



idm@F4E UID / VERSION

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EXTERNAL REFERENCE

Template

Model Direct Service Contract - 2016 Revision

On 2 December 2015, the Governing Board adopted a new F4E Financial Regulation ("new FR") and Implementing Rules ("new IR"). The model direct Service contract has been updated to implement the modifications introduced by the new rules. The modifications concern the following: 1. Modification of the Time-limits for payment: from 45 Days to 30 Days (pre-financing) and 60 Days (other payments) 2. Modification of the general provision on payments and acceptance: new process for approval of ADP, single deadline for approval of ADP and payment ; clarification of F4E's means of action in case of inadmissibility of request for payment; additional rights of the contractor 3. Late payment interest: Contractor's automatic entitlement to late payment interests at ECB Rate (except if the amount does not exceed 200 EUR) and increase of the margin from 7 to 8 percentage points 4. Adaptation of the articles on Conflict of Interest to align with the new definitions of Conflict of Interest and the new notions of Professional Conflicting Interest 5. Modification of the list of ground for termination for cause essentially to reflect the new exclusions grounds set out in article 106 of the new FR. 6. Adaptation and introduction of definitions Track Change versions are attached for the user's convenience.



CALL FOR TENDER N° F4E-[.]

version 2016

ANNEX 1

MODEL CONTRACT



SERVICE CONTRACT

between

**THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF
FUSION ENERGY**

and



(F4E-[.])

F4E - [Contract reference]

CONTRACT NUMBER – F4E-[.]

The European Joint Undertaking for ITER and the Development of Fusion Energy (“Fusion for Energy”), represented for the purposes of the signature of this contract by [name in full, department],

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(the “Contractor”), represented for the purposes of the signature of this contract by [name in full and function],

of the other part,

HAVING REGARD to Council Decision 2007/198/EURATOM of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it¹ (the “Fusion for Energy Council Decision”),

HAVING REGARD to the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project² (the “ITER Agreement”),

HAVE AGREED

¹ OJ L 90 of 30.3.2007, p. 58

² OJ L 358 of 16.12.2006, p. 62

F4E - [Contract reference]

the Special Conditions and the General Conditions below and the following Annexes and Applicable Documents:

Annexes

Annex A – Management Specifications (IDM reference [*])

Annex B – Technical Specifications (IDM reference [*])

Annex C – Declaration of the Contractor’s Background

Annex D – Intellectual Property Provisions

Annex E – Excerpt of Contractor’s Tender

Annex F – [...]

Applicable Documents

The following documents, all not attached hereto but known to both parties, constitute an integral part of this Contract:

AD	Document title	Ref.	Version/Date
AD01	Supplier Quality Requirements	[xxx]	[xxx]
AD02	Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project	INFCIRC/703	2006-11-21
AD03	Pre-Financing Guarantee Form	[check version vs. contractor]	[xxx]
AD04	Template of the Declaration Regarding Nuclear Liability of the ITER IO	[xxx]	[xxx]
AD05	Insurance Certificates	[xxx]	[xxx]
AD06	Signed Power of Attorney	[xxx]	[xxx]
AD07	Contractor’s Tender	[xxx]	[xxx]
AD08	Form for declaration of Foreground Intellectual Property	[xxx]	[xxx]
AD09	Terms of Reference for the Use of the Designated Carrier	[xxx]	[xxx]
AD10	[...]	[xxx]	[xxx]

which form an integral part of this service contract (the “Contract”).

F4E - [Contract reference]

The terms set out in the Special Conditions shall take precedence over those in the other parts of this Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes except those of Annex D (*Intellectual Property Provisions*) which shall take precedence over the terms set out in the General Conditions. The terms set out in the Annexes shall take precedence over those in the Applicable Documents. The terms set out in the Supplier Quality Requirements (AD-01) shall take precedence over those in the other Applicable Documents.

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Fusion for Energy, subject to the rights of the Contractor under Article I.18 (*Applicable law and settlement of disputes*) should it dispute any such instruction.

I. SPECIAL CONDITIONS

I.1. DEFINITIONS

I.1.1. The following capitalised terms shall have the meaning set forth below:

Acceptance	shall have the meaning set forth in Article II.2 (<i>Acceptance</i>).
Acceptance Data Package	shall have the meaning given to it in Applicable Document AD-01 (<i>Supplier Quality Requirements</i>).
Acceptance Note	shall have the meaning set forth in Article II.2 (<i>Acceptance</i>).
Amendment	shall have the meaning set forth in Article II.23 (<i>Amendments</i>).
Background	shall have the meaning set forth in Article 1.4 of Annex D (<i>Intellectual Property Provisions</i>).
[Claims Officer	<i>shall mean the contact person mentioned in the Claims Protocol Summary.]</i>
[Claims Protocol Summary	<i>shall mean the protocol clarifying the claims handling agreement for the enforcement of the construction/erection all risks policy which was attached to the final tender specifications and may evolve in the future.]</i>
Commencement Date	shall have the meaning set forth in Article I.4 (<i>Entry into force and duration</i>).
Confidential Information	shall have the meaning set forth in Article II.22 (<i>Confidentiality</i>).
Conflict of Interest	Shall mean a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract
Contract	shall mean this contract, its Annexes and the Applicable Documents.
Cost	shall mean all expenditure reasonably incurred (or to be incurred) by the Contractor, including overhead and similar charges, but does not include profit.
Days	shall mean calendar days unless otherwise defined.
Deviation Notice	shall have the meaning given to it in section II.2 of Applicable Document AD-01 (<i>Supplier Quality Requirements</i>).

Deviation Order	shall have the meaning given to it in section II.2 of Applicable Document AD-01 (<i>Supplier Quality Requirements</i>).
Deviation Request	shall have the meaning given to it in section II.2 of Applicable Document AD-01 (<i>Supplier Quality Requirements</i>).
Dispute	shall mean any dispute, difference or controversy of whatsoever nature arising under, out of, relating to or in connection with the Contract, a breach, termination or validity thereof, during its implementation or after its completion (including without limitation during the Warranty Period) and whether before or after suspension or termination of the Contract.
Dissemination	shall have the meaning set forth in Article 1.6 of Annex D (<i>Intellectual Property provisions</i>).
Domestic Agency	shall mean a legal entity through which a Member of the ITER IO provides its contributions to the ITER IO as referred to in Article 8(4) of the ITER Agreement.
Final Acceptance	shall have the meaning set forth in section 1.1 of Annex B (<i>Technical Specifications</i>).
Force Majeure	shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents any of them from performing any of their obligations under the Contract, and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, and (ii) could not have been avoided or overcome by the exercise of due diligence. Defects in, or delays in availability of, equipment or material, labour disputes, strikes or financial problems cannot be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure.
Foreground	shall have the meaning set forth in Article 1.5 of Annex D (<i>Intellectual Property Provisions</i>).
Fraud	Shall mean any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation
Information	shall have the meaning set forth in Article 1.2 of Annex D (<i>Intellectual Property Provisions</i>).
Initial Contract Price	shall have the meaning set forth in Article 1.5 (<i>Initial Contract Price</i>).
[Insuring Party	<i>shall mean, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the Contract.]</i>

Intellectual Property	shall have the meaning set forth in Article 1.1 of Annex D (<i>Intellectual Property Provisions</i>).
Irregularity	Shall mean any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union's budget.
ITER Agreement	shall have the meaning set forth in the Recitals.
ITER Annex on Information and Intellectual Property	shall have the meaning set forth in Article 2.3 of Annex D (<i>Intellectual Property Provisions</i>).
Margin	shall have the meaning set forth in Article II.3 (<i>General provisions concerning payments</i>).
Mission	shall have the meaning set forth in Article II.4 (<i>Reimbursement of expenses.</i>)
Notice of Referral	shall have the meaning set forth in Article I.18 (<i>Applicable Law and Settlement of Dispute</i>)
[Optional Items	<i>shall have the meaning set forth in Article I.3 (Options).</i>
Optional Services	<i>shall have the meaning set forth in Article I.3 (Options).</i>
Options	<i>shall have the meaning set forth in Article I.3 (Options).]</i>
Party	shall mean either contracting party to the Contract.
[Performance Guarantee	<i>shall have the meaning set forth in Article I.9 (Performance Guarantee)]</i>
Personal Data Officer	the Fusion for Energy officer responsible for processing the personal data with respect to the Contract in accordance with Article II.10 (<i>Personal data protection</i>).
[Pre-financing Payment	<i>shall have the meaning set forth in Article I.6 (Payment Periods and Formalities).]</i>
Professional Interest	Conflicting Shall mean a situation in which the Contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.
Project Manager	shall have the meaning set forth in Article I.11 (<i>Representatives</i>).
Reference Rate	shall have the meaning set forth in Article II.3.5(<i>General provisions concerning payments</i>).
Release Note	shall have the meaning given to it in section II.6 of Applicable Document AD-01 (<i>Supplier Quality Requirements</i>).
Representatives of Fusion for Energy	shall have the meaning set forth in Article II.7.2 (Checks and <i>Access Rights</i>).
[Safety Important Class (SIC)	<i>shall mean a subclass (i.e. important for nuclear safety) of</i>

Components	<i>the Protection Important Components as set forth in the French Order of 7 February 2012 relating to the General technical regulations applicable to Basic Nuclear Installation.</i>]
Senior Representative	shall mean a representative of either Party at a senior executive level appointed by that Party to attempt to resolve any Dispute in accordance with Article I.18.3 (<i>Applicable Law and Settlement of Disputes</i>).
Significant Organisational Change	shall mean any of the following events: (i) the sale of more than 50% (fifty percent) of the Contractor's authorized or issued capital stock or any equivalent thereof, (ii) the sale, lease, exchange or other disposition of all or substantially all of the Contractor's assets, (iii) the merger, consolidation or reorganization of the Contractor with or into another entity, (iv) the change of a Subcontractor [<i>or Qualified Provider</i>]; (v) a change in the Contractor's legal, financial, technical or organisational situation which could adversely affect, alter or impair the rights and/or interests of Fusion for Energy under or pursuant to the Contract, and (vi) where the Contractor is a consortium, any of the following: (a) a change in the lead entity representing the consortium, or (b) a change in the composition of the consortium. Where the Contractor is a consortium, all events under (i) to (v) refer to any of its members.
Staff	shall refer to individuals involved in the performance of this Contract.
[Stages	<i>shall have the meaning set forth in Article I.2 (Subject matter).</i>]
Subcontractor	shall mean any economic operator, who is not Party to this Contract, and who enters into a legal commitment with the Contractor in order to perform a part of the Contract.
Substantial Error	Shall mean any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union's budget.
[Qualified Provider]	<i>shall mean any economic operator other than Subcontractor, who does not perform part of the Contract but who enters into a legal commitment with the Contractor to provide resources that will be used for the performance of the Contract [i.e. insert criteria(volume, amount, type of material or list of Qualified Provider)].</i>
Responsible Officer	shall have the meaning set forth in Article I.11 (<i>Representatives</i>).
Total Contract Price	shall have the meaning set forth in Article I.5.6 .

