Appendix K

Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project

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Preamble

The European Atomic Energy Community (hereinafter "EURATOM"), the Government of the People's Republic of China, the Government of the Republic of India, the Government of Japan, the Government of the Republic of Korea, the Government of the Russian Federation and the Government of the United States of America,

RECALLING that the successful completion of the ITER Engineering Design Activities under the auspices of the International Atomic Energy Agency (hereinafter "the IAEA") has placed at the disposal of the Parties a detailed, complete and fully integrated engineering design of a research facility aimed to demonstrate the feasibility of fusion as an energy source;

EMPHASIZING the long term potential of fusion energy as a virtually limitless, environmentally acceptable and economically competitive source of energy;

CONVINCED that ITER is the next important step on the path to develop fusion energy and that now is the appropriate time to initiate the implementation of the ITER Project on the basis of progress of research and development in the field of fusion energy;

HAVING REGARD to the joint declaration by the Representatives of the Parties to the ITER negotiations, on the occasion of the ministerial meeting for ITER on 28 June 2005 in Moscow;

RECOGNIZING that the World Summit on Sustainable Development of 2002 called upon governments to promote increased research and development in the field of various energy technologies, including renewable energy, energy efficiency and advanced energy technologies;

EMPHASIZING the importance of the joint implementation of the ITER Project to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes and to stimulate the interest of young generations in fusion;

DETERMINED that the ITER Project's overall programmatic objective will be pursued by the ITER International Fusion Energy Organization through a common international research programme organized around scientific and technological goals, developed and executed with participation of leading researchers from all Parties;

EMPHASIZING the importance of safe and reliable implementation of construction, operation, exploitation, de-activation and decommissioning of the ITER facilities with a view to demonstrating safety and promoting social acceptability of fusion as an energy source;

AFFIRMING the importance of genuine partnership in implementing this long term and large scale project for the purpose of fusion energy research and development;

RECOGNIZING that while scientific and technological benefits will be shared equally among the Parties for fusion energy research purposes, other benefits associated with the implementation of the Project will be shared on an equitable basis;

DESIRING to continue the fruitful cooperation with the IAEA in this endeavour;

HAVE AGREED AS FOLLOWS:

Article 1

Establishment of the ITER International Fusion Energy Organization

1. The ITER International Fusion Energy Organization (hereinafter "the ITER Organization") is hereby established.

2. The headquarters of the ITER Organization (hereinafter "the Headquarters") shall be at St Paul-lez-Durance, Bouches-du-Rhône, France. For the purposes of this Agreement, EURATOM shall be referred to as "the Host Party" and France as "the Host State".

Article 2

Purpose of the ITER Organization

The purpose of the ITER Organization shall be to provide for and to promote cooperation among the Members referred to in Article 4 (hereinafter "the Members") on the ITER Project, an international project that aims to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes, an essential feature of which would be achieving sustained fusion power generation.

Article 3

Functions of the ITER Organization

1. The ITER Organization shall:

   a) construct, operate, exploit, and de-activate the ITER facilities in accordance with the technical objectives and the general design presented in the Final Report of the ITER Engineering Design Activities (ITER EDA Documentation Series No. 21) and such supplemental technical documents as may be adopted, as necessary, in accordance with this Agreement, and provide for the decommissioning of the ITER facilities;

   b) encourage the exploitation of the ITER facilities by the laboratories, other institutions and personnel participating in the fusion energy research and development programmes of the Members;

   c) promote public understanding and acceptance of fusion energy; and

   d) undertake, in accordance with this Agreement, any other activities that are necessary to achieve its purpose.

2. In the performance of its functions, the ITER Organization shall give special regard to the maintenance of good relations with local communities.

Article 4

Members of the ITER Organization

The Parties to this Agreement shall be the Members of the ITER Organization.

Article 5

Legal Personality

1. The ITER Organization shall have international legal personality, including the capacity to conclude agreements with States and/or international organizations.

2. The ITER Organization shall have legal personality and enjoy, in the territories of the Members, the legal capacity it requires, including to:

   a) conclude contracts;

   b) acquire, hold and dispose of property;

   c) obtain licenses; and

   d) institute legal proceedings.

Article 6

Council

1. The Council shall be the principal organ of the ITER Organization and shall be composed of Representatives of the Members. Each Member shall appoint up to four Representatives to the Council.

2. The Depositary referred to in Article 29 (hereinafter "the Depositary") shall convene the first session of the Council no later than three months after the entry into force of this Agreement, provided that the notifications referred to in Article 12(5) have been received from all Parties.

3. The Council shall elect from among its members a Chair and a Vice-Chair who shall each serve for a term of one year and who may be re-elected up to three times for a maximum period of four years.

4. The Council shall adopt its Rules of Procedure by unanimity.

5. The Council shall meet twice a year, unless it decides otherwise. The Council may decide to hold an extraordinary session at the request of a Member or of the Director-General. Sessions of the Council shall take place at the Headquarters, unless the Council decides otherwise.

