non-proprietary information on the progress of the Programme and its results.

Article 4

THE SECRETARY

(a) *Designation; Scope of Authority.* The Executive Committee, acting by unanimity, may designate a secretary (the ~~Secretary~~) to:

- (1) Make and distribute agendas, Minutes and other documents of Executive Committee meetings;
- (2) Prepare decisions and recommendations in accordance with Article 3(e)(4) above;
- (3) Assist the Executive Committee and its Chairman in carrying out their responsibilities under Articles 3(c)(3), 3(d)(8), 3(e)(4), 3(f) and 12(d) of this Agreement;
- (4) Assist the Executive Committee in the overall co-ordination of the work in the different Annexes; and
- (5) Undertake such other activities as may be required by the Executive Committee to assist it in carrying out its responsibilities under this Agreement.

The Secretary shall carry out its functions under the supervision of the Executive Committee. Representatives of the Secretary may attend meetings of the Executive Committee and its subsidiary bodies in an advisory capacity with no voting rights.

(b) *Reimbursement of Costs.* The Executive Committee may provide that expenses and costs incurred by the Secretary under this Article be reimbursed to the Secretary from the common fund which the Executive Committee may establish under the first sentence of Article 7(b) [Finance] below.

(c) *Contracting.* The Secretary may, with the prior approval of the Executive Committee acting by unanimity and in accordance with the Programme of Work and Budget, enter into contracts for necessary and appropriate support or consultancy services.

(d) *Replacement.* Should the Executive Committee wish to replace the Secretary with another entity, the Executive Committee may take such action.

(e) *Resignation.* The Secretary shall have the right to resign at any time by giving six months written notice to that effect to the Executive Committee.

(f) *Information and Report.* The Secretary shall furnish the Executive Committee with such information concerning its work as the Executive Committee may request.❖

Article 5

THE OPERATING AGENTS

(a) *Designation.* Participants shall designate in the relevant Annex an Operating Agent for each Task. References in this Agreement to the Operating Agent shall apply to each Operating Agent in respect of the Task for which it is responsible.

(b) *Scope of Authority to Act on Behalf of Participants.* Subject to the provisions of the applicable Annex:

- (1) All legal acts required to carry out each Task shall be performed on behalf of the Participants by the Operating Agent for the Task;
- (2) The Operating Agent shall hold, for the benefit of the Participants, the legal title to all property rights which may accrue to or be acquired for the Task, unless otherwise provided for in an Annex to the agreement.

The Operating Agent shall operate the Task under its supervision and responsibility, subject to this Agreement, in accordance with the law of the country of the Operating Agent.

(c) *Reimbursement of Costs.* The Executive Committee may provide

that expenses and costs incurred by an Operating Agent in acting as such pursuant to this Agreement shall be reimbursed to the Operating Agent from funds made available by the Participants pursuant to Article 7 hereof.

(d) *Replacement.* Should the Executive Committee wish to replace an Operating Agent with another government or entity, the Executive Committee may, acting by unanimity and with the consent of such government or entity, replace the initial Operating Agent.

References in this Agreement to the ~~Operating Agent~~ shall include any government or entity appointed to replace the original Operating Agent under this paragraph.

(e) *Resignation.* An Operating Agent shall have the right to resign at any time by giving six months written notice to that effect to the Executive Committee, provided that:

- (1) A Participant, or entity designated by a Participant, is at such time willing to assume the duties and obligations of the Operating Agent and so notifies the Executive Committee and the other Participants to that effect, in writing, not less than three months in advance of the effective date of such resignation; and
- (2) Such Participant or entity is approved in its function of Operating Agent by the Executive Committee, acting by unanimity.

(f) *Accounting.* An Operating Agent which is replaced or which resigns as Operating Agent shall provide the Executive Committee with an accounting of any monies and other assets which it may have collected or acquired for the Task in the course of carrying out its responsibilities as Operating Agent.

(g) *Transfer of Rights.* In the event that another Operating Agent is appointed under paragraph (d) or (e) above, the Operating Agent shall transfer to such replacement Operating Agent any property rights which it may hold on behalf of the Task.

(h) *Information and Reports.* Each Operating Agent shall furnish to the Executive Committee such information concerning the Task as the Committee may request and shall each year submit, not later than two months after the end of the financial year, a report on the status of the Task.

Article 6

ADMINISTRATION AND STAFF

(a) *Administration of Tasks.* Each Operating Agent shall be responsible to the Executive Committee for implementing its designated Task in accordance with this Agreement, the applicable Task Annex, and the decisions of the Executive Committee.