I.1.2. For the purposes of this Contract, except as otherwise expressly provided or unless the context otherwise requires:

- (a) The terms defined in this Contract have the meanings assigned to them in this Contract and/or its Annexes and include the plural as well as the singular, and the use of any gender herein shall include the other gender.
- (b) The captions used in this Contract are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Contract or any provision hereof.
- (c) The words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Contract as a whole and not to any particular provision.
- (d) The terms “include” or “including” shall mean, without limitation, by reason of enumeration and shall not be interpreted restrictively.
- (e) Each reference to an “Annex” of this Contract shall include all sections of such Annex and each reference to an “Article” of this Contract or to a “section” of its Annex shall include all subsections/points of such Article or section.
- (f) Any terms used in this Contract and not otherwise defined herein shall have the meaning ascribed thereto pursuant to any of its Annexes, in the Fusion for Energy Council Decision and/or the ITER Agreement.
- (g) References to any element of the legislation, statute, act, law, regulation, or Fusion for Energy’s procedures/rules or any provision thereof shall, where applicable, be deemed to be references to that element of the legislation, statute, act, law, regulation, or Fusion for Energy’s procedures/rules, as amended or re-enacted.

I.2. SUBJECT MATTER

I.2.1. The subject matter of this Contract is the provision of [.] as set out in detail in Annex B (*Technical Specifications*) (the “**Service**”).

I.2.2. The Contractor shall provide the Service in accordance with the provisions of this Contract.

I.2.3. *[The subject matter of this Contract is divided into [.] stages (the “Stages”):*

- (a) *Stage 1: activities forming part of the Service as described in section [.] of Annex B (Technical Specifications). Stage 1 shall start on [.] [the Commencement Date] and the duration for performance shall be consistent with the schedule described in section [.] of Annex B (Technical Specifications); and*
- (b) *Stage 2: activities forming part of the Service as described in section [.] of Annex B (Technical Specifications). Stage 2 shall be released no later than [.] and the duration for performance shall be consistent with the schedule described in section [.] of Annex B (Technical Specifications)].*
- (c) *[Stage 3]*

I.2.4. *[Pursuant to this Contract, the Contractor shall exclusively undertake the work concerning Stage 1, the only Stage coming into force on the Commencement Date.]*

I.3. OPTIONS

I.3.1. *[Fusion for Energy may request the Contractor to perform the following optional services (the “Optional Services”) and/or to supply the following optional items (the*

"Optional Items"): (the *Optional Services and the Optional Items*: together the **"Options"**):

- (a) *Option 1 – [...] in accordance with section [.] of Annex B (Technical Specifications);*
- (b) [**•**].

1.3.2. *The exercise of each of the Options shall be subject to a written instruction by Fusion for Energy. Such written instruction shall:*

- (a) *explicitly inform the Contractor that Fusion for Energy has decided to exercise one (1) or several of the Option(s);*
- (b) *indicate the date on which exercise of the Option(s) shall enter into force;*
- (c) *indicate the date [on which performance of the Option is to commence or to be agreed by the Parties]; and*
- (d) *be sent by registered letter.*

1.3.3. *Performance of the Options may under no circumstances start before the date indicated in the instruction. The Contractor shall perform the exercised Options in accordance with the provisions of the Contract.*

1.3.4. *Fusion for Energy shall be entitled to exercise the Options within the time frame specified below [or as specified in Annex [**★**]:*

- (a) *With respect to Option [**★**], within [**★**] months of [the Commencement Date or [**★**];*
- (b) *With respect to Option [**★**], within [**★**] months of [the Commencement Date or [**★**].]*

1.3.5. *The duration of the Options [**★**]-[**★**] shall be [as follows/or as specified in Section [.] of Annex [**★**] (**•**):*

- (a) *[Option [**★**]: [**★**] months [from the Commencement Date/from the date on which performance of the Option is to commence.];*
- (b) *Option [**★**]: [**★**] months from the Commencement Date/from the date on which performance of the Option is to commence.]]*

1.3.6. *The exercise of any of the Options is subject to Fusion for Energy's sole discretion. The Contractor shall not be entitled to any compensation, should Fusion for Energy decide not to exercise one or several of the Options.*

1.3.7. *Should Fusion for Energy exercise any Option, requests for payments of such Options shall be admissible together with any of the payment periods referred to in Article I.6 (Payment periods and formalities), after completion of the work under the Option and reception by Fusion for Energy of the Acceptance Data Package for that Option unless otherwise indicated in Article I.7 of the Contract or otherwise indicated by Fusion for Energy in the written instruction.*

I.4. ENTRY INTO FORCE AND DURATION

1.4.1. *This Contract shall enter into force on the date on which it is signed by the last Party (the "Commencement Date").*

F4E - [Contract reference]

- I.4.2. Performance of this Contract may under no circumstances begin before the Commencement Date.
- I.4.3. Performance of the Contract shall last until completion of the mutual obligations of the Parties under the Contract, without prejudice to Article I.17 (*Survival of obligations*). Performance of the Contract shall be consistent with the milestones set out in section [...] of Annex B (*Technical Specifications*).
- I.4.4. [Performance of the Stages shall be as follows:
- (a) Stage 1: performance shall start on the Commencement Date and shall last for up to [•](*) months;
 - (b) Stage 2: performance shall start no later than [•] months after [Commencement Date or [•]] and last for [•] (*) months.]

I.5. PRICES

- I.5.1. The amount to be paid by Fusion for Energy to the Contractor shall be EUR [amount in figures and in words] covering the provision of the Service and execution of any related obligations in accordance with the conditions of this Contract (the “**Initial Contract Price**”).
- I.5.2. [The amount corresponding to each Stage is the following:
- (a) Stage 1: EUR [amount in figures and words] covering the provision of the Service and execution of any related obligations relating to Stage 1 (Contract Price relating to Stage 1);
 - (b) Stage 2 [if instructed as per Article I.2.5]: EUR [amount in figures and words] covering the provision of the Service and execution of any related obligations relating to Stage 2 (**Contract Price relating to Stage 2**).
- I.5.3. [The amount to be paid by Fusion for Energy for the Options, if exercised, shall be as follows:
- (a) Option 1: EUR [amount in figures and words] [per month/week/Day];
 - (b) Option 2: EUR [amount in figures and words] [per month/week/Day].
- I.5.4. The unit prices regarding the Service shall be as listed in the Contractor’s Tender (AD-07).
- I.5.5. [Travel and subsistence expenses shall be reimbursed in accordance with Article II.4 (*Reimbursement of Expenses*) [only for travels necessary to perform the tasks set out in section [...] of Annex B (*Technical specification*)/only for travels to [place and purpose] which are necessary for performance of the Service], up to a maximum of [amount in figures and words].] [Any such Mission shall be subject to Fusion for Energy’s prior written authorization [which may be given via e-mail]].
- I.5.6. The Total Contract Price shall be the sum of the Initial Contract Price, plus the price corresponding to any exercised Options, plus any sum paid to the Contractor in reimbursement of the expenses as set out in Article I.5.5, if applicable (the “**Total Contract Price**”).
- I.5.7. Prices shall be expressed in EUR.

1.5.8. All prices shall be fixed and firm, not subject to revision during the lifetime of this Contract, regardless of any variations in the price of materials, equipment or labour, except as otherwise stipulated in the Contract. Prices shall be deemed to include all costs and expenses related to the execution of this Contract.

1.5.9. **[Revision of prices]**

After [one (1) year] from the Commencement Date, all remaining payments may be revised upwards or downwards, once a year, where such revision is requested by one of the Parties by registered letter no later than three (3) months before the anniversary of the Commencement Date.

This revision shall be determined by [to use appropriate index as defined in Indexation Policy] published by [see Indexation Policy: e.g. the Office for Official Publications of the European Union in the EUROSTAT monthly bulletin at <http://www.ec.europa.eu/eurostat/> or any other official publication in relation with the structure of costs.]

Revision shall be calculated in accordance with the following formula:

[Add formula as per Indexation Policy: e.g. $Pr = Po (0,2+0,8 Ir/Io)$ / $[Pr = \dots$

where:

Pr = revised amount of the remaining payments;

Po = original amount of the remaining payments;

Io = index for the month corresponding to the final date for submission of tenders;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.]

[No indexation shall take place where the variation of price leads to a variation lower or equal to EUR 25.000 (twenty-five thousands Euro)]

I.6. PAYMENT PERIODS AND FORMALITIES

1.6.1. Payments shall be made only if the Contractor has properly fulfilled all its contractual obligations by the date on which the request for payment is submitted.

1.6.2. Should the Contractor fail to perform his obligations under the Contract, Fusion for Energy may – without prejudice to its right to terminate this Contract or any other remedies it may have at law – suspend, reduce or recover payments in proportion to the scale of the non-performance.

[Stage 1 – if applicable:]

1.6.3. Pre-financing Payment:

[Pre-financing payment is not applicable to this Contract.]

[Fusion for Energy shall pay the Contractor a pre-financing payment of EUR [amount in figures and words] (corresponding to 10/20/30% (ten/twenty/thirty percent) of the amount referred in Article [I.5.1 (Initial Contract Price)/I.5.2.(a) Contract Price relating to Stage 1] (the “Pre-financing payment”) within thirty (30) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.