6. When appropriate, the Council may decide to hold a session at the ministerial level.

7. The Council shall be responsible, in accordance with this Agreement, for the promotion, overall direction and supervision of the activities of the ITER

Organization in pursuit of its purpose. The Council may take decisions and make recommendations on any questions, matters or issues in accordance with this Agreement. In particular, the Council shall:

a) decide on the appointment, replacement and extension of the term of office of the Director-General;

b) adopt and amend where necessary, on the proposal of the Director-General, the Staff Regulations and the Project Resource Management Regulations of the ITER Organization;

c) decide, on the proposal of the Director-General, the main management structure of the ITER Organization and complement of the Staff;

d) appoint senior Staff on the proposal of the Director-General;

e) appoint the members of the Financial Audit Board as referred to in Article 17;

f) decide, in accordance with Article 18, on the terms of reference for the undertaking of an assessment of the management of the ITER Organization and appoint a Management Assessor for that purpose;

g) decide, on the proposal of the Director-General, the total budget for the various phases of the ITER Project and allowable ranges for adjustment for the purpose of the annual updates referred to in subparagraph j), and approve the initial ITER Project Plan and Resource Estimates referred to in Article 9;

h) approve changes to the overall cost sharing;

i) approve, with the consent of the Members concerned, modifications to the procurement allocation without changing the overall cost sharing;

j) approve the annual updates of the ITER Project Plan and Resource Estimates and, correspondingly, approve the annual programme and adopt the annual budget of the ITER Organization;

k) approve the annual accounts of the ITER Organization;

l) adopt the annual reports;

m) adopt, as necessary, the supplemental technical documents referred to in Article 3 (1) (a);

n) establish such subsidiary bodies of the Council as may be necessary;

o) approve the conclusion of agreements or arrangements for international cooperation in accordance with Article 19;

p) decide on acquisition, sale and mortgaging of land and other titles of real property;

q) adopt the rules on Intellectual Property management and the dissemination of information in accordance with Article 10 on the proposal of the Director-General;

r) approve, on the proposal of the Director-General, the details of setting up of Field Teams with consent of the Members concerned, in accordance with Article 13. The Council shall review, on a periodic basis, the continuation of any Field Teams established;

s) approve, on the proposal of the Director-General, agreements or arrangements governing relations between the ITER Organization and the Members or States on whose territory the Headquarters and Field Teams of the ITER Organization are located;

t) approve, on the proposal of the Director-General, efforts to promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;

u) decide on the accession of States or international organizations to this Agreement in accordance with Article 23;

v) recommend to the Parties, in accordance with Article 28, amendments to this Agreement;

w) decide on the taking or granting of loans, provision of assurances and guarantees and furnishing collateral and security in respect thereto;

x) decide whether to propose material, equipment and technology for consideration by international export control fora for inclusion on their control lists, and establish a policy supporting peaceful uses and non-proliferation in accordance with Article 20;

y) approve compensation arrangements referred to in Article 15; and

z) decide on waivers of immunity in accordance with Article 12 (3) and have such other powers as may be necessary to fulfill the purpose and to carry out the functions of the ITER Organization, consistent with this Agreement.

8. The Council shall decide issues under subparagraphs a), b), c), g), h), o), u), v), w), x), y) and z) of paragraph 7, and on the weighted voting system referred to in paragraph 10, by unanimity.

9. On all issues other than as specified in paragraph 8, the Members shall use their best efforts to achieve consensus. Failing consensus, the Council shall decide the issue in accordance with the weighted voting system referred to in paragraph 10. Decisions on issues related to Article 14 shall require the concurrence of the Host Party.

10. The respective weights of the votes of the Members shall reflect their contributions to the ITER Organization. The weighted voting system, which shall include both the distribution of votes and the decision making rules, shall be set out in the Council Rules of Procedure.

Article 7

The Director-General and the Staff

1. The Director-General shall be the chief executive officer and the representative of the ITER Organization in the exercise of its legal capacity. The Director-General shall act in a manner consistent with this Agreement and decisions of the Council, and shall be responsible to the Council for the execution of his/her duties.

2. The Director-General shall be assisted by the Staff. The Staff shall consist of direct employees of the ITER Organization and personnel seconded by the Members.

3. The Director-General shall be appointed for a term of five years. The appointment of the Director-General may be extended once for an additional period of up to five years.

4. The Director-General shall take all measures necessary for the management of the ITER Organization, the execution of its activities, the implementation of its policies and the fulfillment of its purpose. In particular, the Director-General shall:

   a) prepare and submit to the Council:

      - the total budget for the various phases of the ITER Project and allowable ranges for adjustment;
      - the ITER Project Plan and Resource Estimates and their annual updates;
      - the annual budget within the agreed total budget, including the annual contributions, and annual accounts;
      - proposals on senior Staff appointments and main management structure of the ITER Organization;
      - the Staff Regulations;
      - the Project Resource Management Regulations; and
      - the annual reports;

   b) appoint, direct and supervise the Staff;

   c) be responsible for safety and undertake all organizational measures needed to observe the laws and regulations referred to in Article 14;

   d) undertake, where necessary in conjunction with the Host State, to obtain the permits and licenses required for the construction, operation and exploitation of the ITER facilities;

   e) promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;

f) ensure the quality and fitness of components and systems procured for use by the ITER Organization;

g) submit to the Council, as necessary, the supplemental technical documents referred to in Article 3 (1) (a);

h) conclude, subject to prior approval of the Council, agreements or arrangements for international cooperation in accordance with Article 19 and supervise their implementation;

i) make arrangements for the sessions of the Council;

j) as requested by the Council, assist subsidiary bodies of the Council in the performance of their tasks; and

k) monitor and control the execution of the annual programmes with respect to timing, results and quality, and accept the completion of the tasks.

