

**IMPLEMENTING ARRANGEMENT
BETWEEN
THE AGENCY OF INDUSTRIAL SCIENCE AND TECHNOLOGY
AND
THE AGENCY OF NATURAL RESOURCES AND ENERGY
OF JAPAN AND
THE UNITED STATES DEPARTMENT OF ENERGY
IN
COAL ENERGY RESEARCH AND DEVELOPMENT**

WHEREAS

The Government of Japan and the Government of the United States of America have signed an Agreement on Cooperation in Research and Development in Energy and Related Fields, dated May 2, 1979;

Article IV of the above Agreement provides that implementing arrangements specifying the details and procedures of cooperative activities will be made between the two Governments of their agencies, whichever is appropriate;

The Agency of Industrial Science and Technology (AIST) and the Agency of Natural Resources and Energy (ANRE) of Japan as one Party, and the United States Department of Energy (DOE) as the other Party, hereafter jointly referred to as the "Parties", wish to establish such an implementing arrangement for cooperation in the field of coal energy research and development (R&D);

In their pursuit of bilateral cooperation under this Implementing Arrangement, (hereinafter referred to as the "Arrangement"), the cooperative activities in the field of coal energy R&D in which their respective Governments participate, such as those under the aegis of the International Energy Agency;

It is agreed as follows:

ARTICLE 1 - OBJECTIVE

The objective of this Arrangement is to establish comprehensive cooperation in the area of coal energy R&D in order to accelerate the development of coal energy R&D efforts on the basis of reciprocity and mutual benefits. The areas and forms of cooperation are listed under Articles 2 and 3 respectively.

ARTICLE 2 - AREAS OF COOPERATION

1. The areas for cooperation in the field of coal energy R&D covered by this Arrangement may include:

- (1) coal liquefaction technology;
 - (2) coal gasification technology;
 - (3) materials and components for coal conversion and utilization;
 - (4) pollution control technology related to coal conversion and utilization;
 - (5) additional areas for cooperation in the field of coal energy R&D, such as magnetohydrodynamic technology;
 - (6) such other areas as may be discussed and identified by the Joint Coordinating Committee referred to in Article 4, and as mutually agreed by the Parties in writing.
2. The Party of Japan shall designate AIST and/or ANRE as the implementing agency for each of the above-mentioned areas and shall so inform the Joint Coordinating Committee referred to in Article 4.

ARTICLE 3 - FORMS OF COOPERATION

1. Cooperation under this Arrangement may include, but is not limited to, the following forms:
- (1) exchange of scientific and technical information;
 - (2) exchange of information on policies, program plans, practices, regulations and statutes concerning the development and utilization of coal energy technologies;
 - (3) holding of seminars, workshops, and other meetings;
 - (4) short-term visits by scientists, engineers and other experts to the facilities of the Parties;
 - (5) exchange or loan of equipment, instruments and materials for testing;
 - (6) exchange of scientists, engineers, and other experts for participation in research, development, analysis, design, planning, and experimental activities conducted at the facilities of the Parties;
 - (7) the use by one Party of the facilities owned and operated by the other or its designated representatives;
 - (8) cooperative projects in which the Parties agree to share tasks and costs; and
 - (9) other forms of cooperative activities as may be mutually agreed between the Parties.

2. When necessary, any specific details to implement activities listed in subparagraphs (1) through (6) above may be determined through consultation or auxiliary arrangements between the Parties. Specific terms and conditions necessary to implement activities listed in subparagraphs (7), (8), and (9) of Paragraph 1 above shall be determined through written agreement between the Parties, as set forth in Article 5, Paragraph 2 below.

ARTICLE 4 - COORDINATING COMMITTEE

1. To supervise the execution of this Arrangement a Joint Coordinating Committee in Coal Energy R&D shall be established. The Joint Coordinating Committee shall consist of up to three representatives from each Party, the members of which shall be appointed by each Party, and shall meet at agreed times and places. The Head of the Delegation of the receiving Party shall act as Chairman during meetings of the Joint Coordinating Committee.
2. At its meetings, the Joint Coordinating Committee shall evaluate the status of cooperation under this Arrangement. This evaluation shall include an assessment of the balance of exchanges in the various areas of cooperation listed in Article 2 and, if necessary, a consideration of measures required to correct any imbalance.

ARTICLE 5 - NEW AREAS FOR COOPERATION

1. Major new proposals for cooperation from either of the Parties shall be reviewed, if deemed sufficiently important, by either the Joint Coordinating Committee or the respective Heads of Delegations of the Joint Coordinating Committee.
2. Where it is decided by the Parties that a cooperative program or project under this Arrangement should be subject to a Memorandum of Agreement executed by both Parties, such Memorandum of Agreement shall cover all detailed provisions for implementing such a cooperative program or project, including such matters as patents, exchange of equipment, and information disclosure specific to the particular program or project.

