

Memorandum of Understanding

between

the Department of Energy

of the United States of America

and

the Federal Ministry for Research and Technology

of the Federal Republic of Germany

on an Exchange of Energy-Related Information

The Department of Energy  
of the United States of America (DOE)  
and  
the Federal Ministry for Research and Technology  
of the Federal Republic of Germany (BMFT)  
(hereinafter referred to as the "Parties") -

Recognizing the mutual interest in making more efficient use of conventional energy sources and in developing new sources of energy;

Desiring to accelerate the achievement of these objectives through an orderly exchange of energy-related information; and

Intending to continue the successful and mutually beneficial cooperation under the Memorandum of Understanding for an Exchange of Energy-Related Information signed on November 20, 1987, and expired November 20, 1992, by concluding a new Memorandum of Understanding -

Have agreed as follows:

Article 1  
Objective

The objective of cooperation under the Memorandum of Understanding (hereinafter referred to as the "MOU") is to establish for the mutual benefit of the Parties an exchange of energy information to complement energy research and development activities in their respective countries. This exchange shall include publicly available, scientific and technical information on completed energy research and development projects, energy research and development projects in progress, energy-related factual and numeric data, and information science and systems research.

Article 2  
Exchange of Energy Literature

(1) The Parties shall exchange information on published or issued energy literature in their respective countries. This information shall include research summaries (abstracts), subject indexing, subject classification and bibliographic description in accordance with international rules and format. The information shall be exchanged in machine-readable form. Energy literature includes, but is not limited to, that published in books, journals, conference papers and proceedings, theses, patents, and reports.

(2) DOE shall provide BMFT with a microfiche copy (if available) or an availability notice of non-conventional energy literature published or issued in the United States. (Non-conventional literature refers to documents not published through normal commercial channels, e.g., technical reports, conference papers).

(3) BMFT shall provide DOE with a copy (if available) or an availability notice of all non-conventional energy literature published or issued in its country.

Article 3  
Exchange of Reference Journals

(1) DOE shall provide to BMFT complete sets of published abstract journals and bibliographies prepared by DOE (see Annex).

(2) BMFT shall provide to DOE one copy of energy bibliographies prepared by Fachinformationszentrum Karlsruhe and sample copies of new periodicals published in the Federal Republic of Germany dealing with energy (see Annex).

Article 4  
Exchange of Information on Energy Research and Development Projects in Progress

The Parties shall exchange no less frequently than annually a single copy of computer tapes containing a description of DOE and BMFT research, development and demonstration projects in an internationally accepted format.

Article 5  
Exchange of Numeric and Factual Data

The Parties may also exchange energy-related numeric and factual data. Specific cooperative ventures or exchanges shall be documented.

Article 6  
Information Science and Systems Research Cooperation

The Parties shall cooperate in developing common formats, terminology and other tools for numeric, factual, and bibliographic data storage and exchange and shall keep one another informed as to their current activities in this area. Specific cooperative ventures shall be documented.

Article 7  
Principles Governing the Exchange of Information

(1) The Parties shall observe the following Principles in conducting the information exchange under this MOU:

- a) No proprietary information shall be exchanged.
- b) Machine-readable information transmitted shall be in an internationally-accepted format.
- c) Information exchanged by the Parties under this MOU may be utilized by entities within their respective countries, but shall not be transmitted to third Party nations without receipt of written authorization to do so by the originating Party.
- d) In the event a Party to this MOU does give such information to a third Party nation, prompt notification shall be sent to the Party which supplied it.

(2) With reference to the databases created from this information:

- a) Each Party has the exclusive right to utilize the database within its country in any manner for any purpose.

- b) Each Party may retain ownership and copyright on the input contributed. However, each Party shall grant the other Party the rights which are required for the use of information according to Article 7(2)a).
- c) It is understood that rights to the databases can be acquired by third Party nations only through contribution of similar information to the databases in an amount to be mutually agreed upon by the Parties to this MOU and the third Party nation.

(3) The exchange of information may be effected partly or totally within the framework of international activities, i.e., within an implementing agreement of the International Energy Agency (IEA) which, however, will not impair this MOU.

#### Article 8 Management and Execution

To supervise the execution of the MOU, DOE and BMFT have named, respectively, the DOE Office of Scientific and Technical Information and the Fachinformationszentrum Karlsruhe, Gesellschaft für wissenschaftlich-technische Information, as Coordinators. The Coordinators shall evaluate the program on an annual basis to consider any necessary adjustments. At their discretion, the Coordinators may name correspondents to carry out day-to-day management of the cooperation.

#### Article 9 Warranty

Information transmitted by one Party to the other Party under this MOU shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third Party.

#### Article 10 Legal and Legislative Provisions

Cooperation under this MOU shall be in accordance with the laws and regulations of the respective countries of the Parties. All questions arising during its term shall be settled by the Parties by mutual agreement. The obligations of the Parties to carry out activities under this MOU are subject to the availability of appropriated funds.

Article 11  
Intellectual Property

Provisions for the protection of intellectual property created or furnished in the course of cooperative activities under this MOU are set forth in Annex II to this MOU.

