

September 29, 1977

ANNEX

GENERAL TERMS AND CONDITIONS

- I. Cooperation between the Parties shall be directed towards R&D activities to improve nuclear material safeguards and physical security. This cooperation may extend to exchanges of information, equipment, and staff and includes mutually agreed upon research and development.
- II. The areas of cooperation covered by this Exchange of Letters (hereinafter referred to as the "Agreement") will be specified and may be modified or expanded by mutual agreement.
- III. Both Parties shall make available to each other information in specified areas of the field of nuclear materials safeguards and physical security which they have the right to disclose, either in their possession or available to them.
- IV. Information exchanged between the Parties shall be in the form of technical reports, experimental data, correspondence, visits, joint experts meetings, and such other forms as jointly agreed to by the Parties.
- V. Joint research and development projects shall be agreed upon on a case-by-case basis, including details of joint projects, technical scope, distribution of responsibilities, and time scheduled for performance.

VI. A Permanent Coordinating Group (PCG) shall be established consisting of two members each from the United States of America and the Federal Republic of Germany. The PCG shall have the following functions:

- A. It shall monitor and coordinate all the activities to be carried out under joint projects.
- B. It shall attempt to solve technical and administrative problems which may arise out of the joint collaboration.
- C. The PCG shall meet as frequently and at such locations as program management considerations of the joint program require.

At least annually, the PCG shall arrange a meeting in which the joint program will be reviewed and possible modifications and additions discussed. Members of the PCG shall invite to such meetings members of other organizations in their respective countries which have an interest in the results of the research and development activities of the joint program. Such meetings shall be held alternately in the Federal Republic of Germany and the United States.

VII. The use by one Party of test equipment, facilities, and/or computer programs owned by the other Party shall be agreed upon on a case-by-case basis. Exchanges of support staff shall be agreed upon on a case-by-case basis.

VIII. Both Parties agree that information provided or exchanged under this agreement should be given wide distribution, subject to the need to protect classified information and proprietary information exchanged hereunder and to the provisions of Clause X.

Use of Proprietary Information

A. Definitions

1. The term "information" means scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under this agreement.
2. The term "proprietary information" means information which contains trade secrets or commercial or financial information which is privileged or confidential, and may only include such information which:
 - a. Has been held in confidence by the owner;
 - b. Is of a type which is customarily held in confidence by its owner;
 - c. Has not been transmitted by the transmitting Party to other entities (including the receiving Party) except on the basis that it be held in confidence; and

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- d. Is not otherwise available to the receiving Party from another source without restriction on its further dissemination. :

B. Procedures

1. A Party receiving proprietary information pursuant to this agreement shall respect the privileged nature thereof. Any document which contains proprietary information shall be clearly marked restricting dissemination outside the recipient's organization.
2. Dissemination of proprietary information received in confidence under this agreement, will, unless otherwise mutually agreed upon, be limited to:
 - a. Persons within or employed by the receiving Party and concerned Government departments and Government agencies in the country of the receiving Party, engaged in work relating to the subject matter of the proprietary information;
 - b. Prime contractors or subcontractors of the receiving Party located within the geographical limits of the receiving Party's nation for use only within the framework of their contracts with the receiving Party in work relating to the subject matter of the proprietary information; provided

that any proprietary information so disseminated shall be pursuant to an agreement of confidentiality and shall be marked with a restrictive legend similar to that required by subparagraph B.1. above. Dissemination of equipment and materials embodying proprietary information discernible by a knowledgeable person is to be treated as dissemination of information.

C. Each Party shall exercise its best efforts to ensure that proprietary information received by it under this agreement is controlled as provided herein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of this Clause, it shall immediately inform the other party. The parties shall thereafter consult to define an appropriate course of action.

D. Information arising from seminars and other meetings arranged under this agreement and information arising from the attachments ~~of staff, use of facilities and joint projects shall be treated by~~ the Parties according to the principles specified in this clause; provided, however, no information orally communicated shall be subject to the limited disclosure requirements of this agreement unless the individual communicating the information places the recipient on notice as to the proprietary character of the information communicated.

E. Nothing contained in this agreement shall preclude the use or dissemination of information received by a Party other than pursuant to this agreement.

IX. The application or use of any information exchanged or transferred between the Parties under this agreement shall be the responsibility of the Party receiving it, and the transmitting Party does not warrant the suitability of such information for any particular use or application.