5. The Director-General shall attend meetings of the Council unless the Council decides otherwise.

6. Without prejudice to Article 14, the responsibilities of the Director-General and the Staff in respect of the ITER Organization shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government or from any authority external to the ITER Organization. Each Member shall respect the international character of the responsibilities of the Director-General and the Staff, and shall not seek to influence them in the discharge of their duties.

7. The Staff shall support the Director-General in the performance of his/her duties and shall be under his/her management authority.

8. The Director-General shall appoint the Staff in accordance with the Staff Regulations.

9. The term of the appointment of each member of the Staff shall be up to five years.

10. The Staff of the ITER Organization shall consist of such qualified scientific, technical and administrative personnel as shall be required for the implementation of the activities of the ITER Organization.

11. The Staff shall be appointed on the basis of their qualifications, taking into account an adequate distribution of posts among the Members in relation to their contributions.

12. In accordance with this Agreement and the relevant regulations, the Members may second personnel and send visiting researchers to the ITER Organization.

Article 8

Resources of the ITER Organization

1. The resources of the ITER Organization shall comprise:

a) contributions in kind, as referred to in the document "Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions", comprising: i) specific components, equipment, materials and other goods and services in accordance with the agreed technical specifications and ii) staff seconded by the Members;

b) financial contributions to the budget of the ITER Organization by the Members (hereinafter 'contributions in cash'), as referred to in the document "Value Estimates for ITER Phases of Construction, Operation, Deactivation and De commissioning and Form of Party Contributions";

c) additional resources received either in cash or in kind within limits and under terms approved by the Council.

2. The respective Members' contributions over the duration of this Agreement shall be as referred to in the documents "Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions" and "Cost Sharing for all Phases of the ITER Project" and may be updated by unanimous decision of the Council.

3. The resources of the ITER Organization shall be solely used to promote the purpose and to exercise the functions of the ITER Organization in accordance with Articles 2 and 3.

4. Each Member shall provide its contributions to the ITER Organization through an appropriate legal entity, hereinafter "the Domestic Agency" of that Member, except where otherwise agreed by the Council. The approval of the Council shall not be required for Members to provide cash contributions directly to the ITER Organization.

Article 9

Project Resource Management Regulations

1. The purpose of the Project Resource Management Regulations is to ensure the sound financial management of the ITER Organization. These Regulations shall include, *inter alia*, the principal rules relating to:

a) the Financial Year;

b) the unit of account and the currency that the ITER Organization shall use for accounting, budget and resource evaluation purposes;

c) the presentation and structure of the ITER Project Plan and Resource Estimates;

d) the procedure for the preparation and adoption of the annual budget, the implementation of the annual budget and internal financial control;

e) the contributions by the Members;

f) the awarding of contracts;

g) the management of contributions; and

h) the management of the decommissioning fund.

2. The Director-General shall prepare each year, and submit to the Council, an update of the ITER Project Plan and Resource Estimates.

3. The ITER Project Plan shall specify the plan for the execution of all functions of the ITER Organization and shall cover the duration of this Agreement. It shall:

a) outline an overall plan including time schedule and major milestones, for the fulfilment of the purpose of the ITER Organization and summarise the progress of the ITER Project in relation to the overall plan;

b) present specific objectives and schedules of the programme of activities of the ITER Organization for the coming five years or for the period of construction, whichever will last longer; and

c) provide appropriate commentaries, including assessment of the risks to the ITER Project and descriptions of risk avoidance or mitigation measures.

4. The ITER Resource Estimates shall provide a comprehensive analysis of the resources already expended and required in the future to undertake the ITER Project Plan and of the plans for the provision of the resources.

Article 10

Information and Intellectual Property

1. Subject to this Agreement and the Annex on Information and Intellectual Property, the ITER Organization and the Members shall support the widest appropriate dissemination of information and intellectual property they generate in the execution of this Agreement. The implementation of this Article and the Annex on Information and Intellectual Property shall be equal and non-discriminatory for all Members and the ITER Organization.

2. In carrying out its activities, the ITER Organization shall ensure that any scientific results shall be published or otherwise made widely available after a reasonable period of time to allow for the obtaining of appropriate protection. Any copyright on works based on those results shall be owned by the ITER Organization unless otherwise provided in specific provisions of this Agreement and the Annex on Information and Intellectual Property.

3. When placing contracts for work to be performed pursuant to this Agreement, the ITER Organization and the Members shall include provisions in such contracts on any resulting intellectual property. These provisions shall address, *inter alia*, rights of access to, as well as disclosure and use of, such intellectual property, and shall be consistent with this Agreement and the Annex on Information and Intellectual Property.

4. Intellectual property generated or incorporated pursuant to this Agreement shall be treated in accordance with the provisions of the Annex on Information and Intellectual Property.

Article 11

Site Support

1. The Host Party shall make available or cause to be made available to the ITER Organization the site support required for the implementation of the ITER Project as summarized and under the terms outlined in the Annex on Site Support. The Host Party may designate an entity to act on its behalf for this purpose. Such designation shall not affect the obligations of the Host Party under this Article.

2. Subject to the approval of the Council, the details of and the procedures for cooperation on site support between the ITER Organization and the Host Party or its designated entity shall be covered by a Site Support Agreement to be concluded between them.

Article 12

Privileges and Immunities

1. The ITER Organization, its property and assets, shall enjoy in the territory of each Member such privileges and immunities as are necessary for the exercise of its functions.

