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European Union

Brussels, 5 April 2016  
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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 175 final ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision approving the conclusion, by the European Commission, of the Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy  Council Decision Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy

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Delegations will find attached document COM(2016) 175 final ANNEX 1.

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Encl.: COM(2016) 175 final ANNEX 1



EUROPEAN  
COMMISSION

Brussels, 4.4.2016  
COM(2016) 175 final

ANNEX 1

## ANNEX

**to the Proposal for a Council Decision approving the conclusion, by the European Commission, of the Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy**

### **Council Decision**

**Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy**

## ANNEX

**to the Proposal for a Council Decision approving the conclusion, by the European Commission, of the Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy**

### **Council Decision**

**Agreement between the European Atomic Energy Community and the Government of the Republic of India for research and development cooperation in the field of the peaceful uses of nuclear energy**

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM),

hereinafter referred to as "the Community", on the one part, and

THE GOVERNMENT OF THE REPUBLIC OF INDIA,

hereinafter referred to as "India"

on the other part,

hereinafter referred to as the "Parties",

DESIRING to further develop a long-term, stable scientific and technological cooperation in the fields of common interest in the peaceful and non-explosive uses of nuclear energy on the basis of mutual benefit and reciprocity and in accordance with their respective laws and international obligations;

CONSIDERING the 1985 Agreement on Trade and Economic Cooperation between the European Economic Community and the Republic of India and the Agreement for Scientific and Technological (S&T) Cooperation between the European Community and the Government of the Republic of India signed in 1998, under which there has been active cooperation and information exchanges;

CONSIDERING, in particular, the Agreement for Cooperation between the Government of the Republic of India and the European Atomic Energy Community in the field of fusion energy research, entered into force on 17th May 2010;

CONSIDERING the importance of science and technology for the economic and social development for the Community and India;

CONSIDERING the need to encourage the application of the results of the scientific and technological cooperation to their mutual economic and social benefit;

CONSIDERING that the Community and India are currently pursuing research and development activities in the field of peaceful uses of nuclear energy and that participation in each other's research and development activities will provide mutual benefits, on the basis of reciprocity;

WHEREAS cooperation in the peaceful uses of nuclear energy between the Community and India should further enhance research in areas of common interests;

WHEREAS India as well as the Community and all its Member States have specific safeguards agreements with the International Atomic Energy Agency (IAEA, hereinafter referred to as "the Agency");

WHEREAS the safeguards Agreement between India and the Agency foresees the cooperation with India in the peaceful uses of nuclear energy and in the further development of India's civil nuclear program on a sustained and long term basis;

REAFFIRMING the support of the Government of India, the Community and the Governments of its Member States for the objectives of the Agency;

NOTING that nuclear safeguards are applied in the Community both under Chapter 7 of the Euratom Treaty and under safeguards agreements concluded between the Community, its Member States and the Agency;

RECOGNIZING that India, the Community and its Member States have attained a comparably advanced level in the peaceful uses of nuclear energy and in the security afforded by their respective laws and regulations concerning health, safety, the peaceful uses of nuclear energy and the protection of the environment;

HAVE AGREED AS FOLLOWS:

*Article 1*  
*Definitions*

For the purpose of this Agreement:

- 1) "Parties" means the Government of India and the European Atomic Energy Community. "Party" means one of the above "Parties";
- 2) "The Community" means both:
  - (a) the legal person created by the Treaty establishing the European Atomic Energy Community (Euratom); and
  - (b) the territories to which the Euratom Treaty applies;
- 3) "Cooperative activity" means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research;
- 4) "Information" means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary by the Parties and/or participants engaged in the joint research to be provided or exchanged under this Agreement or research pursuant thereto;
- 5) "Intellectual property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967;
- 6) "Joint research" means research and related education and training, or technological development that is implemented with or without financial support from one or both Parties and that involves collaboration by participants from both the Community and India and is designated as joint research in writing by the Parties or their participants implementing the scientific research programmes. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;
- 7) "Participant" means any person, any research institute, any legal entity or firm or any other body including scientific and technological organisations and agencies otherwise allowed by either Party to participate in cooperative activities under this Agreement including the Parties themselves;
- 8) "Results of intellectual activity" means information and/or intellectual property.
- 9) "Persons" means any natural person, undertaking or other entity designated by the Parties governed by the applicable laws and regulations in the respective territorial jurisdiction of the Parties.
- 10) Nuclear material means any source material or special fissionable material as defined in the IAEA Glossary

