

## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

**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,

hereinafter referred to as 'the Community' or as 'Euratom',

on the one part, and

THE GOVERNMENT OF THE REPUBLIC OF INDIA,

hereinafter referred to as 'India'

on the other part,

hereinafter jointly 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 Agreement for Scientific and Technological Cooperation between the European Community and the Government of the Republic of India signed in 2002, 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 17 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;

REAFFIRMING the support of the Government of India, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency (IAEA, hereinafter referred to as 'the Agency');

WHEREAS India as well as the Community and all its Member States have specific safeguards agreements with the Agency;

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

NOTING that nuclear safeguards are applied in the Community both under Chapter 7 of the Treaty establishing the European Atomic Energy Community (hereinafter referred to as 'the Euratom Treaty') and under safeguards agreements concluded between the Community, its Member States and the Agency;

RECALLING that this Agreement be implemented in accordance with the Convention on the Physical Protection of Nuclear Materials (CPPNM) of 29 October 1979 (INFCIRC/274) and the amendment thereto (INFCIRC/274/Rev1/Mod1) to which the Community, its Member States and India are Parties;

RECOGNISING 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; 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 Organization, done at Stockholm on 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 the 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 participants in that project;
- (7) 'Participant' means any person, any research institute, any legal entity or undertaking 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:
  - (1) 'source material', namely, uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the Agency determines under Article XX of the Statute of the Agency, done on 26 October 1956 (hereinafter

referred to as 'the Statute'), and the appropriate authorities of both Parties inform each other, in writing, to accept; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of the Parties inform each other, in writing, to accept;

(2) 'special fissionable material', namely, plutonium; uranium-233; uranium enriched in the isotope 233 or 235; any material containing one or more of the foregoing; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of both Parties inform each other, in writing, to accept. The term 'special fissionable material' does not include 'source material';

- (11) The term 'equipment' means major items of plant, machinery or instrumentation, or major components thereof, which are especially designed or manufactured for use in nuclear activities, specified in Article 4;
- (12) The term 'nuclear material recovered or produced as a by-product' means special fissionable material derived from nuclear material transferred pursuant to this Agreement.

## *Article 2*

### **Purpose**

1. The overall purpose of this Agreement is to encourage and facilitate Research and Development (hereinafter referred to as 'RD') cooperation, in the peaceful, and non-explosive uses of nuclear energy, on the basis of mutual benefit, equality and reciprocity, with a view to strengthening the overall cooperative relationship between the Community and India and in accordance with the needs and priorities of their nuclear programmes.
2. This Agreement aims to foster RD 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. 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 material, nuclear material or 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 RD cooperative activities**

Cooperation under this Agreement may cover all the activities of research and technological development, foreseen in the Euratom Framework Programmes of the Community for nuclear research and training activities under Article 7 of the Euratom Treaty and RD 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 RD areas:

- Nuclear safety of reactors excluding those loaded with high (above 20% U235) enriched uranium, and safety of plants and fuel cycle related to such reactors;
- Radiation protection and monitoring of the environment;
- Radioactive waste management, in particular waste volume reduction, conditioning and behaviour in storage;
- Decommissioning, decontamination and dismantling of nuclear facilities;
- Nuclear security: methods and technology to prevent, detect and respond to nuclear and radioactive incidents;
- Nuclear safeguards;
- Basic and applied research in nuclear sciences including applications of nuclear technologies in particular for agriculture, health care, industrial isotopes;
- Controlled thermonuclear fusion;
- Education and training;
- Other areas of cooperation related to civil nuclear RD as may be mutually agreed upon by the Parties insofar as they are covered by their respective programmes.

The cooperation 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 RD 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 RD. Such participation is subject to the rules and procedures applicable in the RD programmes of each Party;
  - (b) joint RD projects: the joint RD projects shall be implemented only when the participants have developed a technology management plan (TMP), 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, and which is in conformity with the policies and procedures applicable to the 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 material, nuclear material, and equipment transferred pursuant to this Agreement and nuclear material recovered or produced as a by-product shall not be used other than for peaceful and non-explosive purposes.