(b) *Staff.* It shall be the responsibility of the Operating Agent to retain such staff as may be required to carry out its designated Task in accordance with rules determined by the Executive Committee. The Operating Agent may also, as required, utilise the services of personnel employed by other Participants (or organisations or other entities designated by Contracting Parties) and made available to the Operating Agent by secondment or otherwise. Such personnel shall be remunerated by their respective employers and shall, except as provided in this Article, be subject to their employers' conditions of service. The Contracting Parties shall be entitled to claim the appropriate cost of such remuneration or to receive an appropriate credit for such cost as part of the Budget of the Task, in accordance with Article 7(f)(6) hereof.

Article 7

FINANCE

(a) *Individual Financial Obligations.* Each Contracting Party shall bear the costs it incurs in carrying out this Agreement, including the costs of formulating or transmitting reports and of reimbursing its employees for travel and other per diem expenses incurred in connection with work carried out on the respective Tasks, unless provision is made for such costs to be reimbursed from common funds as provided in paragraph (g) below.

(b) *Common Financial Obligations.* Participants wishing to share the costs of a particular Task shall agree in the appropriate Task Annex to do so. The apportionment of contributions to such costs (whether in the form of cash, services rendered, intellectual property or the supply of materials) and the use of such contributions shall be governed by the regulations and decisions made pursuant to this Article by the Executive Committee.

(c) *Financial Rules, Expenditure.* The Executive Committee, acting by unanimity, may make such regulations as are required for the sound financial management of each Task including, where necessary:

- (1) Establishment of budgetary and procurement procedures to be used by the Operating Agent in making payments from any common funds which may be maintained by

Participants for the account of the Task or in making contracts on behalf of the Participants;

- (2) Establishment of minimum levels of expenditure for which Executive Committee approval shall be required, including expenditure involving payment of monies to the Operating Agent for other than routine salary and administrative expenses previously approved by the Executive Committee in the budget process.

In the expenditure of common funds, the Operating Agent shall take into account the necessity of ensuring a fair distribution of such expenditure in the Participants' countries, where this is fully compatible with the most efficient technical and financial management of the Task.

(d) *Crediting of Income to Budget.* Any income which accrues from a Task shall be credited to the Budget of that Task.

(e) *Accounting.* The system of accounts employed by the Operating Agent shall conform to accounting principles generally accepted in the country of the Operating Agent and shall be consistently applied.

(f) *Programme of Work and Budget, Keeping of Accounts.* Should Participants agree to maintain common funds for the payment of obligations under a programme of work and budget of the Task, the following provisions shall be applicable unless the Executive Committee, acting by unanimity, decides otherwise:

- (1) The financial year of the Task shall correspond to the financial year of the Operating Agent;
- (2) The Operating Agent shall each year prepare and submit to the Executive committee for approval a draft programme of work and budget, together with an indicative programme of work and budget for the following two years, not later than three months before the beginning of each financial year;
- (3) The Operating Agent shall maintain complete and separate financial records which shall clearly account for all funds and property coming into the custody or possession of the Operating Agent in connection with the Task;
- (4) Not later than three months after the close of each financial year the Operating Agent shall submit to auditors selected by the Executive Committee for audit the annual accounts maintained for the Task; upon completion of the annual audit, the Operating Agent shall present the accounts together with the auditors' report to the Executive Committee for approval;

- (5) All books of account and records maintained by the Operating Agent for the Task shall be preserved for a least three years from the date of termination of the Task;
 - (6) Where provided in the relevant Annex, a Participant supplying services, materials or intellectual property to the Task shall be entitled to a credit, determined by the Executive Committee, acting by unanimity, against its contribution (or to compensation, if the value of such services, materials or intellectual property exceeds the amount of the Participant's contribution); such credits for services of staff shall be calculated on an agreed scale approved by the Executive Committee and include all payroll-related costs.
- (g) *Contribution to Common Funds.* Should Participants agree to establish common funds under the annual Programme of Work and Budget for a Task, any financial contributions due from Participants in a Task shall be paid to the Operating Agent in the currency of the country of the Operating Agent at such times and upon such other conditions as the Executive Committee, acting by unanimity, shall determine, provided, however, that:
- (1) Contributions received by the Operating Agent shall be used solely in accordance with the Programme of Work and Budget for the Task;
 - (2) The Operating Agent shall be under no obligation to carry out any work on the Task until contributions amounting to a least fifty per cent (in cash terms) of the total due at any one time have been received.
- (h) *Ancillary Services.* Ancillary services may, as agreed between the Executive Committee and the Operating Agent, be provided by that Operating Agent for the operation of a Task and the cost of such services, including overheads connected therewith, may be met from budgeted funds of that Task.
- (i) *Taxes.* The Operating Agent shall pay all taxes and similar impositions (other than taxes on income) imposed by national or local governments and incurred by it in connection with a Task, as expenditure incurred in the operation of that Task under the Budget; the Operating Agent shall, however, endeavour to obtain all possible exemptions from such taxes.
- (j) *Audit.* Each Participant shall have the right, at its sole cost, to audit the accounts of any work in a Task for which common funds are maintained, on the following terms:
- (1) The Operating Agent shall provide the other

