

IMPLEMENTING AGREEMENT

**FOR CO-OPERATION IN THE FIELD OF FLUIDIZED BED CONVERSION
OF FUELS APPLIED TO CLEAN ENERGY PRODUCTION**

(as amended to April 2004)

INTERNATIONAL ENERGY AGENCY
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(as amended to May 1999)

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 Program on Fluidized Bed Conversion of Fuels Applied to Clean Energy Production (the "Program") 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 programs in the areas set out in Article 42 of the I.E.P. Agreement, including energy research and development in clean and efficient use of energy;

CONSIDERING that the Governing Board of the Agency on 30th March 1979 approved the Program as a special activity under Article 65 of the I.E.P. Agreement;

CONSIDERING that the Contracting Parties wish to integrate the work on Basic Research of Pressurized Fluidized Bed Conversion, undertaken by an informal expert group since 1986;

CONSIDERING that the Agency has recognised the establishment of the Program as an important component of international co-operation in the field of energy research and development of Fluidized Bed Conversion of Fuels Applied to Clean Energy Production;

HAVE AGREED as follows:

Article 1

OBJECTIVES

The objective of the Agreement is to advance the technical and environmental feasibility, reliability and economics of employing the fluidized bed technology for conversion of solid fuels and waste for energy production, namely to provide heat for power generation, industrial process or heat for district heating, and thus provide design and operating experience for wide applications. The co-operative studies or projects undertaken within the scope of this Agreement, known as the "Program" should serve to improve knowledge of physical and chemical processes occurring during fluidized bed conversion of fuels.

Article 2

SCOPE OF CO-OPERATIVE ACTION

(a) *Fluidized Bed Conversion Systems.* During studies or projects of the Program, the Contracting Parties could undertake in their respective installations one or more of the following activities in the relevant areas of Fluidized Bed Conversion Systems. The Contracting Parties could:

- (1) Carry out bench scale R&D studies and operate pilot scale fluidized bed reactors;
- (2) Carry out studies to investigate components making up the overall fluidized bed conversion units;
- (3) Actively design, construct and operate fluidized bed conversion units for different end-use applications;
- (4) Carry out mathematical modelling simulation and prediction work.

The Contracting Parties shall, within the framework of the Program, report and share the scientific and technical knowledge and operating experience gained from these respective installations or works. Each Contracting Party shall have the right to change its proposed installation when deemed necessary.

(b) *Co-ordination and Exchange of Information.* The Contracting Parties agree to cooperate through periodic exchanges of information on their current and planned activities covered by this Agreement. The exchanges shall be carried out by means of periodic meetings of project directors and staffs of the Contracting Parties and by exchanges of non-confidential documents, data and other information.

(c) *Assignment of Personnel.* Each Contracting Party may, at its discretion, in appropriate cases accept in its premises professional personnel designated by other Contracting Parties for collaboration and exchange of information on studies or projects.

Article 3

THE EXECUTIVE COMMITTEE

(a) *Co-ordination.* Co-ordination of the co-operation shall be vested in the Executive Committee established 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) Promote the co-ordination or undertaking of studies and projects among the Contracting Parties;
- (2) Establish procedures for the exchange of information;
- (3) Promote the exchange of personnel and establish the conditions for any such exchanges;
- (4) Organize periodic meetings of specialists responsible for the execution of projects;
- (5) Update the Program when necessary;
- (6) Carry out the other functions conferred upon by this Agreement;
- (7) Consider any matters submitted to it by any Contracting Party.

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

- (1) The Executive Committee shall meet in regular session twice each year; additional meetings shall be convened by its Chairman upon the request of any Contracting Party which can demonstrate the need therefor;
- (2) The Executive Committee shall **every two years** elect a Chairman and one or more Vice-Chairmen;
- (3) A representative of the Agency and a representative of the 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 may establish such subsidiary bodies, technical subgroups and rules of procedure as are required for its proper functioning;
- (5) The agenda of every technical subgroup meeting shall be determined by the Chairman of the Executive Committee after consultation with the Contracting Parties;
- (6) Meetings of the Executive Committee shall be held at such time and in such office or offices as may be designated by the Committee;

- (7) 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; notice need not be given to any person or entity otherwise entitled thereto if notice is waived before or after the meeting;
 - (8) 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);
- (e) *Voting*
- (1) Unanimous decisions of the Executive Committee under this Agreement shall require the agreement of each member or alternate member present and voting at the meeting at which the decision is taken. Decisions and recommendations for which no express voting provision is made in this Agreement shall be adopted by the Executive Committee by majority vote of the members or alternate members present and voting.
 - (2) With the agreement of each Contracting Party a decision or recommendation may be made by mail, fax, or email. The Chairman of the Executive Committee shall have the responsibility of ensuring that all Contracting Parties are informed of each decision or recommendation made pursuant to this subparagraph.
- (f) *Annual Reports.* The Executive Committee shall, by 28th February each year, provide the Agency with reports containing technically substantive, non-proprietary information on the progress of the Program and its results.