2. The Director-General and the Staff of the ITER Organization and the representatives of the Members in the Council and subsidiary bodies, together with their alternates and experts, shall enjoy in the territory of each of the Members such privileges and immunities as are necessary for the exercise of their functions in connection with the ITER Organization.

3. The immunities provided for in paragraphs 1 and 2 shall be waived in any case where the authority competent to waive the immunity considers that such immunity would impede the course of justice and that waiver would not prejudice the purposes for which it was accorded and where, in the case of the ITER Organization, the Director-General, and the Staff, the Council determines that such a waiver would not be contrary to the interests of the ITER Organization and its Members.

4. The privileges and immunities conferred in accordance with this Agreement shall not diminish or affect the duty of the ITER Organization, the Director-General or the Staff to comply with the laws and regulations referred to in Article 14.

5. Each Party shall notify the Depositary in writing upon having given effect to paragraphs 1 and 2.

6. The Depositary shall notify the Parties when notifications have been received from all Parties in accordance with paragraph 5.

7. A Headquarters Agreement shall be concluded between the ITER Organization and the Host State.

Article 13

Field Teams

Each Member shall host a Field Team established and operated by the ITER Organization as required for the exercise of the ITER Organization's functions and the fulfillment of its purpose. A Field Team Agreement shall be concluded between the ITER Organization and each Member.

Article 14

Public Health, Safety, Licensing and Environmental Protection

The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence.

Article 15

Liability

1. The contractual liability of the ITER Organization shall be governed by the relevant contractual provisions, which shall be construed in accordance with the law applicable to the contract.

2. In the case of non-contractual liability, the ITER Organization shall compensate appropriately or provide other remedies for any damage caused by it, to such extent as the ITER Organization is subject to a legal liability under the relevant law, with the details of compensation arrangements to be approved by the Council. This paragraph shall not be construed as a waiver of immunity by the ITER Organization.

3. Any payment by the ITER Organization to compensate for the liability referred to in paragraphs 1 and 2 and any costs and expenses incurred in connection therewith shall be considered as 'operational cost' as defined in the Project Resource Management Regulations.

4. In case the costs of compensation for damage referred to in paragraph 2 exceed funds available to the ITER Organization in the annual budget for operations and/or through insurance, the Members shall consult, through the Council, so that the ITER Organization can compensate, according to paragraph 2 by seeking to increase the overall budget by unanimous decision of the Council in accordance with Article 6 (8).

5. Membership in the ITER Organization shall not result in liability for Members for acts, omissions, or obligations of the ITER Organization.

6. Nothing in this Agreement shall impair, or shall be construed as a waiver of, immunity that Members enjoy in the territory of other States or in their territory.

Article 16

Decommissioning

1. During the period of operation of ITER, the ITER Organization shall generate a Fund (hereinafter "the Fund") to provide for the decommissioning of the ITER facilities. The modalities for the generation of the Fund, its estimation and updating, the conditions for changes and for its transfer to the Host State shall be set out in the Project Resource Management Regulations referred to in Article 9.

2. Following the final phase of experimental operations of ITER, the ITER Organization shall, within a period of five years, or shorter if agreed with the Host State, bring the ITER facilities into such conditions as are to be agreed and updated as necessary between the ITER Organization and the Host State, following which the ITER Organization shall hand over to the Host State the Fund and the ITER facilities for their decommissioning.

3. Following the acceptance by the Host State of the Fund together with the ITER facilities, the ITER Organization shall bear no responsibilities or liabilities for the ITER facilities, except when otherwise agreed between the ITER Organization and the Host State.

4. The respective rights and obligations of the ITER Organization and the Host State and the modalities of their interactions in respect of the decommissioning shall be set out in the Headquarters Agreement referred to in Article 12, under which the ITER Organization and the Host State shall, *inter alia*, agree that:

   a) after the handing over of the ITER facilities, the Host State shall continue to be bound by the provisions of Article 20; and

   b) the Host State shall make regular reports to all Members that have contributed to the Fund on the progress of the decommissioning and on the procedures and technologies that have been used or generated for the decommissioning.

Article 17

Financial Audit

1. A Financial Audit Board (hereinafter "the Board") shall be established to undertake the audit of the annual accounts of the ITER Organization in accordance with this Article and the Project Resource Management Regulations.

2. Each Member shall be represented on the Board by one member. The members of the Board shall be appointed by the Council on the recommendation of the respective Members for a period of three years. The appointment may be extended once for an additional period of three years. The Council shall appoint from among the members the Chair of the Board, who shall serve for a period of two years.

3. The members of the Board shall be independent and shall not seek or take instructions from any Member or any other person and shall report only to the Council.

4. The purposes of the audit shall be to:

a) determine whether all income/expenditure has been received/incurred in a lawful and regular manner and has been accounted for;

b) determine whether the financial management has been sound;

c) provide a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions;

d) determine whether expenditures are in conformity with the budget; and

e) examine any matter having potential financial implications for the ITER Organization.

5. The audit shall be based on recognized international principles and standards for accounting.

Article 18

Management Assessment

1. Every two years, the Council shall appoint a Management Assessor who shall assess the management of the activities of the ITER Organization. The scope of the assessment shall be decided by the Council.

2. The Director-General may also call for such assessments following consultation with the Council.

3. The Management Assessor shall be independent and shall not seek or take instructions from any Member or any person and shall report only to the Council.

