AGREEMENT FOR COOPERATION BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY REPRESENTED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES AND THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA IN THE FIELD OF FUSION ENERGY RESEARCH AND DEVELOPMENT

The European Atomic Energy Community (EURATOM), represented by the Commission of the European Communities, and the Department of Energy of the United States of America (DOE), (hereinafter referred to collectively as "the Parties");

Whereas the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community and the United States of America, signed at Brussels November 7, 1995, and March 29, 1996, provides for cooperation in the peaceful uses of nuclear energy, including controlled thermonuclear fusion, and, in particular, contributions towards multilateral projects;

Desiring to continue the long history of valuable collaboration between the Parties and to enhance the tradition of close and continuing cooperation in the field of fusion energy which has occurred under the Agreement in the Field of Controlled Thermonuclear Fusion (DOE-EURATOM Agreement) signed at Brussels December 15, 1986; and in multilateral frameworks, especially ITER; and

Desiring to continue to promote the development of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy,

HAVE AGREED AS FOLLOWS:

Article I
Objective

The objective of this Agreement is to continue and intensify cooperation between the Parties in the areas covered by their respective fusion programs, on the basis of mutual benefit and overall reciprocity, in order to develop the scientific understanding and technological capability underlying a fusion energy system.

Article II
Areas of Cooperation

The areas of cooperation under this Agreement may include the following:

1. tokamaks, including the large projects of the present generation and activities related to those of the next generation;
2. alternative lines to tokamaks;
3. magnetic fusion energy technology;
4. plasma theory and applied plasma physics;
5. program policies and plans; and
6. other areas as mutually agreed in writing.

Article III
Forms of Cooperation

1. The forms of cooperation under this Agreement may include, but are not limited to, the following:

   a. exchange and provision of information and data on scientific and technical activities, developments, practices and results, and on program policies and plans, including exchange of undisclosed information on the terms and conditions in accordance with Articles VI and VII;

   b. exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development activities in accordance with Article VIII;

   c. organization of seminars and other meetings to discuss and exchange information on agreed topics in the areas listed in Article II, and to identify cooperative actions which may be usefully undertaken in accordance with Article V;

   d. exchange and provision of samples, materials, equipment (instruments and components) for experiments, testing and evaluation in accordance with Articles IX and X;

   e. execution of joint studies, projects or experiments including their joint design, construction and operation;

   f. establishment of data links; and

   g. other specific forms of cooperation as mutually agreed in writing.

2. The Parties shall coordinate the activities, as appropriate, under this Agreement, with other international fusion research and development activities, in order to minimize duplication of effort. Nothing in this Agreement will be construed to prejudice existing or future arrangements for cooperation between the Parties.

Article IV
Coordinating Committee and Executive Secretaries

1. The Parties will establish a Coordinating Committee to coordinate and supervise the conduct of activities under this Agreement. The Coordinating Committee will consist of up to twelve (12) members, half of whom will be appointed by each Party. The Coordinating Committee will meet annually, alternately in the United States and in the European Union, or at other agreed times and places. The Head of the Delegation of the receiving Party will chair the meeting.

2. The Coordinating Committee will review the progress and plans of activities under this Agreement, and propose, coordinate and approve future cooperative activities that are within the scope of this Agreement with regard to technical merit and level of effort to ensure mutual benefit and overall reciprocity within the Agreement.

3. All decisions of the Coordinating Committee will be by unanimity. The Coordinating Committee delegation from each Party shall have one vote, to be cast by the Head of the Delegation.

4. Each Party will nominate an Executive Secretary to act on its behalf during periods between meetings of the Coordinating Committee in all matters concerning cooperation under this Agreement. The Executive Secretaries will be responsible for day-to-day management of the cooperation.

Article V
Project Agreements

When the Coordinating Committee agrees to undertake a cooperative activity, it will approve a Project Agreement to this Agreement and subject to its terms. Each Project Agreement shall list the participants, and include detailed provisions for implementation of the cooperative activity, including but not limited to technical scope, management, applicable decontamination responsibility, exchange of undisclosed information, exchange of equipment, treatment of intellectual property, total costs, cost-sharing and schedule, as appropriate.