Article 4

THE OPERATING AGENT

- (a) *Designation.* An Operating Agent shall be designated **every two years** by the Executive Committee, acting by unanimity.
- (b) *Specific Responsibilities.* The Operating Agent shall:
- (1) Provide secretariat services to the Executive Committee;
 - (2) Distribute the minutes of the regular Executive Committee meetings;
 - (3) Encourage diffusion and dissemination of the activities undertaken, within the scope of the Agreement, in non-Member countries;
 - (4) Maintain close links with the IEA Secretariat;
 - (5) Prepare and provide the annual report containing detailed descriptions of the activities undertaken and non-proprietary information on the progress of the Program and projects;
 - (6) Organize and execute the preparations for the regular meetings of the Executive Committee and technical sessions.

(c) *Reports on Program Work.* The Operating Agent shall provide, at least semi-annually, summary reports of work performed under this Agreement and the results thereof (arising information), excluding proprietary information, to the Executive Committee.

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

(f) *Contact Mechanism.* The Operating Agent shall ensure that a mechanism exists for Contracting Parties to contact the originators of work undertaken for the Program.

Article 5

EXCHANGE OF PERSONNEL

(a) *Decision.* The assignment of personnel by one Contracting Party to another Contracting Party shall be subject in each case to an agreement between those Contracting Parties on the place, duration, scope of work and other terms and conditions of the assignment.

(b) *Working Conditions of Assigned Personnel.* The assigned personnel will comply with the rules, conditions and instructions in effect at the place or places where the assignment is carried out.

Article 6

FINANCE

(a) *Financing of the Joint Studies or Projects.* The joint studies or projects shall be financed through national or international resources.

(b) *Financing of annual report.* The Operating Agent shall bear the cost of preparation and publication of the annual report.

(c) *Financing of other costs.* Each Contracting Party shall bear all costs it incurs in carrying out this Agreement, in particular the costs of:

- (1) Information processing and transmission to the other Contracting Parties.

- (2) Preparation and organization of workshops and other joint expert meetings in its country, but not including travel and accommodation expenses of the other Contracting Parties whose costs will be borne by the other Contracting Parties.

Article 7

INFORMATION AND INTELLECTUAL PROPERTY

(a) *Executive Committee's Powers.* The publication, distribution and handling of all information arising from activities conducted under the Program and the reasonable terms and conditions for licenses granted pursuant to this Article shall be determined by the Executive Committee, acting by unanimity, in conformity with this Agreement.

(b) *Proprietary Information.* The Contracting Parties and the Operating Agent shall take all necessary measures in accordance with this Article, the laws of their respective countries and international law to protect proprietary information arising from the cooperation under this Agreement. For the purposes of this Agreement, proprietary information shall mean information of a confidential nature such as trade secrets and know-how (e.g., computer programs, design procedures and techniques, chemical composition of materials, or manufacturing methods, processes or treatments) which is appropriately marked provided such information:

- (1) Is not generally known or publicly available from other sources;
- (2) Has not previously been made available by the owner to others without any obligation concerning its confidentiality; and
- (3) Is not already in possession of the Operating Agent or Contracting Party without obligation concerning its confidentiality.

(c) *Marking of Proprietary Information.* It shall be the responsibility of each Contracting Party to identify information it furnishes which qualifies as proprietary information under this Article and ensure that it is appropriately marked.

(d) *Relevant Information from Agency Countries.* The Operating Agent should encourage the governments of all Agency Participating Countries to make available or to identify to the Operating Agent all published or otherwise freely available information known to them that is relevant to this Agreement.

(e) *Production of Relevant Information.* Each Contracting Party and the Operating Agent should endeavour to make available, or identify in the context of the Program, pre-existing information and information developed independently of the Program, known to it, which is relevant to it and which can be made available without contractual or legal limitations.

(f) *Reports on Information to the Program.* Information arising in the course of or under the Program ("arising information"), excluding proprietary information, shall be freely available to all Contracting Parties for use and dissemination. Reports containing arising information and pre-existing information necessary for and used in the Program should be provided to the Operating Agent by each Contracting Party under this Program. A report summarizing the work performed under the Program by each Contracting Party and the Operating Agent, excluding pre-existing

proprietary information, shall be prepared by the Operating Agent and forwarded to the Executive Committee.

