



CALL FOR TENDER N° F4E-[.]

ANNEX 1

MODEL CONTRACT



FRAMEWORK SERVICE CONTRACT FOR [.]

between

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

and

[.]

(F4E- [.])

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

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 – Specific Contract Template

Annex G – [...]

¹ OJ L 90 of 30.3.2007, p. 58

² OJ L 358 of 16.12.2006, p. 62

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	Performance Guarantee	[xxx]	[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").

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*) 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 19 (*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 meanings 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>).
Commencement Date	shall have the meaning set forth in Article I.3 (<i>Entry into force and duration</i>).
Confidential Information	shall have the meaning set forth in Article II.22 (<i>Confidentiality</i>).
Contract	shall mean this framework contract and its Annexes.
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 or any Specific 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 or any Specific 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 or any Specific Contract, and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, (ii) could not reasonably have been provided against before entering into the Contract or any Specific Contract, and (iii) 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.
Information	shall have the meaning set forth in Article 1.2 of Annex D (<i>Intellectual Property Provisions</i>).
Insuring Party	shall mean, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the Contract.
Intellectual Property	shall have the meaning given in Article 1.1 of Annex D (<i>Intellectual Property Provisions</i>).
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>)
Nuclear Operator	shall have the meaning set forth in I.13.5 (<i>Nuclear Liability</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 Controller	the Fusion for Energy controller 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>

Project Manager	shall have the meaning set forth in Article I.12. (<i>Representatives</i>).
Reference Rate	shall have the meaning set forth in Article II.3 (<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 (<i>Checks and Access Rights</i>).
[Safety Important Class (SIC) Components	<i>shall mean a subclass (i.e. important for nuclear safety) of 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 (<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, also any of the following: (a) a change in the lead firm representing the consortium, or (b) a change in the composition of the consortium. In case of a consortium, all events under (i) to (v) refer to any of its members.
Specific Contract	shall mean any contract implementing the Framework Contract and subject to its terms and conditions.
Specific Contract Price	shall have the meaning set forth in article I.5.2 (<i>Prices</i>).
Staff	shall refer to individuals involved in the performance of this Contract or any Specific Contract
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 any Specific Contract.
[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 provides resources that will be used for the performance of any Specific Contract [i.e. insert criteria (volume, amount, type of material or list of Qualified</i>

Provider)].

Responsible Officer	shall have the meaning set forth in Article I.12 (<i>Representatives</i>).
Total Contract Price	shall have the meaning set forth in article I.5. (<i>Prices</i>)

I.1.2. For the purposes of this Contract and any Specific 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) and further specified in the Specific Contracts (the “Service”).
- I.2.2. Signature of the Contract imposes no obligation on Fusion for Energy to purchase. Only implementation of the Contract through Specific Contracts is binding on Fusion for Energy. All Specific Contracts pursuant to the Contract shall conform to the terms set out therein.
- I.2.3. The Contract does not confer on the Contractor any exclusive right to provide the Services to Fusion for Energy but it shall provide them if requested by Fusion for Energy.
- I.2.4. The Contractor shall provide the Service in accordance with the provisions of this Contract and any Specific Contract.

I.3. ENTRY INTO FORCE AND DURATION

- I.3.1. This Contract shall enter into force on the date on which it is signed by the last Party (the “**Commencement Date**”).
- I.3.2. Performance of this Contract shall under no circumstances begin before the Commencement Date. Execution of the tasks described in Article I.2 (*Subject matter*) shall under no circumstances begin before the date on which the relating Specific

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Contract enters into force. Performance of the Specific Contract by the Contractor shall be consistent with the milestone dates provided for in the Specific Contract.

- I.3.3. This Contract is concluded for a period of [*number which in total, including any renewal, may not exceed 48 months in principle*] months with effect from the Commencement Date, without prejudice to Article I.17. (*Survival of obligations*). No Specific Contract shall be signed after the expiration of the Contract.
- I.3.4. The Contract shall continue to apply to Specific Contracts being executed after its expiration until completion of the mutual obligations of the Parties under this Contract. Specific Contracts shall not be executed later than [*six (6) months after its expiry*]. [*The period of execution of the Specific Contracts may be extended only with the express written agreement of the Parties before such period elapses*].
- I.3.5. [*The Contract shall be renewed automatically up to [number] times under the same conditions, unless written notification to the contrary is sent by one of the Parties and received by the other [three/four/five/six] months before expiry of the period indicated in Article I.3.3 or the period of renewal. Renewal does not imply any modification or deferment of existing obligations.*]