*Article 2*  
*Purpose*

1. The overall purpose of this Agreement is to encourage and facilitate Research and Development (R&D) cooperation, in the peaceful, non-explosive, non-military uses of nuclear energy, on the basis of mutual benefit, equality and reciprocity, with a view to strengthening the overall co-operative relationship between the Community and India and in accordance with the needs and priorities of their nuclear programmes.
2. This Agreement aims to foster R&D cooperation between the Community and India and, in particular, to facilitate the participation of the research entities of each Party in research projects carried out in relevant research programmes of the other Party.
3. The terms contained in this Agreement shall not be construed as binding the Parties to any form of exclusivity and each Party shall be entitled to conduct business independent of the other.
4. This Agreement shall be implemented in a manner so as:
  - (a) to avoid hampering or delaying the nuclear activities in the territory of either Party;
  - (b) to avoid interference in such activities;
  - (c) to be consistent with prudent management practices required for the economic and safe conduct of such activities;
5. The provisions of this Agreement shall not be used for the purpose of:
  - (a) interfering with the nuclear policy or programmes of either Party, nor for hindering the promotion of the peaceful uses of nuclear energy;
  - (b) impeding the free movement of nuclear material, non-nuclear material and equipment within the territory of the Community or within the territory of India.

*Article 3*  
*Principles*

Cooperative activities shall be conducted on the basis of the following principles:

- 1) mutual benefit based on an overall balance of advantages;
- 2) reciprocal access to the activities of research and technological development undertaken by each Party;

- 3) timely exchange of information which may affect the actions of participants in cooperative activities;
- 4) effective protection of intellectual property and equitable sharing of intellectual property rights.

*Article 4*  
*Areas of R&D cooperative activities*

Cooperation under this Agreement may cover all the activities of research and technological development, hereinafter referred to as "R&D", foreseen in the Euratom Framework Programmes of the Community for nuclear research and training activities under Article 7 of the Treaty establishing the Community and R&D activities in India in the peaceful uses of nuclear energy in the corresponding scientific and technological fields. Such cooperation shall be carried out within the scope of the respective competences and programmes of each Party and in accordance with their respective laws and international obligations. It may include the following R&D areas:

- Nuclear Fission
  - i) safety of reactors excluding those loaded with high (above 20% U235) enriched uranium, and safety of plants and fuel cycle related to such reactors;
  - ii) radiation protection and monitoring of the environment;
  - iii) radioactive waste management, in particular waste volume reduction, conditioning and behaviour in storage;
  - iv) decommissioning, decontamination and dismantling of nuclear facilities;
- Advances in development of techniques and methodologies for nuclear safety, security and safeguards;
- Basic and applied research in nuclear sciences;
- Non power applications of nuclear technology such as agriculture, health care, industrial isotopes;
- Controlled thermonuclear fusion;
- Education and training;
- Other areas of cooperation related to civil nuclear research and development as may be mutually agreed upon by the Parties insofar as they are covered by their respective programmes.

The co-operation referred to in this Article, as between the Parties, may also take place between authorised persons and undertakings established in the respective territories of the Parties.



*Article 5*  
*Forms of cooperative activities*

1. Subject to their respective applicable laws, regulations and policies, the Parties shall foster, to the fullest extent practicable, the involvement of participants under this Agreement with a view to providing comparable opportunities for participation in their respective scientific and technological research and development activities.
2. Cooperative activities may take the following forms:
  - (a) participation of Indian research entities in R&D projects under the Euratom Framework Programmes of the Community for nuclear research and training activities and participation of research entities established in the Community in similar Indian programmes of R&D. Such participation is subject to the rules and procedures applicable in the R&D programmes of each Party;
  - (b) joint R&D projects : the joint R&D projects shall be implemented when the participants have developed a technology management plan, as indicated in the Annex A.
  - (c) visits and exchanges of students, scientists and technical experts;
  - (d) joint organisation of scientific seminars, conferences, symposia, workshops and short-term schools, as well as participation of experts to those activities;
  - (e) exchanges, sharing and transfer of samples, materials, instruments and apparatus for experimental purposes;
  - (f) exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;
  - (g) any other modality recommended by the Steering Committee, established in accordance with Article 10 of this Agreement, and which is in conformity with the policies and procedures applicable to both Parties.

*Article 6*  
*Peaceful use*

1. Cooperation under this Agreement shall be carried out only for peaceful and non-explosive purposes.
2. The Parties shall ensure that the material, nuclear material, equipment and technology transferred under this Agreement, as well as the nuclear material recovered or obtained as by-product, are used only for peaceful and non-explosive purposes.