Article VI
Availability and Dissemination of Information

1. Subject to applicable laws and regulations and to provisions of this Agreement, each Party and its designees shall undertake to make freely available to the other Party and its designees any information at its disposal which is required for the execution of this Agreement.

2. The Parties shall support the widest possible dissemination of information which they have the right to disclose, either in their possession or available to them, and which is either developed jointly or intended to be provided or exchanged pursuant to this Agreement, subject to the need to protect undisclosed information and the need to protect intellectual property arising under this Agreement.

3. Information transmitted by one Party to the other Party under this Agreement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third party. Information developed jointly by the Parties shall be accurate to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly developed information or its suitability for any particular use or application by either Party or by any third party.

Article VII
Intellectual Property

The protection and allocation of intellectual property created or furnished in the course of collaborative activities under this Agreement will be governed by the provisions in Annex A, which shall form an integral part of this Agreement and shall apply to all activities conducted under this Agreement.

Article VIII
Exchanges and Assignments of Personnel

The following provisions shall apply concerning exchanges or assignments of personnel under this Agreement:

1. Each Party or participant shall ensure the selection of qualified personnel with skills and competence necessary to conduct the activities planned under this Agreement. Each such exchange or assignment of personnel shall be mutually agreed in advance by an exchange of letters between the Parties or participants, referencing this Agreement and its pertinent intellectual property provisions.

2. Each Party or participant shall be responsible for the salaries, insurance, and allowances to be paid to its exchanged or assigned personnel.

3. The sending Party or participant shall pay for the travel and living expenses of its exchanged or assigned personnel staying at the host establishment, unless otherwise agreed.

4. The receiving Party or participant shall arrange for adequate accommodations for the other Party's or participant's exchanged or assigned personnel (and their families) on a mutually agreeable, reciprocal basis.

5. The receiving Party or participant shall provide all necessary assistance to the exchanged or assigned personnel of the other Party or participant regarding administrative formalities (e.g., acquiring visas).

6. Each Party or participant shall ensure that the exchanged or assigned personnel conform to the general rules of work and safety regulations in force at the host establishment.

7. Each Party or participant may, at its own expense, observe test activities and analytical work of the other Party or participant in the areas of cooperation defined in Article II. Such observation may be exercised by short-term visits or by the assignment of personnel, subject to the prior agreement of the receiving Party or participant on each occasion.

Article IX
Exchanges of Equipment, Samples, etc.

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

1. The sending participant shall supply as soon as possible a detailed list of the equipment, etc., to be provided, with the relevant specifications and technical and informational documentation.

2. The equipment, etc. supplied by the sending participant shall remain its property and shall be returned to the sending participant on a date to be determined by the Coordinating Committee unless otherwise agreed in the project agreement referred to under article V.

3. The equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the participants.

4. The receiving participant shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, etc., in accordance with technical requirements, which shall be mutually agreed.

Article X
General Provisions

1. Each Party shall conduct the activities provided for in this Agreement subject to its applicable laws and regulations, and shall provide resources subject to the availability of appropriated funds.

2. Unless otherwise specifically agreed in writing by the Parties within the framework of the Coordinating Committee, all costs resulting from cooperation under this Agreement shall be borne by the Party that incurs them.

3. All questions of interpretation or implementation relating to the Agreement arising during its term shall be resolved by agreement of the Parties.

4. This Agreement shall apply in so far as EURATOM is concerned, to the territories to which the Treaty establishing EURATOM applies and to the territories of the countries participating in the EURATOM fusion program as fully associated third States.

Article XI
Duration, Amendment and Termination

1. This Agreement shall enter into force upon the latter date of signature and shall remain in force for five (5) years. Unless one of the Parties notifies the other Party in writing of its intention to terminate this Agreement at least six months before its expiration, this Agreement shall be extended automatically for an additional five (5) years.

2. This Agreement may be amended by written agreement of the Parties.

3. All joint efforts and experiments not completed at the termination or expiration of this Agreement may be continued until their completion under the terms of this Agreement.