4. The purpose of the assessment shall be to determine whether the management of the ITER Organization has been sound, in particular with respect to management effectiveness and efficiency in terms of scale of staff.

5. The assessment shall be based on records of the ITER Organization. The Management Assessor shall be granted full access to personnel, books and records as he/she may deem appropriate for this purpose.

6. The ITER Organization shall ensure that the Management Assessor shall abide by its requirements relating to the treatment of sensitive and/or business confidential information, in particular its policies concerning Intellectual Property, Peaceful Uses and Non-Proliferation.

Article 19

International Cooperation

Consistent with this Agreement and upon a unanimous decision of the Council, the ITER Organization may, in furtherance of its purpose, cooperate with other international organizations and institutions, non-Parties, and with organizations and institutions of non-Parties, and conclude agreements or arrangements with them to this effect. The detailed arrangements for such cooperation shall be determined in each case by the Council.

Article 20

Peaceful Uses and Non-Proliferation

1. The ITER Organization and the Members shall use any material, equipment or technology generated or received pursuant to this Agreement solely for peaceful purposes. Nothing in this paragraph shall be interpreted as affecting the rights of the Members to use material, equipment or technology acquired or developed by them independent of this Agreement for their own purposes.

2. Material, equipment or technology received or generated pursuant to this Agreement by the ITER Organization and the Members shall not be transferred to any third party to be used to manufacture or otherwise to acquire nuclear weapons or other nuclear explosive devices or for any non-peaceful purposes.

3. The ITER Organization and the Members shall take appropriate measures to implement this Article in an efficient and transparent manner. To this end, the Council shall interface with appropriate international fora and establish a policy supporting peaceful uses and non-proliferation.

4. In order to support the success of the ITER Project and its non-proliferation policy, the Parties agree to consult on any issues associated with the implementation of this Article.

5. Nothing in this Agreement shall require the Members to transfer material, equipment or technology contrary to national export control or related laws and regulations.

6. Nothing in this Agreement shall affect the rights and obligations of the Parties that arise from other international agreements concerning non-proliferation of nuclear weapons or other nuclear explosive devices.

Article 21

Application with regard to EURATOM

In accordance with the Treaty establishing EURATOM, this Agreement shall apply to the territories covered by that Treaty. In accordance with that Treaty and other relevant agreements, it shall also apply to the Republic of Bulgaria, the Republic of Romania and the Swiss Confederation, participating in the EURATOM fusion programme as fully associated third States.

Article 22

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the procedures of each Signatory.

2. This Agreement shall enter into force thirty days after the deposit of instruments of ratification, acceptance or approval of this Agreement by the People's Republic of China, EURATOM, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

3. If this Agreement has not entered into force within one year after signature, a meeting of the Signatories shall be convened by the Depositary to decide what course of action shall be undertaken to facilitate its entering into force.

Article 23

Accession

1. After the entry into force of this Agreement, any State or international organization may accede to and become a Party to this Agreement following a unanimous decision of the Council.

2. Any State or international organization that wishes to accede to this Agreement shall notify the Director-General, who shall inform the Members of this request at least six months before it is submitted to the Council for decision.

3. The Council shall determine the conditions of accession of any State or international organization.

4. Accession to this Agreement by a State or international organization shall take effect 30 days after the Depositary has received both the instrument of accession and the notification referred to in Article 12(5).

Article 24

Duration and Termination

1. This Agreement shall have an initial duration of 35 years. The last five years of this period, or shorter if agreed with the Host State, shall be dedicated to the de-activation of the ITER facilities.

2. The Council shall, at least eight years before the expiry of this Agreement, establish a Special Committee, chaired by the Director-General, that shall advise it on whether the duration of this Agreement should be extended having regard to the progress of the ITER Project. The Special Committee shall assess the technical and scientific state of the ITER facilities and reasons for the possible extension of this Agreement and, before recommending to extend this Agreement, the financial aspects in terms of required budget and impact on the de-activation and decommissioning costs. The Special Committee shall submit its report to the Council within one year after its establishment.

3. On the basis of the report, the Council shall decide by unanimity at least six years before the expiry whether to extend the duration of this Agreement.

4. The Council may not extend the duration of this Agreement for a period of more than ten years in total, nor may the Council extend this Agreement if such extension would alter the nature of the activities of the ITER Organization or the framework of financial contribution of the Members.

5. At least six years before the expiry of this Agreement, the Council shall confirm the foreseen end of this Agreement and decide the arrangements for the de-activation phase and the dissolution of the ITER Organization.

6. This Agreement may be terminated by agreement of all Parties, allowing the necessary time for de-activation and ensuring the necessary funds for decommissioning.

Article 25

Settlement of Disputes

1. Any issue arising among the Parties or between one or more Parties and the ITER Organization out of or in connection with this Agreement shall be settled by consultation, mediation or other procedures to be agreed, such as arbitration. The parties concerned shall meet to discuss the nature of any such issue with a view to an early resolution.

2. If the parties concerned are unable to resolve their dispute in consultation, either party may request the Chair of the Council (or if the Chair has been elected from a Member that is a party to the dispute, a member of the Council representing a Member that is not a party to the dispute) to act as a mediator at a meeting to attempt to resolve the dispute. Such meeting shall be convened within thirty days following a request by a party for mediation and concluded within sixty days thereafter, immediately following which the mediator shall provide a report of the mediation, which report shall be prepared in consultation with the Members other than the parties to the dispute with a recommendation for resolution of the dispute.