*Article 7*  
*Nuclear safety*

The provisions of the "Convention on Nuclear Safety" (CNS-IAEA document INFCIRC/449) to which India, the Community and its Member States are parties shall apply. No additional obligations to those assumed under the CNS on the Parties to the Agreement and the Community Member States shall arise.

*Article 8*  
*Nuclear Safeguards*

1. Nuclear material and equipment transferred to the Republic of India under this Agreement, as well as the successive generations of nuclear material recovered or obtained as by-products, shall be and remain subject to the IAEA safeguards pursuant to the Agreement between the Government of India and the International Atomic Energy Agency for the application of safeguards to civilian nuclear facilities (INFCIRC/754), which entered into force on 11 May 2009 and its subsequent addenda;
2. Nuclear material and equipment transferred to the Member States of the Community under this Agreement, as well as the successive generations of nuclear material recovered or obtained as by-products, shall be and remain subject to the Euratom safeguards according to the Euratom Treaty and to the International Atomic Energy Agency safeguards pursuant to the following agreements:
  - i) The Agreement between the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Finland, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Sweden, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, the Republic of Bulgaria, the Republic of Romania, the Community and the Agency in implementation of Article III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons done on April 5, 1973 (hereinafter referred to as "the Safeguards Agreement for the non-nuclear

weapon Member States of the Community"), as supplemented by an Additional Protocol, done on September 22, 1998 (INFCIRC/193);

- ii) The Agreement between the United Kingdom of Great Britain and Northern Ireland, the Community and the Agency for the application of safeguards in the United Kingdom of Great Britain and Northern Ireland in connection with the Non-Proliferation Treaty, done on September 6, 1976 (hereinafter referred to as "the Safeguards Agreement for the United Kingdom"), as supplemented by an Additional Protocol done on September 22, 1998 (INFCIRC/263); and
- iii) The Agreement between France, the Community, and the Agency for the application of safeguards in France, done on July 27, 1978 (hereinafter referred to as "the Safeguards Agreement for France"), as supplemented by an Additional Protocol done on September 22, 1998 (INFCIRC/290).

#### *Article 9*

##### *Retransfers*

1. The receiving Party shall seek the supplying Party's prior written consent for any retransfer beyond the jurisdiction of the Parties of material, nuclear material, equipment and related technologies transferred to him in accordance with the present Agreement.
2. The receiving Party shall also seek the supplying Party's prior written consent for any transfer of material, nuclear material, equipment and related technologies recovered, produced or derived through the use of material, nuclear material, equipment and related technologies originally transferred to him by the supplying Party.
3. The receiving party shall also obtain government to government assurances from the third Party to which it intends to effect a retransfer as described in paragraph 1 or a transfer as described in paragraph 2 confirming that the retransferred or transferred items will be:
  - a) used only for peaceful and non-explosive purposes, and
  - b) will be subject to IAEA safeguards.

*Article 10*  
*Coordination and facilitation of cooperative activities*

1. The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of India, by the Department of Atomic Energy and, on behalf of the Community, by the service of the European Commission responsible of the management of the research actions under the Euratom Framework Programmes, acting as executive agents.
2. The executive agents shall establish a Steering R&D Cooperation Committee, hereinafter referred to as the "Steering Committee" for the management of this Agreement; this Committee shall consist of an equal number of official representatives of each Party; it shall establish its own rules of procedure.
3. The functions of the Steering Committee shall include:
  - (a) promoting and overseeing the different R&D cooperative activities as mentioned in Article 5;
  - (b) recommending joint R&D projects, to be sponsored on a cost-sharing basis by the Parties, received in response to an approved Joint Call for Proposal text issued simultaneously by the Executive Agents;

The joint projects, which have been submitted by the scientists of one side for participation in the programmes of the other side, will be selected by each Party according to the respective selection process of each Party with possible participation of the experts from both sides;
  - (c) indicating, for the following year, pursuant to Article 5.2 (a), among the potential sectors for R&D cooperation, those priority sectors or sub-sectors of mutual interest in which cooperation is sought;
  - (d) proposing, pursuant to Article 5.2 (c), to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;
  - (e) verifying that article 5.2 (e), (f) and (g) are implemented in full consistency with the provisions of this Agreement;
  - (f) making recommendations pursuant to Article 5.2;
  - (g) advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
  - (h) reviewing the efficient functioning and implementation of this Agreement;
  - (i) providing annually a report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement.
4. The Steering Committee shall, as a general rule, meet annually, according to a jointly agreed schedule; the meetings should be held alternatively in the Community and in India. Extraordinary meetings may be organised at the request of either Party.