4. This Agreement and any Project Agreement hereunder may be terminated at any time at the discretion of either Party upon six (6) months' advance notification in writing by the Party seeking to terminate the Agreement or Project Agreement. Such termination shall be without prejudice to the rights that may have accrued under this Agreement or Project Agreement to either Party up to the date of the termination.

POR EL DEPARTAMENTO DE ENERGÍA, POR Y EN NOMBRE DEL GOBIERNO DE LOS ESTADOS UNIDOS DE AMERICA

FUR DAS DEPARTMENT OF ENERGY FÜR UND IM NAMEN DER REGIERUNG DER VEREINIGTEN STAATEN

FOR AMERIKAS FORENEDE STATERS ENERGIMINISTERIUM OG PA DERES REGERINGS VEGNE

AMERIKAN YHDYSVALTOJEN ENERGIAMINISTERIÖN JA AMERIKAN YHDYSVALTOJEN HALLITUKSEN PUOLESTA

POUR LE DOE, AU NOM ET POUR LE COMPTE DU GOUVERNEMENT DES ETATS-UNIS D'AMERIQUE

I-IA TO YHOYPI-EIO ENEPΓEIAΣ KAI EΞ ONOMATOC THC KYBEPNHCHC TΩN HNΩMENΩN ΠOΛITEIΩN THC AMEPIKHC

FOR THE DEPARTMENT OF ENERGY FOR AND ON BEHALF OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

PER IL DIPARTIMENTO DELL'ENERGIA IN NOME E PER CONTO DEL GOVERN0 DEGLI STAT1 UNIT1 D'AMERICA

VOOR HET DEPARTMENT OF ENERGY VOOR EN NAMENS DE REGERING VAN DE VERENIGDE STATEN VAN AMERIKA

PELO DEPARTMENT OF ENERGY EM NOME E POR CONTA DO GOVERN0 DOS ESTADOS UNIDOS DA AMERICA

FÖR ENERGIDEPARTEMENTET FÖR AMERIKAS FÖRENTA STATERS REGERING OCH PA DESS VÄGNAR

POR LA COMUNIDAD EUROPEA DE LA ENERGÍA ATÓMICA, REPRESENTADA POR LA COMISIÓN DE LAS COMUNIDADES EUROPEAS

FUR DIE EUROPAISCHE ATOMGEMEINSCHAFT, VERTRETEN DURCH DIE KOMMISSION DER EUROPAISCHEN GEMEINSCHAFTEN

FOR DET EUROPÆISKE ATOMENERGIFÆLLESSKAB, REPRÆSENTERET VED KOMMISSIONEN FOR DE EUROPÆISKE FÆLLESSKABER

EUROOPAN YHTEISÖJEN KOMISSION EDUSTAMAN EUROOPAN ATOMIENERGIAYHTEISÖN PUOLESTA

POUR LA COMMUNAUTE EUROPEENNE DE L'ENERGIE ATOMIQUE, REPRESENTEE PAR LA COMMISSION DES COMMUNAUTES EUROPEENNES

I-IA THN EYPΩΠAÏKH KOINOTHTA ATOMIKHΣ ENEPΓEIAΣ EKΠPOΣΩΠOYMENH AΠO THN EHITPOHH TΩN EYPΩΠAÏKΩN KOINOTHTRN

FOR THE EUROPEAN ATOMIC ENERGY COMMUNITY REPRESENTED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES

PER LA COMUNITA EUROPEA DELL'ENERGIA ATCMICA RAPPRESENTATA DALLA COMMISSIONE DELLE COMUNITA EUROPEE

VOOR DE EUROPESE GEMEENSCHAP VOOR ATOOMENERGIE VERTEGENWOORDIGD DOOR DE COMMISSIE VAN DE EUROPESE GEMEENSCHAPPEN

PELA COMUNIDADE EUROPEIA DA ENERGIA ATÓMICA. REPRESENTADA PELA COMISSÃO DAS COMUNIDADES EUROPEIAS

PA EUROPEISKA ATOMENERGIGEMENSKAPENS VÄGNAR FÖRETRÄDD AV EUROPEISKA GEMENSKAPERNAS KOMMISSION

.....