[Fusion for Energy will pay only if it has received a duly constituted financial guarantee in the form provided in the Applicable Documents (AD03-Pre-financing Guarantee Form) equal to the amount of the Pre-financing Payment].

I.6.4. Interim Payment(s):

[Interim payment is not applicable to this Contract.]

[Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [★] % of the amount referred to in Article [I.5.1 (Initial Contract Price)/I.5.2.(a) (Contract Price relating to Stage 1)] [minus the Pre-financing Payment [if applicable]/minus a percentage of the Pre-financing Payment].

The Contractor must send a request for interim payment accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (Technical Specifications).

Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.

I.6.5. Payment of the balance:

Fusion for Energy shall pay the Contractor the balance of EUR [amount in figures and words] corresponding to [.] % ([.] percent) of the amount referred to in article I.5.1/I.5.2 (a).

The Contractor must send a request for the payment of the balance accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (Technical Specifications).

Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.

Stage 2 (if applicable)

I.6.6. Pre-financing:

[Pre-financing payment is not applicable to this Contract.]

[Fusion for Energy shall pay the Contractor a pre-financing payment of EUR [amount in figures and words] (corresponding to 10/20/30% (ten/twenty/thirty percent) of the amount referred in article [I.5.1 (Initial Contract Price)/5.2.(b) Contract Price relating to Stage 2] (the “Pre-financing payment”) within thirty (30) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.]

[Fusion for Energy will pay only if it has received a duly constituted financial guarantee in the form provided in the Applicable Documents (AD03-Pre-financing Guarantee Form) equal to the amount of the Pre-financing Payment.]

I.6.7. Interim payment(s):

Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] corresponding to [.] % ([.] percent) of the Initial Contract Price/Contract Price relating to Stage 2 minus [.]% ([.] percent) of the Pre-financing [for Stage 2]).

F4E - [Contract reference]

The Contractor must send a request for interim payment accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (Technical Specifications).

Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.

I.6.8. Payment of the balance:

Fusion for Energy shall pay the Contractor the balance of EUR [amount in figures and words] corresponding to [.]% ([.] percent) of the Contract Price relating to Stage 2.

The Contractor must send a request for payment of the balance accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (Technical Specifications).

Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.

I.7. PAYMENT OF THE OPTIONS

[In case specific payment modalities for Option are necessary, please indicate them here.]

I.8. PRE-FINANCING GUARANTEE

I.8.1. [Where the amount of the Pre-financing Payment equals or exceeds EUR 300.000 (Three Hundred Thousand euros), the Contractor shall provide a Pre-financing guarantee covering the amount of the Pre-financing Payment issued in favour of Fusion for Energy by an authorized bank or other financial institution established in the European Union or Switzerland having a public credit rating of not less than BBB by Standard and Poors or equivalent credit rating from a reputable ratings agency acceptable to Fusion for Energy, in accordance with the template set out in the Applicable Documents (AD03 -Pre-financing Guarantee Form). The guarantee will be released by Fusion for Energy within one (1) month after the clearing of the Pre-financing Payment against the [interim payments/payment of the balance].

I.8.2. The guarantor shall stand as first-call guarantor and shall not require Fusion for Energy to have recourse against the principal debtor, being the Contractor. The guarantee shall specify that it enters into force at the latest on the date on which the Pre-financing Payment is received by the Contractor and shall expire within one (1) month after the clearing of the Pre-financing Payment against the [interim payments/payment of the balance].

I.8.3. The cost of providing such Pre-financing guarantee and any extension thereof shall be borne by the Contractor].

I.9. PERFORMANCE GUARANTEE

[Not applicable in principle for contracts with no obligations after the final payment or for contracts with surviving obligations whose value is below EUR 10.000.000 (ten million). A performance guarantee shall be compulsory for contracts with surviving obligations whose Total Contract Price is equal or above EUR 10.000.000 (ten million).

I.10. BANK ACCOUNT

I.10.1. Payments shall be made to the Contractor's bank account denominated in EUR, identified as follows:

Name of bank: [complete]

Address of branch in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

IBAN³ code: [complete]

I.10.2. The same bank account and value added tax (VAT) registration number shall be indicated on each invoice.

I.10.3. Any request for modification of the Contractor's bank account shall be made by letter duly accompanied by all the supporting documents. Any modification of the Contractor's bank account shall be approved by letter from Fusion for Energy's Responsible Officer.

I.11. REPRESENTATIVES**I.11.1. Fusion for Energy's Responsible Officer**

Fusion for Energy appoints [name] as the Responsible Officer for this Contract. Subject to Article II.23 (*Amendments*), the acts and decisions of the Responsible Officer shall only bind Fusion for Energy within the limits set out in this Contract if made in writing and duly signed by such officer.

I.11.2. Contractor's Project Manager

The Contractor nominates [name] as Project Manager responsible for coordinating the performance of the tasks under the Contract and Contract follow-up.

The Contractor nominates the following key Technical Officers:

1. *Technical* responsible, [name];
2. *Technical responsible for [.]*, [name];

The Project Manager shall be the main contact point of the Contractor regarding any issue raised in connection with the performance of this Contract and shall also coordinate the performance of the Contractor's obligations under this Contract. The Project Manager shall be and shall be deemed to be vested by the Contractor with sufficient power and authority to perform such tasks and represent the Contractor under this Contract.

[The Project Manager and the key Technical Officers listed above shall be dedicated full time to the execution of this Contract.]

³ BIC code for countries with no IBAN code

F4E - [Contract reference]

- I.11.3. The Parties shall give prior written notice of any modification of their representatives listed in this Article I.11. The minimum term for written notice of any modification shall be 15 (fifteen) Days.
- I.11.4. [Any modification of the Contractor's Project Manager and/or key Technical Officer shall be subject to prior approval by Fusion for Energy.]

I.12. COMMUNICATION

- I.12.1. All communications from the Contractor to Fusion for Energy shall be sent by the Project Manager or its office. Fusion for Energy shall send or copy all communication to the Contractor to the Project Manager.
- I.12.2. Any communication relating to the Contract shall be made in writing, in English and shall bear the Contract number. All communications shall be made by mail or electronic mail, as well as by any other means, provided always that in these cases there is evidence of due receipt by the addressee(s), save as otherwise provided in the Contract.
- I.12.3. Ordinary mail shall be deemed to have been received by Fusion for Energy on the date on which it is registered by the department responsible indicated below.
- I.12.4. Communications shall be sent to the following addresses:

For Fusion for Energy:

[name of the Responsible Officer]

[In copy to:

[name]]

Contract number [F4E-...]

The European Joint Undertaking for the Development of ITER and Fusion Energy ('Fusion for Energy')

c/Josep Pla 2

Torres Diagonal Litoral

Building B3

08019 Barcelona

Spain

For the Contractor:

Mr/Mrs/Ms [name of the Project Manager]

[function]

[company name]

[official address in full]

I.13. LIABILITY

I.13.1. Contractor's liability:

The Contractor shall be liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under this Contract. The Contractor's total liability under this Contract shall not exceed [at least one] time(s) the Total Contract Price, subject to the sole exceptions set out in this Article I.13.

Notwithstanding any other provision of this Contract, the Contractor shall remain liable without any limitation as to the amount, for the following:

- (a) damage or loss caused by the gross negligence or wilful misconduct of the Contractor, its employees or agents, or of any Subcontractor or its employees or agents;
- (b) personal injuries or death caused by the Contractor, its employees or agents, or of any Subcontractor or its employees or agents; ;
- (c) damage or loss directly resulting from non-compliance with any applicable mandatory law or from an infringement of intellectual property rights of a third party.

I.13.2. **Third party actions:**

Notwithstanding any provision to the contrary, the Contractor shall be responsible for and shall indemnify Fusion for Energy, without any limitation as to the amount, in the event of any action, claim or proceeding brought against Fusion for Energy by a third party as a result of damage caused by the Contractor in the execution of this Contract. The indemnification shall not exceed the amount of damage and costs sustained by Fusion for Energy as a result of the third party action within the meaning of this Article.

In the event of any action brought by a third party against Fusion for Energy in connection with the performance of this Contract, the Contractor shall, upon request, promptly and fully assist Fusion for Energy.

The ITER IO shall not be considered a third party for the purposes of this Article I.13 unless the damage or loss suffered by the ITER IO was caused by the Contractor's wilful misconduct or gross negligence.

I.13.3. **Consortium**

If the Contractor is a group of economic operators or a consortium, the economic operators forming such group or consortium shall be jointly and severally liable to Fusion for Energy for any loss, damage or claim as a result of the performance or breach of Contractor's obligations by any of them, under the conditions established in Article I.13.1.

I.13.4. **Fusion for Energy's liability:**

Fusion for Energy shall not be liable for any loss, damage or claim sustained by the Contractor in the performance of this Contract except in case of loss or damage arising directly as a result of wilful misconduct or gross negligence by Fusion for Energy

I.13.5. **[Nuclear Liability:**

The Parties hereby acknowledge that nuclear fusion installations are currently not covered by international nuclear liability conventions and that ITER IO assumes by virtue of the declaration in the Applicable Documents (AD04-Declaration regarding Nuclear Liability of ITER) the responsibility of a Nuclear Operator for indemnifying the Contractor in the event of claims, damage and losses caused by radiological damage arising from a nuclear incident as defined by the Paris Convention 'Third Party liability in the Field of Nuclear Energy' of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982].

I.14. **INSURANCE**

- I.14.1. The Contractor shall effect and maintain suitable insurance from a reputable insurance company against risks and damages relating to performance of the Contract as required

by the relevant applicable legislation and reasonably required by standard practice in the industry.

I.14.2. In any case, the Contractor shall effect and maintain the following insurance:

- (a) Third party and public liability insurances to cover each and every liability which the Contractor may incur relating to the performance of the Contract with a limit of indemnity of not less than EUR [amount in figures and words] for any occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract (i.e. with a validity period of at least 2 (two) years following any termination of the Contract).
- (b) Professional indemnity insurance without unusual or onerous conditions or excesses to cover each and every liability which the Contractor may incur relating to the performance of the Contract including joint and several liability of its members and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty execution, with a limit of indemnity of not less than EUR [amount in figures and words] for any one occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract (i.e. with a validity period of at least 2 (two) years following any termination of the Contract).