3. If the parties concerned are unable to resolve their dispute through consultations or mediation, they may agree to submit the dispute to an agreed form of dispute resolution in accordance with procedures to be agreed.

Article 26

Withdrawal

1. After this Agreement has been in force for ten years, any Party other than the Host Party may notify the Depositary of its intention to withdraw.

2. Withdrawal shall not affect the withdrawing Party's contribution to the construction cost of the ITER facilities. If a Party withdraws during the period of operation of ITER, it shall also contribute its agreed share of the cost of decommissioning the ITER facilities.

3. Withdrawal shall not affect any continuing right, obligation, or legal situation of a Party created through the execution of this Agreement prior to its withdrawal.

4. The withdrawal shall take effect at the end of the Financial Year following the year the notification referred to in paragraph 1 is given.

5. The details of withdrawal shall be documented by the ITER Organization in consultation with the withdrawing Party.

Article 27

Annexes

The Annex on Information and Intellectual Property and the Annex on Site Support shall form an integral part of this Agreement.

Article 28

Amendments

1. Any Party may propose an amendment to this Agreement.

2. Proposed amendments shall be considered by the Council, for recommendation to the Parties by unanimity.

3. Amendments are subject to ratification, acceptance or approval in accordance with the procedures of each Party and shall enter into force thirty days after the deposit of the instruments of ratification, acceptance or approval by all Parties.

Article 29

Depositary

1. The Director General of the IAEA shall be the Depositary of this Agreement.

2. The original of this Agreement shall be deposited with the Depositary, who shall send certified copies thereof to the Signatories, and to the Secretary General of the United Nations for registration and publication pursuant to Article 102 of the Charter of the United Nations.

3. The Depositary shall notify all Signatory and acceding States and international organizations of:

   a) the date of deposit of each instrument of ratification, acceptance, approval or accession;

   b) the date of deposit of each notification received in accordance with Article 12 (5);

   c) the date of entry into force of this Agreement and of amendments as provided for under Article 28;

   d) any notification by a Party of its intention to withdraw from this Agreement; and

   e) the termination of this Agreement.

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Annex on Information and Intellectual Property

Article 1

Subject Matter and Definitions

1.1 This Annex covers the dissemination, exchange, use and protection of information and intellectual property pertaining to protectable subject matter, in the execution of this Agreement. Unless otherwise provided, the terms used in this Annex shall have the same meaning as in this Agreement.

1.2 **Information** shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.3 below.

1.3 **Intellectual Property** shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. For the purposes of this Annex, Intellectual Property may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

a) have been held in confidence by their owner,

b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,

c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and

d) are not available to the receiving party without an obligation concerning confidentiality.

1.4 **Background Intellectual Property** shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of this Agreement, or outside of the scope of this Agreement.

1.5 **Generated Intellectual Property** shall mean Intellectual Property that is generated or acquired with full ownership by a Member, acting through a Domestic Agency or Entity, or by the ITER Organization or jointly pursuant to and in the course of the performance of this Agreement.

1.6 **Improvements** shall mean any technological advancement to existing Intellectual Property, including derivative works.

1.7 **Entity** or **Entities** shall mean any entity with which a Domestic Agency or the ITER Organization has entered into a contract for the supply of goods or services for the purposes of this Agreement.

Article 2

General Provisions

2.1. Subject to the provisions of this Annex, the Members support the widest possible dissemination of Generated Intellectual Property.

2.2. Each Member shall ensure that the other Members and the ITER Organization can obtain the rights to Intellectual Property allocated in accordance with this Annex. Contracts placed by each Member or the ITER Organization with any Entity shall be consistent with the provisions of this Annex. In particular, appropriate public procurement procedures must be followed by all Members and the ITER Organization in order to ensure compliance with this Annex.

The ITER Organization shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member and the ITER Organization shall ensure access for the ITER Organization and the other Members to inventions and other Intellectual Property generated or incorporated in the execution of the contracts provided that inventors' rights are respected, in conformity with this Annex.

2.3 This Annex does not alter or prejudice the allocation of rights between a Member and its nationals. Whether the rights concerning Intellectual Property shall be held by a Member or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.

2.4 If a Member generates or acquires full ownership of Intellectual Property in the course of the execution of this Agreement, the Member shall notify all other Members and the ITER Organization in a timely manner and provide details of such Intellectual Property.

Article 3

Dissemination of Information and Scientific Publications whether or not Copyrighted

Each Member shall be entitled, for non commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

Article 4

Intellectual Property Generated or Incorporated by a Member, a Domestic Agency or Entity

4.1. Generated Intellectual Property:

4.1.1 If protectable subject matter is generated by a Member, a Domestic Agency or Entity in the course of the execution of this Agreement, the Member, the Domestic Agency or Entity shall be entitled to acquire all rights, title and interest in all countries in and to such intellectual property according to applicable laws and regulations.

4.1.2 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Generated Intellectual Property to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programmes.

4.1.3 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall make available on an equal and non-discriminatory basis a non-exclusive license to such Generated Intellectual Property to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which such Member licenses such Generated Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.1.4 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property pursuant to this Agreement is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, Entities and third parties in order to allow use of Generated Intellectual Property in fields other than fusion.