Participants with an opportunity to participate in such audits on a cost shared basis;

- (2) Accounts and records relating to activities of the Operating Agents other than those conducted for the Task shall be excluded from such audit, but if the Participant concerned requires verification of charges to the Budget representing services rendered to the Task by the Operating Agent, it may, at its own cost, request and obtain an audit certificate in this respect from the auditors of the Operating Agent;
- (3) Not more than one such audit shall be required in any financial year;
- (4) Any such audit shall be carried out by not more than three representatives of the Participants.

Article 8

INFORMATION AND INTELLECTUAL PROPERTY

It is expected that, for each Task agreed pursuant to this Agreement, the applicable Annex will contain information and intellectual property provisions. The General Guidelines Concerning Information and Intellectual Property, approved by the Governing Board of the Agency on 21st November, 1975, shall be taken into account in developing information and intellectual property provisions pursuant to this Article.

Article 9

LEGAL RESPONSIBILITY AND INSURANCE

(a) *Liability of Operating Agent.* The Operating Agent shall use all reasonable skill and care in carrying out its duties under this Agreement in accordance with all applicable laws and regulations. Except as otherwise provided in this Article, the cost of all damage to property, and all expenses associated with claims, actions, and other costs arising from work undertaken with common funds for a Task shall be charged to the Budget of that Task; such costs and expenses arising from other work undertaken for a

Task shall be charged to the Budget of that Task if the Task Annex so provides or the Executive Committee, acting by unanimity, so decides.

(b) *Insurance.* The Operating Agent shall propose to the Executive Committee all necessary liability, fire and other insurance, and shall carry such insurance as the Executive Committee may direct. The cost of obtaining and maintaining insurance shall be charged to the Budget of the Task.

(c) *Responsibility of Operating Agent.* The Operating Agent shall, in accordance with the laws of the country of the Operating Agent, be responsible in its capacity as such, for any damage to property and all legal liabilities, actions, claims, costs and expenses connected therewith to the extent that they:

- (1) Result from the failure of the Operating Agent to maintain such insurance as it may be required to maintain under paragraph (b) above; or
- (2) Result from the gross negligence or wilful misconduct of any officers or employees of the Operating Agent in carrying out their duties under this Agreement.

Article 10

LEGISLATIVE PROVISIONS

(a) *Accomplishment of Formalities.* Each Participant shall request the appropriate authorities of its country (or its Member States in the case of an international organisation) to use their best endeavours, within the framework of applicable legislation, to facilitate the accomplishment of formalities involved in the movement of persons, the importation of materials and equipment and the transfer of currency which shall be required to conduct the Task in which it is engaged.

(b) *Appropriation of Funds and Applicable Laws.* In carrying out this Agreement and its Annexes the Contracting Parties shall be subject to the appropriation of funds by the appropriate governmental authority, where necessary, and to the constitutions, laws and regulations applicable to the respective Contracting Parties, including, but not limited to, laws establishing prohibitions upon the payment of commissions, percentages, brokerage or contingent fees to persons retained to solicit governmental contracts and upon any share of such

contracts accruing to governmental officials.

(c) *Decisions of Agency Governing Board.* Participants in the various Tasks shall take account, as appropriate, of the Guiding Principles for Co-operation in the Field of Energy Research and Development, and any modification thereof, as well as other decisions of the Governing Board of the Agency in that field. The termination of the Guiding Principles shall not affect this Agreement, which shall remain in force in accordance with the terms hereof.

(d) *Settlement of Disputes.* Any dispute among the Contracting Parties concerning the interpretation or the application of this Agreement which is not settled by negotiation or other agreed mode of settlement shall be referred to a tribunal of three arbitrators to be chosen by the Contracting Parties concerned who shall also choose the Chairman of the tribunal. Should the Contracting Parties concerned fail to agree upon the composition of the tribunal or the selection of its Chairman, the President of the International Court of Justice shall, at the request of any of the Contracting Parties concerned, exercise those responsibilities. The tribunal shall decide any such dispute by reference to the terms of this Agreement and any applicable laws and regulations, and its decision on a question of fact shall be final and binding on the Contracting Parties concerned. Operating Agents which are not Contracting Parties shall be regarded as Contracting Parties for the purpose of this paragraph.