(g) *Arising Inventions.* Inventions made or conceived under this Program and proprietary information developed under this Program (arising inventions) shall be governed by this paragraph. Arising inventions are deemed to be owned with regard to the other Contracting Parties by the inventing or developing Contracting Party. Information regarding inventions on which patent protection can be obtained by the Contracting Party shall not be published or publicly disclosed by the other Contracting Parties before the expiration of a twelve months period reckoned from the date of the first filing of a patent application. It shall be the responsibility of the inventing Contracting Party to appropriately mark reports which disclose inventions that have not been appropriately protected by the filing of a patent application.

(h) *Copyright.* Each Contracting Party may take appropriate measures necessary to protect copyright-able material generated under this Agreement. Copyrights obtained shall be property of that Contracting Party.

(i) *Inventors and Authors.* Each Contracting Party will, without prejudice to any rights of inventors or authors under its national laws, take all necessary steps to provide the cooperation from its inventors and authors required to carry out the provisions of the Program. Each Contracting Party assumes the responsibility to pay awards or compensation required to be paid to its employees according to the laws of its country.

(j) *Patents.* No Contracting Party shall be obligated to take out or maintain any patent arising under the Program.

Article 8

LEGAL RESPONSIBILITY

(a) *Warranty.* The Contracting Parties do not warrant the application or use of any information transmitted under this Agreement, the accuracy or completeness of such information, or the suitability of such information for any particular use or application.

(b) *Liability.* No Contracting Party shall be liable to compensate or contribute to any other Contracting Party for any loss or damage suffered in the course of carrying out the co-operation.

Article 9

LEGISLATIVE PROVISIONS

(a) *Accomplishment of Formalities.* Each Contracting Party shall request the appropriate authorities of its country (or its Member States in the case of an international organization) 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 currencies which shall be required to operate the Program.

(b) *Applicable Laws.* In carrying out this Agreement 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.*

The IEA Framework for International Energy Technology Co-operation, adopted by the IEA Governing Board on 3 April 2003, shall, together with any amendments thereto, be binding upon all Contracting Parties and Sponsors (as defined in the Framework) which have signed or acceded to, and not withdrawn from, this Agreement. A copy of the Framework is attached as Exhibit A to this Implementing Agreement and shall be an integral part thereof .

(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.

Article 10

ADMISSION AND WITHDRAWAL OF CONTRACTING PARTIES

(a) *Admission of New Contracting Parties.* Upon the invitation of the Executive Committee, acting by unanimity, admission to this Agreement shall be open to:

- 1) the governments of both OECD member or OECD non-member countries;
- 2) the European Communities;
- 3) international organizations in which the governments of OECD member countries and/or OECD non-member countries participate; and
- 4) any national agency, public organization, private corporation or other entity designated by the government of an OECD member country or an OECD non-member country, or by the European Communities.

(b) *Conditions of Participation.* The Executive Committee shall establish the terms and conditions for the admission, participation and withdrawal of Contracting Parties, including their rights and obligations, subject always to the IEA Framework for International Energy Technology Co-operation as adopted by the Governing Board of the Agency on 3 April 2003, and any amendments thereto.

(c) *Contributions.* The Executive Committee may require, as a condition to admission to participation, that the new Contracting Party accepts obligations which are designed to compensate the Contracting Parties as appropriate for their prior contribution under this Agreement.

(d) *Replacement of Contracting Parties.* 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.

(e) *Withdrawal.* Any Contracting Party may withdraw from this Agreement 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 in their relations with each other.

(f) *Changes of Status of Contracting Party.* A Contracting Party other than a government or an international organization 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 (e) 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 that 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 or accedes to this Agreement.

(g) *Failure to Fulfil Contractual Obligations.* Any Contracting Party which fails to fulfil its obligations under this Agreement within sixty days after its receipt of notice, specifying the nature of such failure and invoking this paragraph, may be deemed by the Executive Committee to have withdrawn from this Agreement.

Article 11

FINAL PROVISIONS

(a) *Term of Agreement.* This Agreement shall remain in force until **30th April, 2004**. It may be extended by the Executive Committee, acting by unanimity and taking into account any recommendation of the Agency's Committee on Energy Research and Technology concerning the term of the Agreement. The Executive Committee may terminate this Agreement at any time.

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

(c) *Amendment.* This Agreement may be amended at any time by the Executive Committee acting by unanimity. Such amendments shall come into force at a time and under conditions determined by the Executive Committee.

(d) *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. A copy of this Agreement shall be furnished to each Agency Participating Country, to each Member country of the Organization for Economic Co-operation and Development and to the European Union.

Done in Zlotniki, this October 2004