4.1.5. Members, and their Domestic Agencies or Entities, that license or sub-license Generated or Background Intellectual Property pursuant to this Annex, will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

4.2. Background Intellectual Property:

4.2.1. Background Intellectual Property shall remain the property of the party that owns this intellectual property.

4.2.2. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items provided to the ITER Organization which Background Intellectual Property is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

- to maintain or repair the item provided, or

- when decided necessary by the Council, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Background Intellectual Property to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programmes.

4.2.3. (a) Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

- to maintain or repair the item,

- when decided necessary by the Council, in advance of any public procurement, or

- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that the ITER Organization has an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(b) When confidential information is made available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality. The recipient of such information shall use it only for purposes set forth in 4.2.3 (a) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background confidential information by the ITER Organization shall be paid by the ITER Organization.

4.2.4. Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information such as know how or trade secrets into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

- to maintain or repair the item provided, or

- when decided necessary by the Council, in advance of any public procurement,

shall use its best efforts to either grant a commercial license to such background confidential information or supply the same items incorporating the background confidential information to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programmes of a Member on terms no less favorable than the basis upon which such Member licenses such background confidential information or supplies the same items to third parties within or outside such Member's own territory. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.5. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, including background confidential information, in the execution of this Agreement shall use its best efforts to make sure that the component incorporating the Background Intellectual Property is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which such Member licenses such Background Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.6. Any Member, acting through a Domestic Agency or Entity, is encouraged to make available for commercial purposes other than those set out in article 4.2.5. to the other Members, any Background Intellectual Property incorporated into the items provided to the ITER Organization which Background Intellectual Property was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such Background Intellectual Property, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

4.3. Licensing to Third Parties of Non-Members:

Any license on Generated Intellectual Property granted by the Members to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

Article 5

Intellectual Property Generated or Incorporated by the ITER Organization

5.1 Generated Intellectual Property:

5.1.1 Where intellectual property is generated by the ITER Organization, in the course of the execution of this Agreement, it shall be owned by the ITER Organization. The ITER Organization shall develop appropriate procedures for the recording, reporting and protection of the Intellectual Property.

5.1.2 Such intellectual property shall be licensed by the ITER Organization to the Members on an equal, non-discriminatory, irrevocable, non-exclusive, royalty-free basis, with the right of the Members to sub-license within their territory for the purpose of fusion research and development.

5.1.3 Generated Intellectual Property that has been developed or acquired by the ITER Organization in the course of the execution of this Agreement shall be licensed to the Members on an equal, non-discriminatory, non-exclusive basis for commercial use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Generated Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

5.2. Background Intellectual Property:

5.2.1. Provided that it has the pertinent rights, when the ITER Organization incorporates Background Intellectual Property which is required:

- to construct operate, use or integrate technology for research and development in relation to the ITER facilities,
- to create improvements and derivative works,
- to repair and maintain the ITER facilities, or
- when decided necessary by the Council, in advance of any public procurement,

the ITER Organization shall make the necessary arrangements in order to sub-license that Background Intellectual Property on an equal and non-discriminatory basis by an irrevocable, non-exclusive, royalty-free license to the Members, with the right of the Members to sub-license within their respective territory for the purpose of fusion research and development. The ITER Organization shall make its best efforts to acquire the pertinent rights.

5.2.2. For Background Intellectual Property, including background confidential information, incorporated by the ITER Organization in the course of the execution of this Agreement, the ITER Organization shall use its best efforts to make available on an equal and non-discriminatory basis a non-exclusive license to the Members for commercial fusion use, with the right to sub-license for such use by such Members'

own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Background Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

5.2.3. The ITER Organization shall use its best efforts to make available to the Members any Background Intellectual Property, including background confidential information, for purposes other than those set out in article 5.2.2. Such Background Intellectual Property, if licensed by the ITER Organization to the Members, shall be licensed on an equal and non-discriminatory basis.

5.3 Licensing to third parties of a non-Member:

Any license granted by the ITER Organization to third parties of a non-Member shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

Article 6

Intellectual Property Generated by the ITER Organization's Staff and other Researchers

6.1. Intellectual Property generated by directly employed and seconded staff of the ITER Organization shall be owned by the ITER Organization and treated in corresponding employment contracts or regulations consistent with the provisions set out herein.

6.2. Intellectual Property generated by visiting researchers who are participating in the activities of the ITER Organization through an arrangement with the ITER Organization for undertaking specific activities and who are directly involved in general programmes of the ITER Organization exploitation, shall be owned by the ITER Organization unless otherwise agreed by the Council.

6.3. Intellectual Property generated by visiting researchers not involved in general programmes of the ITER Organization exploitation shall be subject to an arrangement with the ITER Organization pursuant to conditions established by the Council.

Article 7

Protection of Intellectual Property

7.1. When a Member acquires or seeks protection for Generated Intellectual Property developed or acquired by that Member, such Member shall notify in a timely manner and provide details of such protection to all other Members and to the ITER Organization. If a Member decides not to exercise its right to seek protection for Generated Intellectual Property in any country or region, it shall notify the ITER Organization in a timely manner of its decision, and the ITER Organization may then seek to obtain such protection either directly or via the Members.

7.2. For Generated Intellectual Property developed or acquired by the ITER Organization, the Council shall adopt, as soon as practicable, appropriate procedures for the reporting, protection and recording of such Intellectual Property for example through the creation of a database to which the Members may have access.

7.3. In the event of a joint creation, the participating Members and/or the ITER Organization shall have the right to seek to obtain in co-ownership Intellectual Property in any State they choose.