5. Decisions of the Steering Committee shall be reached by consensus. Minutes, comprising of a record of decisions and principal points discussed, shall be taken at each meeting. These minutes shall be agreed upon by the designated Co-Chairpersons of the Steering Committee.
6. The costs other than those for travel and accommodation which are directly associated with meetings of the Steering Committee shall be borne by the host Party. Other costs incurred by the Steering Committee or in its name shall be borne by the Party to which members are affiliated.

*Article 11*  
*Funding*

1. Cooperative activities shall be subject to the availability of appropriate funds and to the applicable laws and regulations, policies and programmes of the Parties. The costs incurred by the participants to cooperative activities will not lead to any transfer of funds from one Party to the other.
2. When specific cooperative schemes of one Party provide for financial support to participants from the other Party, any such grants or financial contributions shall be implemented in accordance with the laws and regulations applicable in the territories of each Party. In such case a specific agreement shall describe the terms and conditions to be applied, which will not contradict the terms of the present Agreement.

*Article 12*

*Entry of personnel and experimental equipment*

Each Party shall take all reasonable steps and use its best efforts, within the framework of the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn in and exit from its territory of persons, material, data, samples, instruments and apparatus for experimental purposes involved in or used in cooperative activities identified by the Parties under the provisions of this Agreement.

*Article 13*

*Diffusion and utilisation of information*

1. The research entities established in India which are involved in Community R&D projects shall follow, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the rules of diffusion of research results stemming from the Community R&D specific programmes as well as the provisions of the Annex A to this Agreement, which is an integral part of this Agreement.

Nevertheless, this Annex may be modified without prejudice to the provisions of the present Agreement.

2. The research entities established in the Community which are involved in Indian R&D projects shall follow, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the rules and procedures applicable to the Indian research entities as well as the provisions of the Annex A to this Agreement.
3. The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community.

#### *Article 14 Confidentiality*

Without prejudice to application of Article 12, each Party undertakes to keep secret, up to maximum 10 years after the termination or end of this Agreement, any information, facts or events concerning the other Party and not directly related to the subject of the Agreement that they may have become acquainted with in the course of its execution, insofar as such information has not become public (other than a result of a disclosure by a Party in violation of this Agreement or any other obligation).

#### *Article 15 Bilateral nuclear cooperation agreements*

1. This Agreement shall be without prejudice to existing bilateral agreements, in particular, the Agreement for Cooperation between the Government of the Republic of India and the European Atomic Energy Community in the field of fusion energy research entered into force on 17<sup>th</sup> May 2010, or agreements concluded between India and individual Member States of the Community.
2. Member States of the Community willing to establish bilateral cooperation with India may do so under this Agreement.

*Article 16*  
*Applicable law*

This Agreement shall be interpreted in accordance with the respective laws and regulations in force within the Community and India as well as with the Parties' international obligations. In the case of the Community the applicable law includes the Euratom Treaty and its derived legislation.

*Article 17*  
*Entry into force, termination and dispute settlement*

1. This Agreement shall enter into force on the date on which the Parties have notified each other in writing that the legal requirements for entry into force of this agreement have been fulfilled.
2. This Agreement shall remain in force for a period of ten years. Thereafter this Agreement shall be automatically renewed for additional periods of five years, unless a Party notifies the other Party of its intention to terminate this Agreement pursuant to the procedure provided for in paragraphs 5 and 6 of this Article.
3. The Annex to this Agreement forms an integral part of this Agreement and may be amended in accordance with paragraph 2 of this Article.
4. This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for amending this Agreement have been completed.
5. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement. The expiry or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex A.
6. If either of the Parties or a Member State of the Community at any time following the entry into force of this Agreement takes action of any kind which results in a material violation of its obligations under this Agreement, the other Party shall have the right to cease, further cooperation under this Agreement or to suspend or terminate, in whole or in part, this Agreement, on giving written notice to that effect.
7. All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual agreement between the Parties in the framework of the Steering Committee established in Article 10.

8. Notwithstanding cessation of further cooperation under this Agreement in whole or in part, the termination of this Agreement for any reason, the provisions of Articles 13 and 14 of this Agreement shall continue to apply.

*Article 18*

*Authentic languages*

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Hindi languages, each text being equally authentic.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

For the European Atomic Energy Community

For the Government of the Republic of India

Department of Atomic Energy



## ANNEX A

### INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or furnished under the Agreement shall be allocated as provided in this Annex.

#### APPLICATION

This Annex is applicable to joint research undertaken pursuant to the Agreement, except as otherwise agreed by the Parties.