I.4. IMPLEMENTATION OF THE CONTRACT

- I.4.1. For the implementation of the Contract, specific Services shall be detailed in a specification prepared by Fusion for Energy's Responsible Officer (the "Task Order"). The Task Order shall set out the maximum period available for execution of the tasks relating to the Services, as the case may be.
- I.4.2. Within [*the deadline provided in the Task Order by Fusion for Energy but not less than [ten (10)] Working Days/seven (7) to a maximum of fourteen (14) Days*] of a Task Order being sent by Fusion for Energy to the Contractor, Fusion for Energy shall receive the breakdown of resources to be allocated for its execution and the Total Specific Contract Price (the "Task Offer").
- I.4.3. After having evaluated the appropriateness of the Task Offer with the Contractor, also as a result of discussions carried out with the Contractor if the need arises, Fusion for Energy may send the Contractor the Specific Contract.
- I.4.4. Within [*.] Days/the deadline provided by Fusion for Energy but not less than [ten (10) Working Days*] after the Contractor has received the Specific Contract from Fusion for Energy, the Contractor shall send it back to Fusion for Energy duly signed and dated.
- I.4.5. In case Fusion for Energy does not receive from the Contractor (i) the Task Offer in accordance with Article I.4.2 and/or (ii) the Specific Contract signed in accordance with article I.4.4 Fusion for Energy shall be entitled to terminate the Contract in accordance with Article II.18 (*Termination for cause*).
- I.4.6. In case of disagreement with the Task Offer, justified in writing, or failure to submit (i) a Task Offer in accordance with Article I.4.2 and/or (ii) the Specific Contract signed in accordance with article, Fusion for Energy may request the provision of the Specific Services from another economic operator without the Contractor being entitled to any compensation. The price to be paid to another economic operator for the Specific Services shall not be higher than the price included in the refused Task Offer and the conditions of the contract shall not be substantially different from the conditions that would have applied to the Contractor under the refused Task Offer.
- I.4.7. [*Specific provisions for Multiple framework contract in cascade*]
 [*If Fusion for Energy does not receive from the Contractor the Task Offer in accordance with Article I.4.2, Fusion for Energy shall be entitled to send the Task Order to the next Contractor on the list. In the event of failure to observe this deadline or in the event the*

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Parties cannot agree on the allocation of resources, price or technical issues after discussions, the Contractor shall be considered unavailable and Fusion for Energy shall be entitled to send the Task Order to the next Contractor on the list. Also in the event of failure to observe the deadline laid down in Article I.4.4, the Contractor shall be considered unavailable without any liability to Fusion for Energy].

I.4.8. *[Specific provisions in case of reopening of competition]*

I.5. PRICES

I.5.1. The maximum total amount to be paid by Fusion for Energy under the Contract [, including all [Options],[travel and subsistence expenses] under all Specific Contracts] shall not exceed EUR [amount in figures and in word] (the “Total Contract Price”). The Total Contract Price is an overall ceiling which must in no way be construed as a commitment on Fusion for Energy to purchase for the Total Contract Price.

I.5.2. The maximum total amount to be paid by Fusion for Energy for each Specific Services and/or goods shall be included in the Specific Contracts (“**Specific Contract Price**”). They shall cover the provisions of all the Specific Services and execution of all related obligations in accordance with the conditions of the Contract.

I.5.3. *[The amount to be paid by Fusion for Energy for the Options, if exercised, shall be indicated in the Specific Contract/ 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. Prices shall be any amount calculated on the basis of the Unit Prices/prices as listed in the Contractor’s Tender (AD07).

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 Annex B (Technical specification)/only for travels to [place and purpose] which are necessary for performance of the Service], [up to an overall maximum of [amount in figures and words] EUR]/up to the maximum indicated in each Specific Contract.] [Any such Mission shall be subject to Fusion for Energy’s prior written authorization [which may be given via e-mail]].[The maximum amount to be paid pursuant to this article for all the Service under the Contract shall not exceed [amount in figures and words].*

[OR]

[In addition to the Specific Contract Price, travel and subsistence expenses shall be reimbursed as a lump sum identified in the Specific Contract. The amount of the lump sum shall be agreed between the Parties in accordance with the instructions of Article II.4. Details related to the calculation of the lump sum shall be set out in the Task Offer].

I.5.6. Prices shall be expressed in EUR.

I.5.7. 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 the Contract.

I.5.8. [Revision of prices

After [two (2) year] from the Commencement Date, prices 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 =..

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) .]