Article 11

ADMISSION AND WITHDRAWAL OF CONTRACTING PARTIES

(a) *Admission of New Contracting Parties: Agency Countries.* Upon the invitation of the Executive Committee, acting by unanimity, admission to this Agreement shall be open to the government of any Agency Participating Country (or a national agency, public organisation, private corporation, company or other entity designated by such government), which signs or accedes to this Agreement, accepts the rights and obligations of a Contracting Party, and is accepted for participation in at least one Task by the Participants in that Task, acting by unanimity. Such admission of a Contracting Party shall become effective upon the signature of this Agreement by the new Contracting Party or its accession thereto and its giving Notice of Participation in one or more Annexes and the adoption of any consequential amendments thereto.

(b) *Admission of New Contracting Parties: Other Countries.* The government of any country which does not participate in the Agency may, on the proposal of the Executive Committee, acting by unanimity, to

be invited by the Governing Board of the Agency to become a Contracting Party to this Agreement (or to designate a national agency, public organisation, private corporation, company or other entity to do so), under the conditions stated in paragraph (a) above.

(c) *Admission of New Participants in Tasks.* Any Contracting Party may, with the agreement of the Participants in a Task, acting by unanimity, become a participant in that Task. Such participation shall become effective upon the Contracting Party's giving the Executive Director of the Agency a Notice of Participation in the appropriate Task Annex and the adoption of consequential amendments thereto.

(d) *Contributions.* The Executive Committee may require, as a condition to admission to participation, that the new Contracting Party or new Participant shall contribute (in the form of cash, services, materials or intellectual property) an appropriate proportion of the prior budget expenditure of any Task in which it participates.

(e) *Replacement of Contracting Parties.* With the agreement of the Executive Committee, acting by unanimity, and upon the request of a Government, a Contracting Party designated by that government may be replaced by another party. In the event of such replacement, the replacement party shall assume the rights and obligations of a Contracting Party as provided in paragraph (a) above and in accordance with the procedure provided therein.

(f) *Withdrawal.* Any Contracting Party may withdraw from this Agreement or from any Task either with the agreement of the Executive Committee, acting by unanimity, or by giving twelve months written Notice of Withdrawal to the Executive Director of the Agency, such notice to be given not less than one year after the date hereof. The withdrawal of a Contracting Party under this paragraph shall not affect the rights and obligations of the other Contracting Parties; except that, where the other Contracting Parties have contributed to common funds for a Task, their proportionate shares in the Task Budget shall be adjusted to take account of such withdrawal.

(g) *Changes to Status of Contracting Party.* A Contracting Party other than a government or an international organisation shall forthwith notify the Executive Committee of any significant change in its status or ownership, or of its becoming bankrupt or entering into liquidation. The Executive Committee shall determine whether any such change in status of a Contracting Party significantly affects the interests of the other Contracting Parties; if the Executive Committee so determines, then, unless the Executive Committee, acting upon the unanimous decision of the other Contracting Parties, otherwise agrees:

- (1) That Contracting Party shall be deemed to have

- withdrawn from the Agreement under paragraph (f) above on a date to be fixed by the Executive Committee; and
- (2) The Executive Committee shall invite the Government which designated that Contracting Party to designate, within a period of three months of the withdrawal of the Contracting Party, a different entity to become a Contracting Party; if approved by the Executive Committee, acting by unanimity, such entity shall become a Contracting Party with effect from the date on which it signs of accedes to this Agreement and gives the Executive Director of the Agency a Notice of Participation in one or more Annexes.

(h) *Failure to Fulfil Contractual Obligations.*

- (1) Any Participant in a Task which, in the opinion of the Executive Committee acting by unanimity of the other Participants in that Task, fails to fulfil its obligations under that Task shall be given a written notice invoking this paragraph and specifying the nature of such failure;
- (2) Any Participant in a Task which fails to fulfil its obligations under a Task within 60 days after its receipt of a notice under paragraph (h)(1) above may be deemed by the Executive Committee, acting by unanimity of the other Contracting Parties, to have withdrawn from that Task;
- (3) Any Participant in a Task which is deemed by the Executive Committee to have withdrawn from that Task has thus lost all rights to any claim of whatever kind towards the other Participants in that Task related to the Task Activities. This includes claims for information and economical compensation for both made investments and damages etc.
- (4) Any Contracting Party which, in the opinion of the Executive Committee acting by unanimity of the other Contracting Parties, fails to fulfil any obligations under this Agreement shall be given a written notice invoking this paragraph and specifying the nature of such failure;
- (5) Any Contracting Party which fails to fulfil its obligations under this Agreement within 60 days after its receipt of a notice under paragraph (h)(3) above may be deemed by the Executive Committee, acting by unanimity of the other Contracting Parties, to have withdrawn from this Agreement;
- (6) Any Contracting Party which is not a Participant in at least one Task for any period exceeding twelve months

may be deemed by the Executive Committee, acting by unanimity of the other Contracting Parties, to have withdrawn from this Agreement.