ARTICLE 6 - INFORMATION

1. General
 - A. The Parties shall support the widest possible dissemination of information provided or exchanged under this Arrangement subject to the need to protect proprietary information, to copyright restrictions, and to the provisions of Article 7.

- B. Upon publication of such information, it shall be made clear that the information was obtained under this Arrangement.

2. Use of Proprietary Information

A. Definitions as used in this Arrangement:

- (i) The term "information" means scientific or technical data, results or methods of R&D, and any other information intended to be provided or exchanged under this Arrangement.
- (ii) 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 its 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
 - d) is not otherwise available to the Receiving Party from another source without restriction on its further dissemination.

B. Procedures

- (i) A Party receiving proprietary information pursuant to this Arrangement shall respect the privileged nature thereof. Any document which contains proprietary information shall be clearly marked with the following (or substantially similar) restrictive legend:

"This document contains proprietary information furnished in confidence under an Implementing Arrangement dated _____ between the United States Department of Energy, and the Agency of Industrial Science and Technology and the Agency of Natural Resources and Energy of Japan in the Field of Coal Energy Research and Development, and shall not be disseminated outside these organizations, their contractors, and the concerned departments and agencies of the Governments of the United States and Japan without prior approval of _____.

This notice shall be marked on any reproduction, hereof, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction."

- (ii) Proprietary information received in confidence under this Arrangement may be disseminated by the Receiving Party to:
 - a) persons within or employed by the Receiving Party, and other concerned Government departments and Government agencies in the country of the Receiving Party; and
 - 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 substantially identical to that appearing in subparagraph 2.B.(i) above.

- (iii) With the prior written consent of the Party providing proprietary information under this Arrangement, the Receiving Party may disseminate such proprietary information more widely than otherwise permitted in the foregoing subparagraph (ii). The Parties shall cooperate with each other in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its national policies, regulations and laws.

- C. 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 Paragraph, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.
- D. Information arising from seminars, workshops, and other meetings arranged under this Arrangement and information arising from the assignments of staff and exchange of equipment shall be treated by the Parties according to the principles specified in this Article; provided, however, no proprietary information orally communicated shall be subject to the limited disclosure requirements of this Arrangement unless the individual communicating such information places the recipient on notice as to the proprietary character of the information communicated prior to or at the time of such communication, and forthwith confirms the notice in writing.

ARTICLE 7 - INFORMATION DISCLAIMER

The Transmitting Party in its relation with the Receiving Party does not warrant the suitability of any information transmitted for any particular use or application.

ARTICLE 8 - PATENTS

The Parties shall take necessary steps under the applicable laws and regulations of the relevant country or countries to achieve the equitable distribution of industrial property resulting from this Arrangement and licenses thereof, as follows:

1. With respect to any invention or discovery made or conceived in the course of or under this Arrangement:
 - A. If made or conceived by personnel of one Party (the Assigning Party) or its contractors while assigned to the other Party (the Receiving Party) or its contractors in connection with exchanges of scientists, engineers and other specialists,
 - (i) The Receiving Party shall acquire all right, title and interest in and to any such invention or discovery in its own country and in third countries, and
 - (ii) The Assigning Party shall acquire all right, title and interest in and to any such invention or discovery in its own country.
 - B. 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 Arrangement by another Party or its contractors or communicated during seminars or other joint meetings, the Party making the invention shall acquire all right, title and interest in and to such invention or discovery in all countries.
 - C. For loans or exchanges of materials, instruments and equipment having a value of less than five thousand United States dollars, the provision of subparagraph B above shall apply.
 - D. The Party which owns an invention referred to in subparagraphs A, B, and C above shall license such inventions to the other Party, its Government and the nationals of its country designated by it, upon request of the other Party on reasonable terms and conditions.
 - E. The distribution of rights set forth in subparagraphs A, B, and C are applicable only to the exchanges of personnel and information, and loans or exchanges of material, instruments and equipment having a value of less than five thousand United States dollars. With regard to other specific forms of cooperation including

special joint research projects, the Parties shall provide for appropriate distribution of right to inventions or discoveries resulting from such cooperation taking into consideration the benefits, right and contributions of the Parties.