I.14.3. The insurance policies listed above shall allow direct payment of the compensation for the insured damage sustained.

I.14.4. Upon request, the Contractor shall provide to Fusion for Energy:

- (a) copies of all relevant insurance certificates; and
- (b) evidence that premiums payable under all insurance policies have been paid and that the policies are in full force and effect.

I.14.5. [Contract implementation in the ITER site in Cadarache]

Wherever the Contractor is the Insuring Party, each insurance policy shall be effected in terms and with insurers approved by Fusion for Energy. These terms shall be consistent with any terms agreed by both Parties before the Contract is signed.

Each policy insuring against loss or damage shall provide for payments to be made in the currency required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The Insuring Party shall keep the insurers informed of any relevant changes to the execution of the Contract and ensure that insurance is maintained in accordance with this Article I.14.

Nothing in this Article I.14 limits the obligations, liabilities or responsibilities of the Contractor or the Fusion for Energy, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or Fusion for Energy in accordance with these obligations, liabilities or responsibilities.

(a) All risk insurance policy taken out by Fusion for Energy

Fusion for Energy shall maintain an all-risks insurance policy to cover the risk of physical loss or damage to the works to be carried out onsite in accordance with the Construction and Erection All Risks Policy as attached under Applicable Document [AD-05](The insurance certificate).

Insurance indemnification will be processed according to the Claims Protocol Summary and managed through the Claims Officer, to the insured which suffered the loss. The deductible is borne by the insured which suffered the loss, without any determination of the liability for the damage.

Reimbursement of the deductible by the economic operator considered liable is the responsibility of the insured having borne the deductible, and depends only on it. This shall not adversely affect the Contract implementation.

(b) Third party liability taken out by Fusion for Energy

Fusion for Energy shall take out and maintain an insurance policy that covers third-party liability as indicated in the Applicable Documents [•] (The insurance certificate)

This shall not affect any of the Contractor's obligations under this Article I.14 or any other provision of the Contract.

(c) Insurance for Contractor's equipment taken by the Contractor

The Contractor shall take out and maintain insurance for its own equipment.

This obligation applies as well for Subcontractor's equipment and the Contractor shall, upon request, provide evidence of such insurance on its behalf.

(d) Insurance for motor vehicle liability taken by the Contractor

Without prejudice to its other obligations under the Contract or otherwise pursuant to the applicable law, the Contractor shall maintain motor vehicle liability with an insurance value limit in accordance with French law.

Reimbursement of the deductible by the economic operator considered liable is the responsibility of the insured having borne the deductible, and depends only on him. This shall not adversely affect the Contract implementation.

(e) Insurance for Contractor's personnel taken by the Contractor

The Contractor shall cover its liability for any claims, damages, losses and expenses arising from injury, sickness or death of any person employed by the Contractor or and of the Contractor's personnel, according to French law.

This cover shall be maintained during the whole time that these personnel are assisting in or participating to the execution of the works carried out onsite. This obligation applies to the Subcontractors as well and the Contractor shall be responsible for compliance to this Article by the Subcontractors.

(f) Professional indemnity insurance taken by the Contractor

The Contractor shall take out and maintain professional indemnity insurance without unusual or onerous conditions or excesses to cover each and every liability which the Contractor may incur relating to the performance of the Contract including joint and several liability of its members and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty execution, with a limit of indemnity of not less than EUR 10,000,000 (ten million) for any one occurrence and in the yearly aggregate, notwithstanding any termination of the present contract.]

I.15. LIQUIDATED DAMAGES

- 1.15.1. Where [completion date is not met/any of the milestones dates for deliverable [.] /milestones [★] defined in section [★] of Annex B (Technical Specifications), as extended if at all, are not met] and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to [.]% ([.] percent) of the Total Contract Price (at the time of the occurrence of the above date)/ total price for the relevant Stage] per [day/week/month] of delay, up to a maximum of 10% (ten percent) of the Total Contract Price. Fusion for Energy may at its sole discretion apply a lower amount.

- I.15.2. Without prejudice to Fusion for Energy's right to terminate the Contract in accordance with Article II.18 (*Termination by Fusion for Energy for cause*), the liquidated damages payable under this Article I.15 shall constitute the sole, full and final remedy available to Fusion for Energy in respect of any delay.
- I.15.3. The Parties expressly agree and acknowledge that any amounts payable under this Article I.15 are of the nature of liquidated damages and not penalties and represent a reasonable estimate of fair compensation for the damages and losses that may be reasonably anticipated by Fusion for Energy from any delay of the Contractor.

I.16. INTELLECTUAL PROPERTY

- I.16.1. The provisions of Annex D (*Intellectual Property Provisions*) shall be applicable.

I.17. SURVIVAL OF OBLIGATIONS

- I.17.1. Obligations under this Contract, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in the Article I.13 (Liability), Article II.20 (Checks and Audits), Article II.22 (Confidentiality) and Annex D (*Intellectual Property Provisions*) shall survive the termination or expiration of this Contract.

I.18. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.18.1. The Contract shall be governed by the Community and European Union Law, complemented by national substantive law of [*Spain/France*] other than its rules of private international law (conflict of law/*renvoi* rules).
- I.18.2. The Parties agree that all Disputes shall be resolved in good faith in accordance with the following provisions.
- I.18.3. Any Dispute shall in the first place be referred for resolution to the Senior Representatives of the Parties by service of a notice of referral (the "**Notice of Referral**").

The Notice of Referral shall be duly accompanied by:

- (a) Full written particulars of the matters that are the subject of the Dispute;
- (b) Full details of the factual and legal basis of the referring Party's claim;
- (c) Full details of the remedy sought by the referring Party together with full particulars in support of that remedy; and
- (d) Copies of all documents relied upon by the referring Party in support of its claim.

Following service of a Notice of Referral and the accompanying information specified above, the Senior Representatives shall meet in person and endeavour in good faith to reach agreement to resolve the Dispute. Notwithstanding the reference of any Dispute to the Parties' Senior Representatives, the Parties shall continue to perform their duties and obligations hereunder.

- I.18.4. If the Senior Representatives fail to reach agreement to resolve the Dispute within thirty (30) working days of the date of the Notice of Referral (or such other period as may be agreed in writing by the Senior Representatives) then the Dispute shall be resolved in accordance with Article I.18.5. In this case, if the Dispute is not referred to the Court of

Justice of the European Union (the "ECJ") within three hundred sixty five (365) days as from the date of the Notice of Referral no reference in respect thereof may be commenced.

- I.18.5. Any Dispute between the Parties which cannot be settled amicably or by way of an agreement of the Senior Representatives shall be exclusively decided by the ECJ in accordance with its own rules of procedure. The language of the proceedings shall be English. Notwithstanding the foregoing, neither Party shall be entitled to refer any Dispute for resolution pursuant to this Article I.18.5, unless the Dispute has been first referred to the Senior Representatives pursuant to Article I.18.3. Notwithstanding the reference of any Dispute to the ECJ, the Parties shall continue to perform their duties, obligations and liabilities hereunder.
- I.18.6. At any stage after the failure to reach an agreement on any Dispute referred to the Senior Representatives of the Parties under Article I.18.3 and without prejudice to Article I.18.3 and Article I.18.5, the Parties may at any time agree to submit the Dispute to mediation, in which case the following procedure shall apply:
- (a) If any Party to the Dispute gives written notice to the other Party of its desire to commence mediation, and the other Party agrees in writing, the Parties shall jointly appoint a mutually acceptable mediator within two (2) weeks of the date of the said written agreement. If the Parties are unable to agree upon the appointment of a mediator within that time period, then the Parties agree to submit the Dispute in question to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce (being in force as from 1 January 2003).
 - (b) Within two (2) months of its appointment, the mediator shall produce a non-binding written proposal resolving the Dispute or a statement that no proposal can be made. The mediator's proposal shall not be binding on the Parties, who reserve the right to bring the Dispute before the ECJ, as per Article I.18.5, as the case may be.
 - (c) Within two (2) weeks of the date of notification of the proposal of the mediator [or expert], the Parties can conclude a written agreement, duly signed by the Parties, based on the proposal. In case such agreement is reached, the Parties are precluded from initiating proceedings before the ECJ. If such proceedings have already commenced, the Party who brought the dispute before the ECJ shall withdraw the claim, or the part of it which has been settled by mediation.
 - (d) The Parties further agree to share equally the costs of mediation and, if necessary, the fees and the costs of the International Centre for Expertise of the International Chamber of Commerce, provided, however that such fees and costs will not include any fees or costs incurred by a Party in connection with the mediation.

I.19. OTHER SPECIAL CONDITIONS

I.19.1. Items delivered to the Contractor

[.]

I.19.2. [Rules on access and presence of external Contractor Staff for the execution of services in Fusion for Energy's premises]

- (a) *[The Contractor shall, within three (3) calendar days prior to the envisaged beginning of the work on Fusion for Energy premises, submit to Fusion for Energy the list of his employees he will entrust with the execution of the onsite Services, transmitting for each*

Person information on name, first name, date and place of birth, profession, and residence.