- (7) Any Contracting Party which is deemed by the Executive Committee to have withdrawn from the Agreement has thus lost all rights to any claim of whatever kind towards the other Contracting Parties. This includes claims for information and economical compensation for both made investments and damages etc.

Article 12

FINAL PROVISIONS

(a) *Term of Agreement.* This Agreement shall enter into force upon signature by all of the Contracting Parties and shall remain in force for an initial period of five years. The term of the Agreement may be extended for such additional periods as may be determined by the Executive Committee, acting by unanimity, with the prior agreement of the Governing Board of the Agency. The Executive Committee may, acting by unanimity, terminate this Agreement at any time.

(b) *Legal Relationship of Contracting Parties and Participants.* Nothing in this Agreement shall be regarded as constituting a partnership between any of the Contracting Parties or Participants.

(c) *Termination.* Upon termination of this Agreement, or any Annex to this Agreement, the Executive Committee, acting by unanimity, shall arrange for the liquidation of the assets of the Task or Tasks. In the event of such liquidation, the Executive Committee shall, so far as practicable, distribute the assets of the Task, or the proceeds therefrom, in proportion to the contributions which the Participants have made from the beginning of the operation of the Task, and for that purpose shall take into account the contributions and any outstanding obligations of former Contracting Parties. Disputes with a former Contracting Party about the proportion allocated to it under this paragraph shall be settled under Article 10(d) hereof, for which purpose a former Contracting Party shall be regarded as a Contracting Party.

(d) *Amendment.* This Agreement may be amended at any time by the Executive Committee, acting by unanimity, and any Annex to this Agreement may be amended at any time by the Executive Committee, acting by unanimity of the Participants in the Task to which the Annex refers. Such amendments shall come into force in a manner determined by the Executive Committee, acting under the

voting rule applicable to the decision to adopt the amendment.

(e) *Deposit.* The original of this Agreement shall be deposited with the Executive Director of the Agency and a certified copy thereof shall be furnished to each Contracting Party and to the Operating Agents. A copy thereof shall be furnished to each Agency Participating Country and to each Member country of the Organisation for Economic Co-operation and Development.

Done in Paris, this 2nd day of April, 1990.

Original Signatories in April 1990

The COMITATO NAZIONALE PER LA RICERCA E PER LO
SVILUPPO DELL'ENERGIA NUCLEARE E DELLE ENERGIE
ALTERNATIVE (ENEA)
(designated by the Government of Italy)

The NEW ENERGY AND INDUSTRIAL TECHNOLOGY
DEVELOPMENT ORGANISATION (NEDO)
(designated by the Government of Japan)

The NETHERLANDS AGENCY FOR ENERGY
AND THE ENVIRONMENT (NOVEM)
(designated by the Government of the Netherlands)

The NORWEGIAN COUNCIL FOR SCIENTIFIC
AND INDUSTRIAL RESEARCH
(designated by the Government of Norway)
*(Changed in October 1994 to THE RESEARCH COUNCIL
OF NORWAY)*

For HIDROELÉCTRICA ESPAÑOLA, S.A.
(designated by the Government of Spain)
(Deemed to have withdrawn from the Agreement in December 1997)

For the NATIONAL ENERGY ADMINISTRATION
(designated by the Government of Sweden)

For the OFFICE FÉDÉRAL DE L'ÉNERGIE
for and on behalf of the Government of Switzerland

Other Signatories

The SECRETARY OF STATE FOR ENERGY
for and on behalf of the Government of the
United Kingdom of Great Britain and Northern Ireland September
1991
*(Changed in April 1992 to the SECRETARY OF STATE
FOR INDUSTRY)*

The ministry of energy
for and on behalf of the Government of Denmark September 1990

The Forschungszentrum Jülich
for and on behalf of the German Ministry of Research
and Technology November 1991

ENERGY, MINES AND RESOURCES
for and on behalf of the Government of Canada December 1992
The GOVERNMENT OF THE UNITED STATES
OF AMERICA May 1995

CERAMIC FUEL CELLS LIMITED

(designated by the Government of Australia)

December 1995

The UNIVERSITY OF WAIKATO

(designated by the Government of New Zealand)

January 1996