X. A. With respect to any invention or discovery made or conceived in the course of or under this agreement:

1. If made or conceived by personnel of one Party (the assigning Party) or its contractors while assigned to the other Party (recipient Party) or its contractors in connection with exchanges of scientists, engineers, and other specialists:

a. The recipient Party shall acquire all rights, title, and interest in and to any such invention, discovery, patent application, or patent in its own country and in third countries, subject to a non-exclusive, irrevocable, royalty-free license to the assigning Party, with the right to grant sub-licenses, under any such invention, discovery, patent

application or patent, for use in the production, utilization, transport or storage of special nuclear material or production or utilization of atomic energy; and

- b. The assigning Party shall acquire all rights, title, and interest in and to any such invention, discovery, patent application, or patent in its own country subject to a non-exclusive, irrevocable, royalty-free license to the recipient Party, with the right to grant sub-licenses, under any such invention, discovery, patent application, or patent, for use in the production, utilization, transport, or storage of special nuclear material or the production or utilization of atomic energy.

- 2. If made or conceived by a Party or its contractors as a direct result of employing information which has been communicated to it under this agreement by the other Party or its contractor or communicated during seminars or other joint meetings, the Party making the invention shall acquire all right, title, and interest in and to any such invention, discovery, patent application, or patent in all countries, subject to a grant to the other Party of a royalty-free, non-exclusive, irrevocable license with the right to grant sub-licenses, in and to any such invention, discovery, patent application, or patent, in all countries, for

use in the production, utilization, transport, or storage of special nuclear material or atomic energy.

3. With regard to other specific forms of cooperation, including exchanges of materials, instruments, and equipment for special joint research projects, the Parties shall provide for appropriate distribution of rights to inventions resulting from such cooperation. In general, however, each Party should normally determine the rights to such inventions in its own country, with a non-exclusive, irrevocable, royalty-free license to the other Party, and the rights to such inventions and discoveries in other countries should be agreed upon by the Parties on an equitable basis.

4. It is understood that after the European Patent Conventions (Übereinkommen Über die Erteilung Europaischer Patente, Übereinkommen Über das Europäische Patent Für Den Gemeinsamen Market) have come into force, either Party may request a modification of this paragraph A. for the purpose of according equivalent rights as provided in sub-paragraphs A. 1.-3. above under the European Patent Conventions.

- B. Neither Party shall discriminate against citizens of the other Party with respect to granting any license or sub-license under any invention pursuant to paragraph A. above.

- C. Each Party waives any and all claims against the other Party for compensation, royalty, or award as regards any invention or discovery, patent application, or patent, made or conceived under this agreement, and releases the other Party with respect to any and all such claims, including any claims under the provisions of the U.S. Atomic Energy Act of 1954, as amended, and the German Employee's Inventions Law (Arbeitnehmererfindergesetz) of July 25, 1957 (BGBI, 1957, Part 1, Page 765), as amended.
- XI. Information which is classified by either Party for national security reasons shall be exchanged pursuant to the Exchange of Notes between the Governments of the United States of America and the Federal Republic of Germany signed December 23, 1960. All of the provisions of such Exchange of Notes and the Annex thereto are incorporated herein by reference. "Classified information," for the purposes of this agreement, shall not include Restricted Data of either Party as defined by the United States Atomic Energy Act of 1954, as amended.
- XII. A. Wherever an exchange of staff is contemplated under this agreement, each Party shall ensure that qualified staff are selected for attachment to the other Party.
- B. Each Party shall be responsible for the salaries, insurance, and allowance to be paid its personnel while on attachment to the host Party unless otherwise agreed.

C. Each Party shall pay for the travel and living expenses of its personnel while on attachment to the host Party unless otherwise agreed.

D. The host establishment shall use its best efforts to arrange for comparable accommodations for the other Party's personnel and their families on a mutually agreeable reciprocal basis.

E. Each Party shall provide all necessary assistance to the attached staff (and their families) or the other Party as regards administrative formalities (travel arrangements, etc.).

F. The personnel of each Party shall conform to the general rules of work and safety regulations in force at the host establishment.

XIII. A. By mutual agreement, a Party may provide equipment to be utilized in joint projects and experiments. In such cases, the sending Parties shall supply, as soon as possible, a detailed list of the equipment to be provided together with the relevant specifications and technical and informational documentation.