- (b) Persons may only have access to Fusion for Energy premises with a permit that has been delivered to them personally by Fusion for Energy. This permit shall be constantly visible in order for the person being capable of being identified. Fusion for Energy reserves the right not to accept unwelcome persons on its premises, at his discretion, by informing the Contractor. The Contractor shall make sure that the permit is returned to Fusion for Energy at the end of the services.*
- (c) The working hours of the Contractor's personnel must be included in Fusion for Energy's opening time, which is as follows: Monday-Friday: 8.30 to 13.00 and from 14.15 to 17.30. The Contractor will receive the list of days regarded as bank holidays by Fusion for Energy, apart from Saturdays and Sundays. Dispensation to the above-mentioned timetable shall be possible only with the authorisation granted on a case by case basis by the representatives of Fusion for Energy.*
- (d) Each of the Contractor's employees accepted for services at Fusion for Energy premises shall remain a direct employee of the Contractor at all times during the period of such services. It is expressly agreed that such person shall not be considered an employee or agent of Fusion for Energy. The Contractor shall indemnify and hold harmless Fusion for Energy for any such claim by any such person. The relation of employment between the Contractor and his employee shall remain the same and shall not be altered by this Contract. At the end of the services at Fusion for Energy premises, the Contractor ensures that such employees leave the site.*
- (e) Fusion for Energy shall not be responsible for any payment to the Contractor's employees for any cost or expenses incurred by him and/or his employees under or in connection with this Contract, In particular, Fusion for Energy shall not pay any salary, remuneration, reimbursement of travel and living expenses or the like to the Contractor's employees. The Contractor shall indemnify and hold harmless Fusion for Energy from any such claim by his employees.*
- (f) Fusion for Energy may request the Contractor to recall a person from the Fusion for Energy's premises when deemed appropriate and provide a justification. The Contractor shall immediately comply with such a request, and, if requested by Fusion for Energy, the Contractor shall substitute the recalled person by another employee.*
- (g) Each of the Contractor's employees and/or Subcontractors (personnel) working in the premises of Fusion for Energy shall conform to any internal security and information technology rules of Fusion for Energy, including the Information Systems Security Policy of Fusion for Energy that is made available to the Contractor before commencing any works in the premises of Fusion for Energy.*
- (h) The Parties declare and acknowledge that the Contractor's employees and/or Subcontractors (personnel) working in the premises of Fusion for Energy shall by no means be (re)qualified as staff member of Fusion for Energy. The Contractor undertakes in agreement with Fusion for Energy to work out, implement and maintain appropriate measures to prevent such requalification.*
- (i) All property of the Contractor while at the Fusion for Energy premises shall be at risk of the Contractor and Fusion for Energy shall accept no liability for any loss or damage to that property or caused by that property except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee of Fusion for Energy acting in the course of their employment. Fusion for Energy shall accept liability only to the extent to which such loss or damage is so caused or contributed to.]*

1.19.3. [Qualified Providers

Article II.12 (Subcontracting) applies to Qualified Providers.]

I.19.4. [Warranty]

Obligation for the Contractor to correct mistakes, ambiguities or inconsistencies discovered after Final Acceptance up to a period of [one (1) year] [and to repeat the performance of part of the services concerned] without additional payment].

II. GENERAL CONDITIONS

II.1. PERFORMANCE OF THE CONTRACT

II.1.1. General provisions on performance of this Contract:

- (a) The Contractor shall perform this Contract with due skill, care and diligence, in accordance with the high professional standards of an experienced contractor in the field of this Contract.
- (b) The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU⁴.
- (c) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required to perform this Contract under the laws and regulations in force at the place where this Contract is to be executed.
- (d) The Contractor shall be obliged to follow the instructions of Fusion for Energy given in writing by the Responsible Officer for this Contract. If the Contractor receives instructions that jeopardize the economical, expeditious, and safe performance of this Contract, it shall immediately call the attention of Fusion for Energy in writing thereto. However, if the Responsible officer for this Contract repeats the instructions in writing, the Contractor shall execute them at the risk and expense of Fusion for Energy.
- (e) The Contractor shall neither represent Fusion for Energy nor behave in any way that would give such an impression. The Contractor shall inform third parties that it and its employees do not belong to the European public service.

II.1.2. General provisions regarding the Contractor's Staff

- (a) The Contractor must ensure that any Staff performing the Contract (including that of Subcontractors) has the professional qualifications and experience required for execution of the Contract.
- (b) Upon request of Fusion for Energy, the Contractor shall justify the deployment of the human resources, regarding the number and the professional qualification of the personnel involved for the execution of the Contract.
- (c) The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him with respect to its Staff, notably those resulting from employment, tax, social security and health and safety legislation. The Contractor shall indemnify and hold harmless Fusion for Energy from any claim in that respect including those claims related to salary, remuneration, tax, social security and health and safety obligations of the Contractor. If requested by Fusion for Energy, the Contractor shall submit copies of forms evidencing compliance with the aforementioned obligations.
- (d) The Contractor shall be responsible for the submission of any information required by the labor or tax authorities, or other authority, having jurisdiction over the work in respect of the employees working or from time to time employed or hired by the Contractor and its subcontractors to carry out any work under this Contract. The Contractor shall also be responsible to submit copies of that documentation to Fusion for Energy. The Contractor

⁴ OJ L 94 of 28.03.2014, p. 65

shall keep at all times in the site the legally required books and records containing information on its employees and those of its subcontractors working on the site. Fusion for Energy shall have access to the information contained in such registry book.

- (e) The Contractor shall have sole responsibility for the Staff executing the tasks under the Contract. The Contractor has the duty to manage the team in charge of the execution of this Contract.
- (f) The Contractor shall make provision for the following employment or service relationships with its Staff: (1) Staff executing the tasks assigned to the Contractor may not be given orders directly by Fusion for Energy; and (2) Fusion for Energy may not under any circumstances be considered to be the Staff's employer and the said Staff shall undertake not to invoke in respect of Fusion for Energy any right arising from the contractual relationship between Fusion for Energy and the Contractor.
- (g) The Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the work. The Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. The Contractor shall advise Fusion for Energy promptly in writing of any actual or threatened labor dispute of which the Contractor has knowledge that might materially affect the performance of this Contract by the Contractor or by any of its subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.
- (h) In the event of disruption resulting from the action or omission of a member of the Contractor's Staff or in the event of the expertise of a member of the Contractor's Staff failing to correspond to the profile required by this Contract, the Contractor shall replace him without delay. Fusion for Energy shall have the right to request the replacement of any such member of Staff, stating its reasons for so doing. Replacement Staff must have the necessary qualifications and be capable of performing this Contract under the same contractual conditions. The Contractor shall ensure the continuity of the service and the transfer of knowledge from the replaced Staff to the replacement Staff. The Contractor shall be responsible for any delay in the execution of this Contract resulting from the replacement of Staff

II.1.3. Quality management and safety

- (a) The Contractor shall comply during the performance of this Contract with the quality and management requirements laid down in Annex I of this Contract.
- (b) The Contractor shall have the responsibility for ensuring compliance with the safety regulations and standards applicable in the places where the Contract is executed.

II.2. ACCEPTANCE

II.2.1. Acceptance:

In this Contract, "Acceptance" shall mean acknowledgement that the Service and the deliverables are in compliance with the contractual requirements.

Acceptance of the Service and the deliverables shall be evidenced by a written communication to this effect or, in the case of a deliverable linked to a payment, by the payment.

Conformity shall be declared only where the conditions laid down in this Contract are satisfied and the Service provided conform to Annex A (*Management Specification*) and Annex B (*Technical Specifications*).

Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Service and the deliverables, the Contractor shall be notified in writing at the latest by the deadline for approval of Acceptance Data Package.

Approval of any deliverable or document by any means other than those set out in this Article II.2 shall not constitute an Acceptance within the meaning of this Article II.2. No obligation and/or responsibility of the Contractor under this Contract shall be released until Final Acceptance.

Acceptance is without prejudice to the rules on Liability in Article I.13.

II.2.2. Approval of the Acceptance Data Packages linked to payments:

(a) Where the Contractor must submit an Acceptance Data Package (ADP) linked to a payment, Fusion for Energy has sixty (60) Days from receipt of the relevant request for payment :

- (1) to approve it and make the payment; or
- (2) to reject it and require the Contractor to submit another ADP; or
- (3) to make observations, suspend the time-limit for payment and require the Contractor to take corrective actions.

(b) Any rejection by Fusion for Energy must be based on objective reasons in accordance with the provisions of this Contract and be transmitted in writing to the Contractor.

If Fusion for Energy rejects the Acceptance Data Package, the Contractor shall submit a new Acceptance Data Package which shall likewise be subject to the above provisions.

The deadline for submission of any other Acceptance Data Package and other deadlines set out in this Contract shall not be affected or deferred due to Fusion for Energy's rejection of a given Acceptance Data Package.

II.3. GENERAL PROVISIONS CONCERNING PAYMENTS

II.3.1. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.

II.3.2. Fusion for Energy may suspend the payment periods referred to in Article I.6 (*Payment periods and formalities*) at any time if it informs the Contractor that its payment request is not admissible. The reasons Fusion for Energy may cite for the inadmissibility of a payment request are:

- (a) the payment is not due in accordance with the Contract;
- (b) the Contractor has not produced the appropriate supporting documents or deliverables; or
- (c) Fusion for Energy has observations on the documents or deliverables submitted with the invoice.

II.3.3. In case of doubt on the admissibility of the payment request, Fusion for Energy may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the request is admissible.

II.3.4. Fusion for Energy shall notify the Contractor as soon as possible of the suspension and set out the reasons for it. Suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the requested

information or revised documents are received or the necessary verifications, including on-the-spot checks, is carried out. Where the suspension of payment exceeds two months, the Contractor may request F4E's decision on whether the suspension must be continued.

II.3.5. In the event of late payment the Contractor shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "**Reference Rate**") plus eight (8) percentage points (the "**Margin**"). The Reference Rate in force on the first Day of the month in which the payment is due shall apply. Interest shall be payable for the period elapsing from the Day following expiry of the time limit for payment up to the Day of payment. Suspension of payment by Fusion for Energy does not constitute late payment. When the calculated interest is lower or equal to EUR 200, it must be paid only if the Contractor requests it within two months of receiving late payment.

II.4. REIMBURSEMENT OF EXPENSES

II.4.1. Where provided for by Article I.5.5, Fusion for Energy shall reimburse the travel and subsistence expenses that are directly connected with the tasks which must be performed by the Contractor (the 'Missions') in accordance with the Contract on production of original supporting documents, including receipts and/or printouts of booking and boarding documents.