2. The provisions of the preceding Paragraph 1 of this Article shall apply *mutatis mutandis* to the protection of utility model and of design.
3. Each Party shall assume the responsibility to pay awards and/or compensation required to be paid to its own nationals according to its own laws. Each Party shall, without prejudice to any rights of inventors under its national laws, take all necessary steps to provide the cooperation from its inventors or authors required to carry out the provisions of this Article.

ARTICLE 9 - COPYRIGHTS

Copyrights of the Parties shall be accorded treatment consistent with internationally recognized standards of protection. As to copyrights on materials within the scope of Paragraph 1 of Article 6 above owned or controlled by a Party, that Party shall make efforts to grant to the other Party a license to reproduce or translate copyrighted materials.

ARTICLE 10 - DISPUTES

Cooperation under this Arrangement shall be in accordance with the laws of the respective countries and the regulations of the respective Parties. All questions relating to this Arrangement or activities carried out hereunder shall be settled by mutual agreement of the Parties. Compensation for damages incurred during the implementation of this Arrangement shall be in accordance with the applicable laws of the countries of the Parties.

ARTICLE 11 - ATTACHMENT OF STAFF

With respect to the exchange of staff under this Arrangement:

1. Whenever an exchange of staff is contemplated under this Arrangement, each Party shall ensure that qualified staff is selected for assignment to the other Party.
2. Each such assignment of staff shall be the subject of a separate assignment agreement between the Parties.
3. Each Party shall be responsible for the salaries, insurance, and allowances to be paid its staff.

4. The Sending Party shall pay for the travel and living expenses of its staff while on assignment with the Receiving Party, unless otherwise agreed.
5. The Receiving Party shall arrange for adequate accommodations for the assigned staff and their families on a mutually agreeable reciprocal basis.
6. The Receiving Party shall provide all necessary assistance to the assigned staff and their families as regards administrative formalities (travel arrangements while there, etc.).
7. The staff of each Party shall conform to the general and special rules of work and safety regulations in force at the host establishment, or as agreed in separate assignment-of-staff agreements.

ARTICLE 12 - SHIPMENT AND USE OF EQUIPMENT

Both Parties agree that in the event equipment, instruments, materials, or necessary spare parts (hereinafter referred to as "the equipment, etc.") are to be exchanged, loaned, or supplied by one Party to the other, the following provisions shall apply covering the shipment and use of such equipment, etc.

1. The Sending Party shall supply as soon as possible a detailed list of the equipment, etc. to be provided together with the relevant specifications and technical and informational documentation.
2. The equipment, etc. supplied by the Sending Party shall remain its property and shall be returned to the Sending Party upon completion of the mutually agreed upon activity unless otherwise agreed.
3. The above-mentioned equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the Parties.
4. The Receiving Party shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, etc., in accordance with technical requirements which shall be mutually agreed.
5. Responsibility and expenses for the transport of equipment, etc. from the United States to their ultimate destination in Japan, and return, and also responsibility for their safekeeping and insurance, en route, shall rest with DOE.
6. Responsibility and expenses for the transport of equipment, etc. from Japan to their ultimate destination in the United States, and return, and also responsibility for their safekeeping and insurance, en route, shall rest with AIST and/or ANRE.

7. The Receiving Party shall notify the customs authorities that it considers the equipment, etc. provided by the Sending Party for carrying out mutually agreed upon activities are of a scientific character and not of a commercial character.

ARTICLE 13 - FUNDS

The implementation of this Arrangement shall be subject to the availability of appropriated funds. Unless otherwise agreed in writing, all costs resulting from cooperation under this Arrangement shall be borne by the Party that incurs them.

ARTICLE 14 - RELATIONS WITH OTHER ARRANGEMENTS

Nothing in this Arrangement shall be construed to prejudice existing or future Arrangements for cooperation between the two Governments.

ARTICLE 15 - CHANGE OF PARTICIPATION

1. This Arrangement shall continue in force as long as the Agreement between the Government of Japan and the Government of the United States of America on Cooperation in Research and Development in Energy and Related Fields, signed May 2, 1979, remains in force, unless terminated earlier in accordance with Paragraph 2 below.
2. This Arrangement may be terminated at any time at the discretion of either Party, upon one year's advance notification in writing by the Party seeking to terminate this Arrangement. Such termination shall be without prejudice to the rights that may have accrued under this Arrangement to either Party up to the date of such termination.
3. Specific activities initiated hereunder but not completed at the termination of this Arrangement may be continued until their completion under the terms of this Arrangement.
4. This Arrangement may be amended through mutual written agreement of the Parties.

Done in duplicate at Tokyo, this 16th day of
October 1987.

FOR THE AGENCY OF INDUSTRIAL
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OF JAPAN

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