- B. Title to the equipment and necessary spare parts supplied by the sending Party for use in joint projects and experiments shall remain in the sending Party and the property shall be returned to the sending Party upon completion of the joint project or experiment, unless otherwise agreed.
- C. The above-mentioned equipment shall be brought into operation at the host establishment only by mutual agreement between the Parties or between their senior representatives at the host establishment.
- D. The host establishment shall provide the necessary premises for the equipment, and shall provide for electric power, water, gas, etc., in accordance with technical requirements which shall be as mutually agreed upon.
- E. The responsibility and expenses for the transport of equipment and materials from the United States of America by plane or ship to an authorized port of entry in the Federal Republic of Germany convenient to the ultimate destination, and return, and also responsibility for its safekeeping and insurance en route shall rest with ERDA.
- F. The responsibility and expenses for the transport of equipment and materials from the Federal Republic of Germany by plane or ship to an authorized port of entry in the United States of America convenient

to the ultimate destination, and return, and also responsibility for their safekeeping and insurance en route shall rest with the BMFT.

G. The equipment provided by the sending Party for carrying out joint projects and experiments shall be considered to be scientific, not having a commercial character.

H. The recipient Party shall use its best efforts to assure duty-free entry into its territory of any equipment provided pursuant to this article.

XIV. Cooperation under this agreement shall be in accordance with the laws and regulations of the respective countries. All questions relating to the agreement arising during its term shall be settled by the Parties by mutual agreement.

XV. Except when otherwise specifically agreed, all costs resulting from cooperation under this agreement shall be borne by the Party that incurs them. It is understood that the ability of the Parties to carry out their obligations is subject to the availability of appropriated funds.

XVI. Both Parties agree that the following provisions shall apply concerning compensation for damages incurred during the implementation of joint projects. It is understood that such compensation shall be in accordance with the laws of the country on whose territory damages will have been incurred, except as otherwise provided.

A. First and second Party damages:

1. Each Party shall alone be responsible for payment of compensation for damages suffered by its staff regardless of where the damages have been incurred, and will not bring suit or lodge any other claims against the other party for damages to its property except as noted in Paragraphs A.2. and A.3.
2. If damages suffered by the staff of one of the Parties is due to the gross negligence or intentional misconduct of the staff of the other Party, the latter shall reimburse the former an agreed sum of money which the former would be obliged to pay to the person or persons suffering the damages.
3. If damages to the property of one Party are due to the gross negligence or intentional misconduct of the staff of the other Party, the latter shall compensate the former for the damages suffered.

B. Third Party damages:**1. Defective equipment**

Damages caused to the staff or property of a third Party by defective equipment of a Party shall be compensated for by the Party to which the equipment belongs, except as noted in Paragraph B.3.

2. By staff

Damages caused to the staff or property of a third Party by the staff of a Party will be compensated for by the Party in whose territory the damages occurred, except as noted in Paragraph B.3.

3. Gross negligence or intentional misconduct

If damages referred to in Paragraph B.1 and B.2 were due to the gross negligence or intentional misconduct of the staff of a Party, that Party will bear the financial responsibility in regard to the third Party.

4. Damage by third Party . . .

In the event of damage of any kind caused by a third Party to the staff or property of one or both of the parties each of the two contracting Parties will render the other aid in corroboration of claims on the third Party.

5. Resolution of questions .

The Party on whose territory the damage was incurred will, in consultation with the other Party, take upon itself the resolution, with the third Party, of all questions connected with the determination of the causes, extent and necessity for compensation for damages incurred. Any such resolution shall have the concurrence of the other Party. After resolution of the matter, both Parties will decide, between themselves, the questions relating to compensation for damages incurred.

- C. In the event of any dispute between the two Parties, a committee shall be appointed by the Parties, with equal representation. The conclusions of the committee will be presented to ERDA and BMFT who will review the conclusions and arrive at a mutual agreement concerning final disposition.

D. The foregoing provisions of this clause shall have no applicability to damages caused by a nuclear incident as defined by the laws of the Parties. Compensation for damage caused by such a nuclear incident shall be in accordance with the laws of the Parties.

E. Definitions

1. "Staff" of a Party means the employees of the Party, its contractors and subcontractors performing services under this agreement, and employees of these contractors and subcontractors performing services under this agreement.

2. "Equipment" or "property" of a Party means the equipment or property owned by that Party, or by the contractors or subcontractors of that Party who perform services in connection with joint projects under this agreement.

XVII. This agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the United States of America within 3 months from the effective date of this agreement.

XVIII. This agreement shall remain in effect for 5 years after its effective date and may be extended by mutual agreement. The agreement may be

terminated at any time at the discretion of either Party, upon 3 months advance notification in writing by the Party seeking to terminate the agreement.