II.4.2. Travel and subsistence expenses shall be calculated on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.4.3. Travel expenses shall be reimbursed up to a maximum amount calculated on the basis of the following assumptions:

- (a) travel by air are made on economy class;
- (b) travel by boat or rail are made on first class;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey;

II.4.4. For journeys of 200 km and more (return trip), subsistence expenses shall be reimbursed on the basis of a daily allowance which covers all subsistence expenses, including accommodation, meals, local transport and transport to airport, insurance and sundries. The daily subsistence allowance indicated in the following index shall apply: https://ec.europa.eu/europeaid/funding/about-calls-tender/procedures-and-practical-guide-prag/diems_en

II.4.5. Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.4.6. In the request(s) for prior written authorization by Fusion for Energy the Contractor shall state the name and number of persons travelling, the duration of travel/mission (in Days) and the date and the place of the respective mission.

II.4.7. Unless otherwise indicated in the Contract, reimbursement of expenses shall occur together with the interim payment or balance payment which follows the submission of the request for reimbursement of expenses. Requests for reimbursement of expenses shall be admissible if accompanied with:

- (a) the relevant request for reimbursement of expenses, indicating the reference number of the Specific Contract, and this Article II.4 (*Reimbursement of Expenses*); and
- (b) the supporting documents as indicated in this Article II.4 (*Reimbursement of Expenses*).

II.4.8. RECOVERY

- II.4.9. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of this Contract, the Contractor shall reimburse the appropriate amount in EUR on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.
- II.4.10. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.3 (*General provisions concerning payments*). Interest shall be payable from the Day following the due date up to the Day on which the debt is repaid in full.
- II.4.11. In the event of failure to pay by the deadline specified in the request for reimbursement, Fusion for Energy may, after informing the Contractor in writing, recover amounts established as certain, of a fixed amount and due by offsetting them against any amount owed to the Contractor by Fusion for Energy that is certain, of a fixed amount and due. Fusion for Energy may also claim against the Pre-financing guarantee or the Performance guarantee depending on which payment is impacted by the debt to be recovered.

II.5. TAXATION

- II.5.1. The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union⁵.
- II.5.2. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Items and services required for performance of the Contract are exempt from taxes and duties, including VAT. The Contractor shall remain responsible for the proper application of the rules on VAT at the place where is taxable. Fusion for Energy reserves the right to communicate information on the Contract to the Member State in which the contractor is liable to VAT.
- II.5.3. Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

II.6. CHECKS AND ACCESS RIGHTS

- II.6.1. For the purposes of checking the performance of the Contract and subject to prior notification (which in any case shall be less than 5 (five) days), Fusion for Energy or any entity it designates shall have the right to carry out onsite checks in the premises of, and access to the facilities (including documentation) of the Contractor and its Subcontractors as set out in detail in Applicable Document AD-01 (*Supplier Quality Requirements*).

⁵ OJ C 321 E of 29.12.2006 p. 0318-0324

- II.6.2. Fusion for Energy shall notify in writing to the Contractor the names of the persons entitled or designated to execute the checks (the “**Representatives of Fusion for Energy**”). The Contractor shall grant access to its facilities for the above purposes and shall ensure that any contracts entered into with Subcontractors also provide such unlimited and unrestricted access.
- II.6.3. In carrying out the checks, the Representatives of Fusion for Energy shall comply with the internal rules of procedure, safety and security of the Contractor and Subcontractors as well as with any restriction imposed by any applicable safety and security law.
- II.6.4. In addition to the rights of Fusion for Energy set out in Applicable Document AD-01 (*Supplier Quality Requirements*), Fusion for Energy shall be entitled to a reasonable number of copies (and unless otherwise indicated by Fusion for Energy, not less than three (3)) in paper and electronic form of the documents required in accordance with Applicable Document AD-01 (*Supplier Quality Requirements*) at any time at no cost for Fusion for Energy.
- II.6.5. The Contractor shall provide at no cost for Fusion for Energy (also in the case of permanent Representatives of Fusion for Energy), suitable office accommodation and facilities as may be required for the use of the Representative(s) of Fusion for Energy for the purpose mentioned in this Article II.7 and also all appliances, materials and labour required for inspection or test purposes for the purpose mentioned in this Article II.7.
- II.6.6. Nothing under this Article II.7 (*Checks and Access Rights*) shall relieve the Contractor of any of its obligations and responsibilities under this Contract.

II.7. REPORTING

- II.7.1. The Contractor shall provide Fusion for Energy with reports providing details about the progress of the performance of this Contract, Acceptance Data Packages and Final Report, all of which shall be in accordance with the requirements set out in Annex A (*Management Specification*) and Annex B (*Technical Specifications*).
- II.7.2. Should any unforeseen event, action or omission directly or indirectly negatively impact the execution of this Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.8. CONFLICT OF INTERESTS

- II.8.1. The Contractor shall take all necessary measures in order to prevent any situation of Conflict of Interest or Professional Conflicting Interest. Any Conflict of Interest or Professional Conflicting Interest which could arise during performance of the Contract must be notified to Fusion for Energy in writing without delay. The Contractor shall immediately take all necessary steps to rectify it.

- II.8.2. Fusion for Energy reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that its Staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1.2. (General provisions regarding the Contractor's staff) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its Staff exposed to such a situation.
- II.8.3. The Contractor shall abstain from any contact likely to compromise its independence.
- II.8.4. The Contractor declares:
- (a) that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under this Contract;
 - (b) that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of this Contract.

II.9. PERSONAL DATA PROTECTION

- II.9.1. Any personal data of natural persons (the "Data Subject") included in or relating to the Contract, including its execution shall be processed by Fusion for Energy pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movements of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract and/or Specific Contract by Fusion for Energy, without prejudice to possible transmission to its internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the European Union.
- II.9.2. The Data Subject shall have the right of access to its personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Data Subject have any queries concerning the processing of its personal data, it shall address them to the personal data protection officer of Fusion for Energy. The Data Subject shall have right of recourse at any time to the European Data Protection Supervisor.
- II.9.3. Fusion for Energy shall inform the Data Subject of the name of the personal data protection officer of Fusion for Energy upon request.

II.10. RIGHTS ON DOCUMENTATION AND ITEMS PROVIDED BY FUSION FOR ENERGY

- II.11.1. Where for the purpose of this Contract Fusion for Energy provides to the Contractor access to drawings, files, technical data, computer programs, source codes, and any other item or property, the Contractor shall not become the owner of any items provided.
- II.11.2. These items may only be used by the Contractor for the purposes of the Contract. The distribution, reproduction or use by a third party without prior written approval by Fusion for Energy is strictly forbidden.

II.12. SUBCONTRACTING

- II.12.1. The Contractor shall not subcontract any part of the work to any Subcontractor without prior written authorisation from Fusion for Energy nor cause or allow this Contract to be performed in fact by third parties. Fusion for Energy may waive its right for prior authorization by registered letter for specific part of the Contract and subject to the conditions it defines.
- II.12.2. The request for such authorization mentioned in this Article II.12.1 shall be made in writing to Fusion for Energy, accompanied by references of the proposed Subcontractor's qualifications and experience, its place of establishment, the part of the service/supply to be subcontracted and the total amount estimated to be paid for such service/supply and whether the Subcontractor qualifies as small and medium-sized enterprise. Together with the invoice for payment of the balance, the Contractor shall declare the total amount paid or to be paid to each Subcontractor for the part of the service/supply which was subcontracted.
- II.12.3. Even where Fusion for Energy authorises the Contractor to subcontract to third parties, the Contractor shall nonetheless remain bound by its obligations to Fusion for Energy under this Contract and shall bear exclusive liability for proper performance of this Contract. The Contractor shall at all times be responsible towards Fusion for Energy for the acts and omissions of Subcontractors. Fusion for Energy does not undertake any obligation to pay or be responsible for the payment of any sums to any Subcontractor or their employees.
- II.12.4. If required by Fusion for Energy, the Contractor shall list all the legal commitments it enters into for the purpose of executing the Contract and the amounts paid to Subcontractors. The Contractor and/or the Subcontractor shall promptly (and in no event later than thirty (30) Days from the receipt of Fusion for Energy's request) submit copies of forms evidencing payment of salaries and social security contributions, as well as the labour benefits of its employees and the Subcontractor's employees, as the case may be, and provide evidence that the Contractor and the Subcontractor comply with all their legal obligations (of any nature) in respect to their employees.
- II.12.5. The Contractor shall make sure that the legal commitment with the Subcontractor does not affect any rights to which Fusion for Energy is entitled to by virtue of this Contract.
- II.12.6. All contracts between the Contractor and Subcontractors shall be made in writing, shall be consistent with the terms and conditions of this Contract (including imposing any relevant obligations under this Contract to the Subcontractor) and shall include any provisions which are necessary to guarantee the rights of Fusion for Energy under this Contract

II.13. SIGNIFICANT ORGANISATIONAL CHANGE

- II.13.1. The Contractor shall notify Fusion for Energy without delay of any contemplated Significant Organisational Change by registered letter. This notice shall clearly state (i) the reasons for the contemplated Significant Organisational Change, and (ii) the impact thereof on the performance of the Contract, including with respect to the technical requirements, the quality assurance requirements, the progress requirements and the delivery requirements of the Contract. In addition, the notice shall be accompanied by the following supporting information:
- (a) legal entity form (if applicable);
 - (b) bank account form (if applicable);

- (c) evidence that the Contractor and/or its Subcontractors, after the Significant Organizational Change has been effected, do or will not fall within any of the exclusion criteria according to Articles 126, 127 or 128 of the Implementing Rules of Fusion for Energy; and
- (d) evidence of professional and financial capacity.

II.13.2. Fusion for Energy shall be entitled to object to the proposed Significant Organisational Change if it adversely affects the performance of the Contract and/or the ITER Project as a whole and/or whether it would amount to a substantial modification of the Contract. Fusion for Energy shall notify the Contractor of its decision on the proposed Significant Organisational Change no later than 30 (thirty) Days of receipt of notice thereof.

II.13.3. In case of failure to comply with Fusion for Energy's decision mentioned in Article II.13.2, Fusion for Energy shall be entitled to terminate the Contract pursuant to Article II.18.1 (m) (*Termination by Fusion for Energy for cause*).

II.13.4. Fusion for Energy may waive its rights under this article with respect to a change of Subcontractor by registered letter and subject to the conditions it defines.