Payment shall be made on the basis of the prices in force on the date on which the Specific Contracts are signed by both Parties. These prices shall not be subject to revision.]

I.6. PAYMENT PERIODS AND FORMALITIES

I.6.1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations related to the relevant payment by the date on which the invoice is submitted.

I.6.2. Should the Contractor fail to perform its obligations under the Contract and the Specific Contract, Fusion for Energy may – without prejudice to its right to terminate this Contract and the Specific Contract – reduce or recover payments in proportion to the scale of the non-performance.

I.6.3. *Pre-financing Payment:*

Unless otherwise specified in the Specific Contract, Fusion for Energy shall pay the Contractor pre-financing payment (corresponding to 10/20/30% (ten/twenty/thirty percent) of the Specific Contract Price as referred in Article I.5.2 [(Specific Contract Price) (the “Pre-financing payment”) within 45 (forty-five) Days of the later of:

- (a)** *the receipt by Fusion for Energy of a request for the Pre-financing payment related to the Specific Contract with a corresponding invoice, indicating the reference number of the Contract and, if applicable as per Article I.8 (Pre-financing Guarantee);*
- (b)** *the receipt by Fusion for Energy of 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:*

*[Unless otherwise specified in the Specific Contract, Fusion for Energy shall pay the Contractor an interim payment corresponding to [*****] % of the amount referred to in Article I.5.2 [(Specific Contract Price) [minus the Pre-financing Payment [if*

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applicable]/minus a percentage of the Pre-financing Payment] within forty-five (45) Days of the later of:

- (a) *the issuance by Fusion for Energy of the Acceptance Note approving the Acceptance Data Package related to the relevant deliverable/milestone referred to in [the Specific Contract/Annex B (Technical Specifications)]; and*
- (b) *receipt of a request for interim payment accompanied by the relevant invoice, indicating the reference number of the Contract and the Specific Contract.]*

[No Interim Payment shall be made unless the duration of the Specific Contract exceeds [three (3) months]]

I.6.5. Payments of the balance:

Fusion for Energy shall pay the Contractor the balance due of the Specific Contract Price within 45 (forty-five) Days of the later of:

- (a) *the issuance by Fusion for Energy of the Acceptance Note approving the Acceptance Data Package related to the relevant deliverable/milestone, referred to [the Specific Contract/Annex B (Technical Specifications)] ; and*
- (b) *the receipt of the request for payment of the balance accompanied by the relevant invoice, indicating the reference number of this Contract and the Specific Contract.*

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 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 Poor’s 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 or payment of the balance, as set out in the Specific Contract].

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 Euros). The following shall be compulsory for contracts with surviving obligations whose Total Contract Price is equal or above EUR 10.000.000 (ten million Euros).

I.10. BANK ACCOUNT

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- 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. [Quality] responsible, [name];
2. *Technical responsible for [.]*, [name];

The Project Manager shall be the main contact points of the Contractor regarding any issue raised in connection with the performance of this Contract and any Specific 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 and any Specific Contract; and shall also coordinate the performance of the Contractor's obligations under this Contract and any Specific Contract.

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

- I.11.3. The Parties shall give prior written notice of any modification of their Representatives listed in this Article. 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. [A Specific Project Manager and/or Specific key Technical Officer may be designated for each Specific Contract].*

I.12. COMMUNICATION

- I.12.1. All communications from the Contractor to Fusion for Energy shall be sent by the Project Manager or his office. Fusion for Energy shall send or copy all communication to the Contractor to the Project Manager.

³ BIC code for countries with no IBAN code

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- I.12.2. Any communication relating to the Contract and any Specific Contract shall be made in writing in English and shall bear the Contract number and using 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 this 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. The 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 and any Specific Contract. The Contractor’s total liability under this Contract and any Specific Contract shall not exceed *[the sum of the Specific Contract Prices of the Specific Contracts signed [with this Contractor]/ [one time] the Specific Contract Price]*, subject to the sole exceptions set out in this Article I.14.1(Contractor’s Liability). *[Should the sum of the Specific Contract Prices be less than [amount in figure and words], the Contractor’s total liability shall not exceed [amount in figure and words not higher than the Total Contract Price].*

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 laws or from an infringement of intellectual property rights of a third party.

I.13.2. Third party actions:

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 and the Specific Contracts. The indemnification shall not exceed the amount of damage and costs sustained by F4E 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 or any Specific 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 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.14.1.