.....

Miembro de la Comisión
Medlem af Kommissionen
Mitglied der Kommission
Μέλος της Επιτροπής
Member of the Commission
Membre de la Commission
Membro della Commissione
Lid van de Commissie
Membro da Comissão
Komission jäsen
Ledamot av kommissionen

ANNEX A

INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or furnished under this Agreement shall be allocated as follows:

I. Application

This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed.

II. Ownership, Allocation and Exercise of Rights

A. For purposes of this Agreement "Intellectual Property" shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967.

B. This Annex addresses the allocation of rights, interests and royalties between the Parties and participants. Each Party shall ensure that the other Party 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 between a Party and its nationals, which shall be determined by that Party's laws and practices.

C. Termination or expiry of this Agreement shall not affect rights or obligations under this Annex.

D. (1) In the case of cooperative activities between the Parties, intellectual property arising from joint research, i.e., research supported by both Parties, shall be treated in a Technology Management Plan (TMP) according to the following principles:

(a) The Parties shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement (or relevant implementing arrangements).

(b) Unless otherwise agreed, rights and interests in intellectual property created during joint research shall be exploitable by either Party without territorial restriction.

(c) Each Party shall seek protection for the intellectual property to which it obtains rights and interests under the TMP in a timely fashion.

(d) Each Party shall have a non-exclusive, irrevocable, royalty-free license to use any intellectual property arising under this Agreement for research and development purposes only.

(e) Visiting researchers shall receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions.

(2) In all other cases, to the extent required by its laws and regulations, each Party shall require all its participants to enter into specific agreements concerning

the implementation of joint research and the respective rights and obligations of the participants. With respect to intellectual property, the agreements 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 agreements may also address foreground and background information, licensing and deliverables.

E. While maintaining the conditions of competition in areas affected by this Agreement, each Party shall endeavor 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, (i) the use of information created, or otherwise made available, under this Agreement and its dissemination insofar as this is in accordance both with the conditions set out in this Agreement, the provisions of Section IV hereof and any rules which may be in force under the Parties' domestic laws governing treatment of sensitive or confidential information in the nuclear field, and (ii) the adoption and implementation of international standards.

III. Copyright Works

Consistent with the terms of this Agreement, copyright belonging to the Parties or to participants shall be accorded treatment consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organization.

IV. Scientific Literary Works

Subject to the treatment provided for undisclosed information in Section V, the following procedures shall apply:

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement by or on behalf of the Parties.

B. 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. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

V. Undisclosed Information

A. Documentary Undisclosed Information

1. Each Party and the participants shall identify at the earliest possible moment the information that they wish to remain undisclosed in relation to this Agreement, taking account, *inter alia,* of the following criteria:

- the information is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means;

- the information has actual or potential commercial value by virtue of its secrecy; and

- the information has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

The Parties or the 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 or participant shall ensure that undisclosed information under this Agreement and its ensuant privileged nature is readily recognizable as such by the other Party or participant, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

   A Party or participant receiving undisclosed information pursuant to such agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party or participant to persons employed by the receiving Party or participant including its contractors, and other concerned departments of the Party or participant authorized for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be protected to the extent provided by each Party's laws and regulations and shall be readily recognizable as such, as set out above.

B. Non-Documentary Undisclosed Information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under the Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, will be treated by the Parties or their designees according to the principles specified for documentary information in this Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavor to ensure that undisclosed information received by it under this Agreement shall be 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 paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

VI. Dispute Settlement and New Types and Unforeseen Intellectual Property

A. Disputes between the Parties concerning intellectual property shall be resolved in accordance with Article 12 of the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community and the United States of America.

B. In the event either Party or a participant concludes that a new type of intellectual property not covered in a TMP or agreement between participants may result from a cooperative activity undertaken pursuant to this Agreement, or if other unforeseen difficulties arise, the Parties shall enter into immediate discussions with the object of assuring that the protection, exploitation and dissemination of the intellectual property in question are adequately provided for in their respective territories.