II.14. CHANGE IN LEGISLATION

II.14.1. If, as a result of a change in the applicable law or in the judicial or governmental interpretation of such applicable law (but not related to employment, tax or social legislation) occurring after the Commencement Date and directly affecting the performance of the Contract, the Contractor will be forced to delay and/or incur additional costs in performing its obligations hereunder, the Contractor shall give written substantiated notice to Fusion for Energy of any such delay and/or additional costs within thirty (30) Days from the date of the change. Should Fusion for Energy decide not to terminate the Contract pursuant to Article II.19 (*Termination by Fusion for Energy for convenience*) and to continue with its execution, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, if completion is or will be delayed; and
- (b) payment from Fusion for Energy of any such duly documented direct Costs, which shall be added to the Total Contract Price.

Article II.23 (*Amendments*) shall apply for the remainder.

II.14.2. The Contractor is not entitled to any compensation or extension in case of failure to timely provide the notice or in case the impact of the change on the Contract implementation is already covered by the application of another provision of the Contract.

II.15. FORCE MAJEURE

II.15.1. Neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them by Force Majeure, provided that notice has been given pursuant to this Article II.15 and for so long as the notified Force Majeure prevents this Party from performing its obligations.

II.15.2. Without prejudice to the provisions of Article II.8 (*Reporting*), if either Party is faced with a Force Majeure, it shall notify the other Party by registered letter without delay, but in any case within 14 (fourteen) Days after the Party becomes aware or should have become aware of the applicable Force Majeure. Such notice shall state the nature, likely

duration and foreseeable effects of the Force Majeure, including the obligations whose performance is or will be prevented by the Force Majeure.

- II.15.3. In the event of Force Majeure, the Parties shall promptly take all necessary measures to minimize any delay in the performance of the Contract and to reduce damage to a minimum.
- II.15.4. The Party invoking Force Majeure shall give notice to the other Party when it ceases to be affected by the Force Majeure.
- II.15.5. Where the Contractor is unable to perform its contractual obligations owing to Force Majeure, it shall have the right to remuneration only for tasks actually executed.
- II.15.6. In case of Force Majeure exceeding six (6) months, notified in accordance with this Article either Party may terminate the Contract with immediate effect, where performance thereof cannot be resumed before a period of minimum six (6) months. Article II.18 (Termination by Fusion for Energy for cause) shall apply *mutatis mutandis* to the effects of such termination.

II.16. ASSIGNMENT

- II.16.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part without prior written authorisation from Fusion for Energy.
- II.16.2. In the absence of such written authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against, and shall have no effect on, Fusion for Energy.
- II.16.3. Fusion for Energy may assign the rights and obligations arising from the Contract, in whole or in part, without prior authorisation from the Contractor, to the ITER IO, any other entity which may have taken over all or a substantial part of the ITER IO's/Fusion of Energy's role in respect of the ITER project, or another Domestic Agency, or the European Commission.

II.17. SUSPENSION OF THE CONTRACT

- II.17.1. Fusion for Energy may at any time and for duly justified reasons suspend performance of the Contract or any part thereof. Suspension shall take effect on the Day the Contractor receives notification of the suspension by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Fusion for Energy may at any time following suspension give notice in the same way to the Contractor to resume performance of this Contract.
- II.17.2. Should Fusion for Energy decide to suspend this Contract for a period of over twelve (12) months, the Contractor shall be entitled to ask for this Contract to be terminated, on condition that it does so by registered letter with acknowledgment of receipt or equivalent within one (1) month of the receipt of the notification of the suspension. The same shall apply in the event of a series of suspensions totalling a period of over eighteen (18) months. The one-month deadline mentioned above for the request to terminate shall commence on the date of the reception of the decision resulting in the suspension of the Contract for over 12 (twelve) months or for 18 (eighteen) months respectively.

- II.17.3. In case of termination following the Contractor's request in the conditions mentioned in this Article II.17, the provisions regarding termination for convenience established in Articles II.19 (*Termination by Fusion for Energy for convenience*) shall apply.
- II.17.4. In case the Contract is suspended for more than three (3) months, the Contractor is entitled to request, upon submission of relevant proof, an indemnity corresponding to any certain and direct damage it sustained as a result of the suspension. The Contractor's claim shall be deemed acceptable only if submitted to Fusion for Energy by registered letter with acknowledgment of receipt after the end of the suspension and together with the proof of the precise nature and extent of the damage including a detailed breakdown of the Costs caused by the suspension. The Contractor shall take all necessary measures to prevent and minimize damage.
- II.17.5. The indemnity under this Article II.17 shall be the Contractor's exclusive remedy on this ground. The conditions of this Article II.17 shall also apply to the contracts with Subcontractors.
- II.17.6. It is agreed that within fifteen (15) Days from the date on which performance of the Contract is resumed by Fusion for Energy the Parties shall convene to re-negotiate in good faith an adequate updated schedule of performance of the Contract. Article II.23 (*Amendments*) shall apply.

II.18. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

- II.18.1. Fusion for Energy may terminate this Contract in the following circumstances:
- (a) where the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation⁶ ;
 - (b) where the Contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;;
 - (c) where the procedure for awarding the contract or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;;
 - (d) where the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
 - (e) where the Contractor is in a situation that could constitute a Conflict of Interest or a Professional Conflicting interest as referred to in Article II.8 (Conflict of interest);
 - (f) where for reasons due to the Contractor, the performance of this Contract has not actually commenced fifteen (15) Days after the date of entry into force of this Contract or any agreed date for the start of the execution of this Contract;
 - (g) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of this Contract;
 - (h) where the amount of liquidated damages exceeds the maximum amount established in Article I.15 (*Liquidated damages*);

⁶ Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>), to which article 85 of F4E Financial Regulation refer (http://fusionforenergy.europa.eu/downloads/procurements/F4E_Financial_Regulation.pdf) .

- (i) where the Contractor does not perform the Contract in accordance with the tender specifications or is in material breach of one another of its substantial contractual obligations and has received formal notice from Fusion for Energy in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, Contractor remains in breach of its contractual obligations;
- (j) where the Contractor commits a material breach of his obligations under this Contract as set out in Article II.18.5 (Covenants). For the avoidance of doubt, under this Article II.18.5 (Covenants), Fusion for Energy is entitled to terminate this Contract, in the case of a group of companies or consortium, with effect to the group of companies or consortium;
- (k) where the Contractor has failed to comply with Fusion for Energy's decision on the proposed Significant Organisational Change or has failed to notify Fusion for Energy in accordance with Article II.13 (*Significant Organisational Change*); or
- (l) where the Contractor is in breach of his obligations under Article II.24 (*Export Control Requirements*).

II.18.2. Prior to termination under Article II.18.1 (a) and (f) to (l) above, the Contractor shall be given the opportunity to submit his observations within a reasonable time but in no event later than five (5) Days upon receipt of the letter of termination of Fusion for Energy sent by a registered letter with acknowledgment of receipt.

II.18.3. Fusion for Energy shall notify the Contractor of the said termination by registered letter with acknowledgment of receipt. This letter shall specify the extent of termination. Termination shall take effect on the date on which the letter is received by the Contractor, or any other date indicated in the letter. Such termination shall be effective *ipso iure* without any further legal formalities.

II.18.4. Consequences of termination:

Upon termination of the Contract or any portion thereof in accordance with this Article, the following shall apply:

- (a) The Contractor shall take immediate steps to bring to an end its activities forming the subject matter of the Contract and shall take all appropriate measures to prevent and minimise damage, and cancel or reduce his commitments. Contractor shall draw up the documents required by this Contract for the Service provided and accepted, in accordance with the provisions of this Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents, information (including but not limited to the Information, the Background and the Foreground) pursuant to this Contract.
- (b) Without prejudice to Fusion for Energy's right to seek compensation, the Contractor is entitled to be paid for the part of the Service performed in compliance with this Contract provisions and its Annexes and accepted by Fusion for Energy in accordance with the provisions of this Contract, up to the effective date of the termination.
- (c) The ownership of all materials, parts and unfinished work paid for by Fusion for Energy under the provisions of this Contract shall be vested in or transferred to Fusion for Energy as soon as they have been paid for.
- (d) Fusion for Energy may engage any other contractor to replace the Contractor. Fusion for Energy shall be entitled to claim from the Contractor all additional costs incurred in making good, and completing the performance of this Contract, without prejudice to

any other rights or guarantees it has under this Contract. This paragraph shall not apply in the case of termination due to Force Majeure in accordance with Article II.15 (Force majeure).

- (e) Subject to the limitation foreseen in Article I.13, Fusion for Energy may claim from the Contractor compensation for any loss or damage sustained due to the early termination and recover any sums paid to the Contractor under the Contract. This paragraph shall not apply in the case of termination due to Force Majeure in accordance with Article II.15.
- (f) The Contractor shall not be entitled to any compensation whatsoever from Fusion for Energy, including but not limited to losses and damages effectively suffered or loss of profit for any uncompleted Services.
- (g) In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (a), (b) or (d) of Article II.19.1.

II.18.5. Covenants:

In addition and without prejudice to those covenants, undertakings, commitments and obligations made by or in respect of the Contractor herein and/or in the Contractor's Tender (AD07), the Contractor hereby covenants that, so long as this Contract shall be in force, it shall:

- (a) not take or omit to take any action the taking or omission of which might result in the alteration or impairment of any rights of Fusion for Energy under this Contract or which might adversely affect the implementation of this Contract;
- (b) immediately but not later than four (4) Days notify Fusion for Energy of any event or circumstance, which might adversely affect, alter or impair the rights and/or interests of Fusion for Energy under or pursuant to this Contract, including (without limitation) the filing of a petition for the bankruptcy or insolvency of the Contractor (in case of a group of companies or a consortium, of any member of the same), or the initiation of any similar proceedings, the termination of the Contractor's commercial activities or the winding-up of the Contractor (in the case of a group of companies or a consortium, the termination of the commercial activities or the winding up of any member of the group or consortium);
- (c) not pass any resolution, according to the applicable law to the Contractor (and in case of a group of companies or a consortium, of any member of the same), (i) to dissolve and/or liquidate the Contractor or to authorise an application for the bankruptcy or insolvency of the Contractor (in case of a group of companies or a consortium, of any member of the same), or (ii) to reduce the authorized or issued capital stock or any equivalent thereof of the Contractor, save for a decrease of such to be made in accordance with a mandatory statutory requirements set out in applicable law to the Contractor (in case of a group of companies or a consortium, of any member of the same);
- (d) promptly provide Fusion for Energy, upon its request, with statements on such other matters and information relating to this Contract as Fusion for Energy may from time to time request.