#### *Article 7*

### **Nuclear safety**

The provisions of the Convention on Nuclear Safety (CNS-IAEA document INFCIRC/449), which has to be implemented including the principles of the Vienna Declaration on Nuclear Safety (IAEA: CNS/DC/2015/2/Rev.1 document INFCIRC/872) and 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 and the Community and its Member States shall arise.

#### *Article 8*

### **Nuclear Safeguards**

1. Nuclear material and equipment transferred to India under this Agreement, as well as the successive generations of nuclear material recovered or produced 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, the Additional Protocol to that Agreement (INFCIRC/754), which entered into force on 25 July 2014 (INFCIRC/754/Add.6), and any 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 Republic of Croatia, 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, as supplemented by an Additional Protocol, done on September 22, 1998 (INFCIRC/193) and any subsequent addenda;

- (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, as supplemented by an Additional Protocol done on September 22, 1998 (INFCIRC/263) and any subsequent addenda; and
- (iii) The Agreement between France, the Community, and the Agency for the application of safeguards in France, done on July 27, 1978, as supplemented by an Additional Protocol done on September 22, 1998 (INFCIRC/290) and any subsequent addenda.
- (iv) If the IAEA decides that the application of IAEA safeguards is no longer possible, the supplier and recipient should consult and agree on appropriate verification measures. If there is no agreement, the recipient should allow at the request of the supplier, the restitution of transferred and derived, nuclear material, or equipment subjected to this Agreement.

#### *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 and equipment transferred in accordance with this Agreement.
2. The receiving Party shall also seek the supplying Party's prior written consent for any transfer of material, nuclear material, and related technologies, equipment recovered, produced or derived through the use of material, nuclear material and equipment originally transferred to it 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.

Any transfer or retransfer of material, nuclear material or equipment conducted under this Agreement shall be made in accordance with relevant international commitments of each signatory Party and of Member States of the Community.

#### *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 RD 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 RD cooperative activities referred to in Article 5;
  - (b) recommending joint RD 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 in accordance with 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 RD 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 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 territory of the respective Party. In such case a specific agreement shall lay down the terms and conditions to be applied, which shall not contradict the terms of this 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 RD 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 RD specific programmes as well as the provisions of Annex A.

2. The research entities established in the Community which are involved in Indian RD 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 Annex A.

3. 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 shall keep confidential, for a period of no less than 10 years from the date of the termination or expiry 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**

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 May 2010, or future agreements, including future amendments or modifications to existing agreements, concluded between India and individual Member States of the Community.

#### *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 Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the Euratom Treaty and all secondary legislation.

#### *Article 17*

### **Entry into force, termination, cessation and dispute settlement**

1. This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for the entry into force of this Agreement have been completed.

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.

3. The Annexes to this Agreement form an integral part of this Agreement and may be amended in accordance with paragraph 4.

4. This Agreement may be amended by agreement between 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 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 under Article 10.
8. Notwithstanding the cessation of further cooperation under this Agreement in whole or in part, the termination of this Agreement for any reason, the provisions of Articles 6, 8, 9, 13 and 14 and the individual TMP concluded following Annex A shall continue to apply in respect of joint activities conducted under this Agreement, while this Agreement is in force.

#### 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*

Mariya GABRIEL

10 July 2020

*For the Government of the Republic of India*

*Department of Atomic Energy*

K.N. VYAS

15 July 2020

\_\_\_\_\_

## ANNEX A

**INTELLECTUAL PROPERTY RIGHTS**

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

## APPLICATION

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

## I. Ownership, allocation and exercise of rights

1. For purpose of this Annex 'intellectual property' shall have the meaning as defined in Article 1.
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 conventions of the World Intellectual Property Organization (hereinafter referred as 'the WIPO-conventions') and the 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 this 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 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 the WIPO conventions and the 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 TMP. 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 IP created in the course of joint research and not addressed in a TMP will be allocated in accordance with 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 this Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this 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 this Agreement.
8. Termination or expiry of this 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 Agreement on Trade-Related Aspects of Intellectual Property Rights (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 under this Agreement, the other Party or its participants will be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence 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 this 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 this 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 this 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 this 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 departments or agencies concerned 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 under paragraph 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 of Section III A 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.

---