#### I. Ownership, allocation and exercise of rights

1. For purpose of this Annex "intellectual property" is defined in Article 1 of the Agreement.
2. This Annex addresses the allocation of rights and interests of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a Party and its nationals or participants which will be determined by the laws and practices of each Party and in compliance with the international (conventions of the World Intellectual Property Organisation (WIPO)) and respective national rules applicable in the field of intellectual property.
3. The Parties shall apply the following principles, which shall be provided for in specific contractual arrangements:
  - (a) effective protection of intellectual property including copyright of software. The Parties shall ensure that they and/or their participants notify one another within a reasonable time of the creation of any intellectual property arising under the Agreement or implementation arrangements and to seek protection for such intellectual property in a timely fashion as appropriate;
  - (b) effective exploitation of results;
  - (c) taking into account the contributions of the Parties and their participants in determining the rights and interests of the Parties and participants;
  - (d) non-discriminatory treatment of participants from the other Party as compared with the treatment given to its own participants, with regard to ownership, utilisation and dissemination of information and ownership, allocation and exercise of intellectual property rights;
  - (e) protection of business-confidential information.
4. The participants shall jointly develop a Technology Management Plan (TMP). The TMP is a specific agreement to be concluded between the participants in joint research defining their respective rights and obligations, including those in respect

of the ownership and use, including publication, of information and intellectual property to be created in the course of joint research. With respect to intellectual property (IP), the TMP will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP shall also address the treatment of foreground and background information, licensing and deliverables. The TMP shall be developed within the rules and regulations in force in each Party and without prejudice to international (with reference to the WIPO conventions) and respective national rules applicable in the field of IP taking into account the aims of the joint research, the relative financial or other contributions of the Parties and participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable national laws, the need for dispute settlement procedures and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the joint technology management plans. The TMP shall be approved by the responsible funding agencies, or departments of the Parties involved in financing the research, before the conclusion of the specific research and development cooperation contracts to which they are attached.

5. Information or intellectual property created in the course of joint research and not addressed in a TMP will be allocated according to the principles set out in the TMP to be concluded as soon as possible. In the event of absence of a TMP and in case of a disagreement which cannot be resolved by the agreed dispute settlement procedure, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.
6. In accordance with applicable national laws and respecting the above mentioned principles, each Party will ensure that the other Party and its participants may have the rights to IP allocated to them.
7. While maintaining the condition of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, and arrangements made under it, are exercised in such a way as to encourage, in particular the dissemination and use of information created, disclosed or otherwise made available, under the Agreement.
8. Termination or expiry of the Agreement will not affect rights or obligations of participants with regard to intellectual property under approved on-going projects in accordance with this Annex.

## II. Copyright works and scientific literary works

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971) and the TRIPS Agreement. Without prejudice to Section I and to the possibility to obtain an intellectual property right and to Section III, and unless otherwise agreed in the TMP, results of research

shall be published jointly by the Parties or participants. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or its participants in scientific and technical journals, articles, reports, books, including video arising from joint research pursuant to the Agreement, the other Party or its participants will be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties shall endeavour to disseminate literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author explicitly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

### III. Undisclosed information

#### A. Documentary undisclosed information

1. Each Party, its agencies or its participants, as appropriate, shall identify by appropriate documentary means at the earliest possible moment, and preferably in the TMP, the information that they wish to remain undisclosed in relation to the Agreement, taking into account *inter alia* the following criteria:
  - (a) secrecy of the information in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known among, or readily accessible by lawful means to, experts in the fields;
  - (b) the actual or potential commercial value of the information by virtue of its secrecy;
  - (c) previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy. The Parties and their participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.
2. Each Party shall ensure that it and its participants clearly identify undisclosed information, for example by means of an appropriate marking or restrictive legend or an appropriate non-disclosure agreement. This also applies to any reproduction of the said information, in whole or in part that shall bear the same marking or legends. A Party receiving undisclosed information pursuant to the Agreement will respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.
3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party only to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving

Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognisable as such, as set out above under 2.

4. With the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

#### B. Non-documentary undisclosed information

1. In cases where undisclosed information is communicated by the providing Party orally and in particular arising from seminars, meetings, visits to premises or laboratories, the provisions of paragraphs 1 to 4 will apply mutatis mutandis, provided that the provider and recipient of such undisclosed or other confidential or privileged information jointly establish, prior to any oral communication, a memorandum that describes the limits and content of those oral communications.

#### 2. Control

Each Party shall endeavour to ensure that undisclosed 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 be reasonably expected to become, unable to meet the non-dissemination provisions of this section, it shall immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.

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