The Parties agree that the breach of the covenants and/or the obligation of the Contractor made under Articles II.18.5 (b) and (c) (Covenants), and the obligation in relation to their due notification as stated above shall qualify as material breach of this Contract.

II.19. TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

- II.19.1. Fusion for Energy may, at any time, at its discretion terminate this Contract or any portion thereof in accordance with this Article II.19 (Termination by Fusion for Energy for convenience).
- II.19.2. Any such termination shall be effected by delivery to the Contractor of a written notice sent by registered letter with acknowledgement of receipt. This notice shall specify the extent to which performance under this Contract is to be terminated and the effective date of termination.
- II.19.3. Upon receipt of a notice under this Article II.18.1 (Termination by Fusion for Energy for convenience), the Contractor shall discontinue performance of this Contract in accordance with the notice and shall take any reasonable steps which are necessary or desirable to terminate performance in a safe and timely manner and minimise the costs associated with the termination.
- II.19.4. Fusion for Energy shall reimburse the Contractor for those costs actually incurred and claimed in accordance with this Article II.19 (Termination by Fusion for Energy for convenience) by the Contractor as a direct result of termination of this Contract or of any portion thereof as well as a cancellation fee corresponding to 3% (three percent) of the remaining payments of any released Stages. However, no cancellation fee shall be paid if termination is made pursuant to Article II.14 (Change in Legislation).
- II.19.5. As promptly as possible and in no event later than thirty (30) Days after the effective date of termination, the Contractor shall submit to Fusion for Energy its claim for reimbursement in writing by registered letter with acknowledgement of receipt. Such claim for reimbursement shall include a cost breakdown of unavoidable costs actually incurred as a result of termination which he is seeking to recover from Fusion for Energy with supporting evidence.
- II.19.6. The amount of reimbursement payable under this Article II.18.1 (Termination by Fusion for Energy for convenience) shall be fixed on the basis of the evidence produced by the Contractor and accepted by Fusion for Energy. It shall take account of the proportion of this Contract completed and accepted by Fusion for Energy in accordance with Article II.1 (Performance of this Contract) and shall be consistent with this Article II.19 (Termination by Fusion for Energy for convenience). The Contractor hereby expressly waives the right to claim any loss of profit in respect of the uncompleted or outstanding services which were to be performed after the termination date.
- II.19.7. Fusion for Energy shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under this Contract, exceeds the Total Contract Price.
- II.19.8. The ownership of all materials, parts and unfinished work paid for by Fusion for Energy under the provisions of this Contract shall be vested in or transferred to Fusion for Energy as soon as they have been paid for.
- II.19.9. The Contractor shall draw up the documents required by this Contract for the Service provided and accepted, in accordance with the provisions of this Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents, information (including but not limited to the Information, the Background and the Foreground) pursuant to this Contract.

II.20. SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

- II.20.1. Where, after the award of this Contract, the award procedure or the performance of this Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, Fusion for Energy may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor (in accordance with Article II.18 (Termination by Fusion for Energy for cause), in proportion to the seriousness of the errors, irregularities of fraud.

The consequences described in Article II.18 shall apply.

II.21. CHECKS AND AUDITS

- II.21.1. In accordance with Article 5a of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over natural or legal persons receiving payments from the budget of Fusion for Energy from Commencement Date of the Contract up to five (5) years after payment of the balance.
- II.21.2. Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits on performance of the Contract from Commencement Date of the Contract up to five (5) years after payment of the balance.
- II.21.3. In accordance with Article 5a of Fusion for Energy Council Decision, the European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections in accordance with Parliament and Council Regulation (EURATOM, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996 from Commencement Date of the Contract up to five (5) years after payment of the balance.

II.22. CONFIDENTIALITY

- II.22.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract (the "**Confidential Information**").
- II.22.2. Article II.22 does not apply where:
- (a) the Confidential Information becomes publicly available by means other than a breach of confidentiality obligations; or
 - (b) the disclosing Party subsequently informs the recipient that the Confidential Information is no longer confidential; or
 - (c) the Confidential Information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality; or
 - (d) the disclosure or communication of the Confidential Information is required by law or permitted under other provision of this Agreement, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.
- II.22.3. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of ten (10) years.
- II.22.4. The Contractor shall obtain from each member of its Staff, board and directors which will need to know the Confidential Information, an undertaking that they will respect

the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly even after execution of the Contract for a period of ten (10) years.

- II.22.5. According to Article 17 of Title II ‘Rights and Obligations of Officials’ of the ‘Staff Regulations of Officials read in conjunction with Articles 11 and 81 of the ‘Conditions of Employment of Other Servants of the European Union’ any Fusion for Energy staff member shall refrain from any unauthorized disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. In addition any Fusion for Energy staff member shall continue to be bound by this obligation after leaving the service.

II.23. AMENDMENTS

- II.23.1. Any amendment to this Contract shall be the subject of a written agreement duly dated and signed by the Parties. An oral agreement shall not be binding on the contracting parties.
- II.23.2. An amendment to this Contract shall be required where a Deviation Request or Deviation Order leads to:
- (a) a variation on the price referred to in Article I.5 (Prices);
 - (b) a variation on the payment modalities referred to in Article I.6 (Payment periods and formalities); and/or
 - (c) any other substantial change to the subject matter of this Contract.

In such cases, the provisions of this Article II.23 supplement section II.2 of Applicable Document AD-01 (*Supplier Quality Requirements*).

- II.23.3. In all cases other than those referred to above, a Deviation Request or Deviation Order may be implemented after the approval of the Deviation Request or after the issue of the Deviation Order by the Responsible Officer in accordance with Annex A (*Management Specifications*) and Applicable Document AD-01 (*Supplier Quality Requirements*).
- II.23.4. The impact assessment to be produced by the Contractor upon receipt of a Deviation Notice from Fusion for Energy shall include a detailed breakdown of the costs to be incurred in order to perform the additional work, if any. Unit prices and productivity rates indicated in Financial Forms of the Contractor’s Tender (AD07) shall be applicable whenever possible. If not, unit prices and productivity rates shall be deducted (extrapolation, interpolation or proportionality) from the Financial Forms of the Contractor’s Tender (AD07). Fusion for Energy reserves the right to request the Contractor to submit duly documented evidence with respect to any of the proposed cost items.
- II.23.5. The Contractor shall submit the impact assessment within a reasonable time and in no event later than 15 (fifteen) working days after receipt of the Deviation Notice, unless agreed otherwise.
- II.23.6. After reviewing the cost breakdown contained in the impact assessment, Fusion for Energy may agree with the Contractor the final extent of the additional work to be performed, as well as any additional amount to be paid, schedule, payment schedule and modalities, relevant deliverables and issue a Deviation Order. Implementation of the Deviation Order may under no circumstances begin before the date of the entry into

force of the amendment to this Contract and shall not be deemed to be binding on Fusion for Energy prior to the entry into force of the relevant amendment.

- II.23.7. Any Deviation Request issued by the Contractor shall include a detailed break-down of the costs foreseen including productivity rates to accomplish the work. Unit prices indicated in Contractor's Tender (AD07) shall be applicable whenever possible.
- II.23.8. After reviewing the cost breakdown contained in the Deviation Request, Fusion for Energy may agree in writing with the Contractor the final extent of the work to be performed, as well as any additional amount to be paid, schedule, payment schedule and modalities, relevant deliverables and approve the Deviation Request. However, implementation of the Deviation Request may under no circumstances begin before the date on which the entry into force of an Amendment to the Contract and shall not be deemed to be binding on Fusion for Energy prior to the entry into force of the relevant amendment.

II.24. EXPORT CONTROL REQUIREMENTS

- II.24.1. In the implementation of the Contract, the Contractor shall be responsible, including for its Subcontractors, for ensuring compliance with relevant requirements imposed by applicable legislation regarding exportation, re-exportation and transfers (including intra-Community) of the dual-use products, components and technology or any parts thereof subject to the Contract (the "**Dual-use Goods**") to the country of delivery or the ITER site in Cadarache, France.
- II.24.2. Unless otherwise indicated by Fusion for Energy the Contractor shall act as an **Exporter** of the Dual-use Goods and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation. Should Fusion for Energy decide to act as an Exporter, the Contractor shall assist Fusion for Energy in obtaining any required export, re-export or transfer authorization (including customs) and to provide any necessary information or documentation.
- II.24.3. Where the Contractor is unable to obtain any required export, re-export or transfer authorization (including customs) and to provide the requested information or documentation, Fusion for Energy shall be entitled to terminate the Contract in accordance with Article II.18 (Termination by Fusion for Energy for Cause) unless the Contractor proves that the failure is due to a Force Majeure.
- II.24.4. At a date to be defined by Fusion for Energy in accordance with Annex A (*Management Specification*), the Contractor shall produce a list of Dual-use Goods with indication of their category based on applicable international export control lists. It shall also clearly identify any Dual-use Goods to be subcontracted.

II.25. OTHERS

- II.25.1. This Contract contains the whole agreement between the Parties relating to the subject matter of this Contract as at the date of this Contract to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Contract.
- II.25.2. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to

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the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract, except to the extent that any greater burden is imposed upon any Party in consequence thereof. The Parties agree that they will negotiate in good faith to replace any provision hereof held invalid, illegal or unenforceable with a valid, legal and enforceable provision which is as similar as possible in substance to the invalid, illegal or unenforceable provision.

II.25.3. Unless otherwise provided for herein, the Parties will bear their own expenses (including fees and disbursements of their respective counsel) in connection with this Contract and the Service provided under this Contract.

II.25.4. This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument

SIGNATURES

For the Contractor,

For Fusion for Energy

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [complete], [date]

Done at Barcelona, [date]

In duplicate in English.