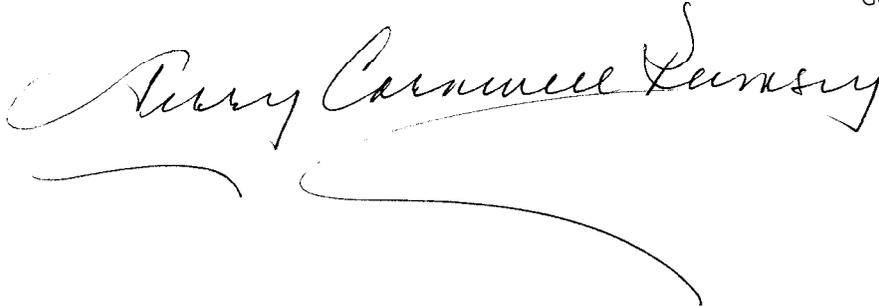
Article 12  
Entry into Force, Duration, Amendment, Termination

- (1) This MOU shall enter into force upon signature.
- (2) This MOU shall continue for a five (5) year period. It may be amended or extended by written agreement by the Parties.
- (3) Either Party may terminate this MOU upon twelve (12) months' advance notification in writing to the other Party.

Done at Washington, D.C., United States of America, on November 23, 1994, in duplicate in English and German languages, both texts being equally authentic.

For the Department  
of Energy of the  
United States of America

For the Federal Ministry  
for Research and Technology  
of the Federal Republic of  
Germany



A large, cursive handwritten signature in black ink, reading "Perry Carmichael Ramsey". The signature is written over a horizontal line that extends across the width of the signature.



A cursive handwritten signature in black ink, reading "Volker Knack".

**Annex I**

U.S. DOE List of Reference Journals:

Current Awareness Publications

Energy Research Abstracts

FIZ Karlsruhe Liste der Fachbibliographien

Energy Data 1  
(Data Compilations in Energy)

Energy Data 2  
(Data Compilations to Energy)

**Annex II**  
**Intellectual Property (Article II of this MOU)**

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this MOU 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.

Part I  
Scope

1. This Annex is applicable to all cooperative activities undertaken by the Parties or by relevant entities (hereafter "cooperative entities") pursuant to this MOU, except as otherwise specifically agreed by the Parties or their cooperative entities.
2. For purposes of this MOU, "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.
3. This Annex addresses the allocation of rights, interests, and royalties between the Parties or cooperative entities. Each Party shall ensure that the other Party or cooperative entities can obtain the rights to intellectual property allocated in accordance with this Annex. 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.
4. Disputes concerning intellectual property arising under this MOU should be resolved through discussions between the cooperative entities, or, if necessary, the Parties. 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 cooperative entities agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.
5. Termination or expiration of this MOU shall not affect rights or obligations under this Annex.

Part II  
Allocation of Rights

1. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to reproduce, publicly distribute and translate scientific and technical journal articles, reports, and books directly arising from cooperation under this MOU. 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. Each Party or cooperative entity shall have the right to review a translation prior to public distribution.
2. Rights to all forms of intellectual property, other than those rights described in Part II paragraph 1 above, shall be allocated as follows:
  - a) Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under arrangements with their host institutions. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host country with regard to awards, bonuses, benefits, or any other rewards, in accordance with the

policies of the host institution.

b) **aa)** For intellectual property created during joint research, the Parties or their cooperative entities shall jointly develop a technology management plan. The technology management plan shall consider the relative contributions of the Parties and their cooperative entities, the benefits of licensing by territory or for fields of use, requirements imposed by the Parties' domestic laws, and other factors deemed appropriate. The initial research cooperation arrangement may include the technology management plan for that specific cooperation.

bb) If the Parties or their cooperative entities cannot reach agreement on a joint technology management plan within a reasonable time not to exceed six months from the time a Party becomes aware of the creation of the intellectual property in question, the Parties or cooperative entities shall resolve the matter in accordance with the provisions of Part I paragraph 4. Pending resolution of the matter, such intellectual property shall be owned jointly by the Parties or their cooperative entities, but shall be commercially exploited (including product development) only by mutual agreement.

cc) A specific program of research will be regarded as joint research for purposes of this Annex only when it is designated as such in the relevant implementing arrangement, otherwise the allocation of rights to intellectual property will be in accordance with Part II paragraph 2a.

dd) In the event that either Party believes that a particular joint research project under this MOU will lead to the creation or furnishing of intellectual property of a type not protected by the applicable laws of one of the Parties, the Parties shall immediately hold discussions to determine the allocation of the rights to the said intellectual property; the joint activities in questions will be suspended during the discussions unless otherwise agreed by the parties thereto. If no agreement can be reached within a three-month period from the date of the request for discussions, the Parties shall cease the cooperation in the project in question.

### Part III Proprietary Information

In the event that information identified in a timely fashion as proprietary is furnished or created under the MOU, each Party and its cooperative entities shall protect such information in accordance with applicable laws, regulations, and administrative practices. Without prior written consent, none of the Parties shall disclose any proprietary information except to employees, government personnel, and prime and subcontractors. Such disclosures shall be for use only within the terms of their permits or licenses with the Parties or the scope of work of their contracts with the Parties and in work relating to the subject matter of the information so disseminated. The Parties shall impose, or shall have imposed, an obligation on those receiving such information to keep it confidential. If one of the Parties becomes aware that, under its laws or regulations, it will be, or may reasonably be expected to become, unable to meet the non-disclosure provisions, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action. Information may be identified as proprietary 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.