7.4. There shall be co-ownership of Intellectual Property when created by two or more Members or by one or more Members together with the ITER Organization and when the features of such intellectual property are not capable of being separated for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right. In such a case the joint creators shall agree among themselves by means of a co-ownership arrangement on the allocation of and the terms of exercising the ownership of the said Intellectual Property.

Article 8

Decommissioning

8.1. For the decommissioning phase after the transfer of the facilities to the Host State, the Host Party shall provide to the other Members all relevant information, whether published or not, generated or used during the decommissioning of the ITER facilities.

8.2. Intellectual Property generated by the Host State during the decommissioning phase shall not be affected by this Annex.

Article 9

Termination and Withdrawal

9.1. The Council shall, as necessary, address any issues relating to the termination of this Agreement or the withdrawal of a Party in so far as they relate to Intellectual Property, that are not fully addressed in this Agreement.

9.2. The Intellectual Property rights conferred and obligations imposed upon the Members and the ITER Organization by the provisions of this Annex, in particular all granted licenses, shall subsist after the termination of this Agreement, or after the withdrawal of a Party.

Article 10

Royalties

Royalties received from the licensing of Intellectual Property by the ITER Organization shall be a resource of the ITER Organization.

Article 11

Settlement of Disputes

Any dispute arising out of or in connection with this Annex shall be settled in accordance with Article 25 of this Agreement.

Article 12

Awards to Inventors

The Council shall determine appropriate terms and conditions for the remuneration of the Staff when such Staff generates Intellectual Property.

Article 13

Liability

When negotiating license arrangements, the ITER Organization and the Members shall, as appropriate, include suitable provisions governing their respective liabilities, rights and obligations arising from the execution of those license arrangements.

Annex on Site Support

Article 1

Site Support Agreement

1. The Host Party shall make or cause to be made available to the ITER Organization land, facilities, buildings, goods and services in support of the site as summarized in this Annex. The Host Party may designate an entity to act on its behalf for this purpose.

2. The details of such support, as well as the procedures for cooperation between the ITER Organization and the Host Party or its designated entity (hereinafter "the Host"), shall be covered by an agreement (hereinafter "the Site Support Agreement") to be concluded between them.

Article 2

Duration of the Agreement

The Host shall provide the site support to the ITER Organization throughout the period from the establishment of the ITER Organization to the expiry or termination of this Agreement.

Article 3

Liaison Committee

The ITER Organization and the Host shall establish a liaison committee to ensure the effective provision of the support covered by this Annex under the terms of the Site Support Agreement.

Article 4

Land, Buildings, Facilities and Access

The Host shall at its own expense provide the ITER site under the conditions set out in the ITER Site Requirements and Site Design Assumptions as adopted in 2000 (hereinafter the "Reference Conditions") by the Council established under the Agreement among the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on Cooperation in the Engineering Design Activities for the International Thermonuclear Experimental Reactor (hereinafter "the ITER EDA") and other specific facilities and services as set out below:

a) *Land* to be put at the disposal free of charge to the ITER Organization allowing for the construction, use and possible extension of all the ITER buildings and auxiliary services which are referred to in the Final Report of the ITER EDA;

b) *Main services* to be supplied to the site boundary:- water, electricity, sewage and drainage, alarm systems;

c) *Roads, Paths and Bridges*, including adaptations, as necessary, to the route between the Port Autonome de Marseille and the ITER site to provide access to the site boundary for the maximum size and weights of equipment to be delivered for the ITER Project and for Staff and visitors;

d) *Transportation services* from the Port Autonome de Marseille or in case of air transport the Marignane airport to the ITER site of components contributed by the Parties;

e) *Temporary accommodation* as required for the ITER Organization at or near the ITER site until the final buildings and facilities of the ITER Organization are ready for occupation;

f) *Power supplies*:- installation and maintenance up to the site boundary of power supplies able to provide up to 500 MW for pulsed loads as well as a capability to draw from the grid 120 MW continuous electrical power without interruption because of connection maintenance;

g) *Water cooling supply* to dissipate on average 450 MW (thermal) energy to the environment; and

h) *Connection to computer network and telecommunication lines* with large capacity.

Article 5

Services

In addition to the items referred to in Article 4 of this Annex, the Host shall supply at its own expense or charged at proven cost, in accordance with the Site Support Agreement, such technical, administrative and general services as are required by the ITER Organization. Such services shall include, but are not limited to:

a) support staff, in addition to Staff assigned from the Host to the ITER Organization under Article 8 of this Agreement;

b) medical services facilities;

c) emergency services;

d) security-alarm system and its facilities;

e) cafeteria;

f) support to licensing process;

g) support to safety management;

h) support to language courses;

i) services for the management and disposal of radioactive wastes arising from ITER operations;

j) relocation and settlement support;

k) bus service to and from work;

l) recreation, social and welfare facilities;

m) utility services and supplies;

n) library and multi-media services;

o) environmental monitoring, including radiation monitoring; and

p) site services (waste disposal, cleaning and gardening).

Article 6

Education

The Host shall, at its own expense, establish an international school for the education of the children of Staff and provide pre-university education according to an international core curriculum to be developed in consultation with the educational authorities of the non-Host Parties, and shall facilitate the implementation of additional curricular elements specific to and supported by non-Host Parties. The non-Host Parties shall use their best efforts to assist the development of the school and the accreditation of its curriculum by their respective authorities.