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 or any Specific Contract except in the case 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 or any Specific Contract with a limit of indemnity of not less than [x euros] for any occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract or any Specific 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 or any Specific 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 or any Specific Contract, design of the works and faulty execution, with a limit of indemnity of not*

less than EUR [x] for any one occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract or any Specific 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 to the victim.

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.

Nothing in this Article 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 him. 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 [AD-05] (The insurance certificate)

This shall not affect any of the Contractor's obligations under this Article 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

I.15.1. Where [completion date is not met/any of the milestones dates [for deliverable [./]milestones [★] defined in section [★] of Annex B (Technical Specifications)/defined in a Specific Contract], 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 Specific Contract price per [day/week/month] of delay/the Total Contract Price per [day/week/month] of delay, up to a maximum of 10% (ten percent) of the [Specific Contract Price/Higher amount subject to maximum of 10 % of 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 other rights and remedies under this Contract, the liquidated damages payable under this Article I.16 (*Liquidated damages*) 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 (*Liquidated damages*) 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 and any Specific 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.21 (*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 and any Specific Contract shall be governed by the Community and European Union Law, complemented by national substantive law of *Spain* 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 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.18.3, 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 his appointment, the mediator shall produce a non-binding written proposal resolving the Dispute or a statement that no proposal can be made. The

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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, 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.

[OTHER SPECIAL CONDITIONS]

I.19. ITEMS DELIVERED TO THE CONTRACTOR

- I.19.1. *All supplies delivered to the Contractor by Fusion for Energy or third parties designated by Fusion for Energy in connection with the Contract or any Specific Contract (Section [.] of Annex B (Technical Specification) (the "Free-Issue Items"), shall never become the property of the Contractor and shall be used only for the execution of the Contract and for no other purpose whatsoever, without prior approval in writing of Fusion for Energy.*
- I.19.2. *These Free-Issue Items are delivered [DAP (Incoterms 2010) to [the Contractor's premises or another place of destination] on behalf of Fusion for Energy, ITER IO or another ITER project Member.*
- I.19.3. *The Free-Issue Items will be clearly labelled and delivered with the official documentation mentioning that export is on behalf of the ITER IO. Articles 5 and 6 of the Agreement on the Privileges and Immunities of the ITER IO for the Joint Implementation of the ITER project shall apply and then these items will be exempt from all duties and taxes.*
- I.19.4. *For the Free-Issue Items belonging to Fusion for Energy, ITER IO or a Domestic Agency), the Contractor shall be responsible of the custom clearance and formalities, the unloading, and, as may arise, free storage on site. The transfer of risks to the Contractor shall happen at the moment the Items are made available to him in accordance with the INCOTERMS referred to in I.19.2.*
- I.19.5. *From the moment of the transfer of risks, the Contractor shall bear the risks of any damage, loss or destruction of any or all the supplies delivered on behalf of Fusion for Energy or another ITER project member (ITER IO or a Domestic Agency) that it has in its possession for execution of the Contract. The Contractor shall be responsible for providing surveillance and guarding for these Items at its expense until Final Acceptance of the goods in which the items delivered to him are incorporated.*
- I.19.6. *Leftovers from sample preparation and the tested specimens shall be archived by the Supplier. Fusion for Energy shall have the right to instruct the Contractor to either:*
 - a) *ship them to Fusion for Energy, or*
 - b) *dispose of them.]*

I.20. [RULES ON ACCESS AND PRESENCE OF EXTERNAL CONTRACTOR STAFF FOR THE EXECUTION OF SERVICES IN FUSION FOR ENERGY'S PREMISES]

- I.20.1.** *[The Contractor shall, within three (3) Days prior to the envisaged beginning of the work on Fusion for Energy premises, submit to Fusion for Energy the list of its employees it 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.*
- I.20.2.** *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 its 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.*
- I.20.3.** *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.*
- I.20.4.** *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.*
- I.20.5.** *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.*
- I.20.6.** *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.*
- I.20.7.** *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.*
- I.20.8.** *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 (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.20.9.** *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.*

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I.21. MULTIPLE FRAMEWORK CONTRACT IN CASCADE

[Insert any specific condition related to the use of a framework contract in cascade subject to review by Legal Service]

I.22. [QUALIFIED PROVIDERS

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

[Other specific conditions may be envisaged subject to review by Legal Service]

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 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.
- (c) The Contractor shall be obliged to follow the instructions of Fusion for Energy regarding the execution of this Contract 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.
- (d) 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 personnel

- (a) The Contractor must ensure that any Staff performing this Contract (including that of Subcontractors) has the professional qualifications and experience required for execution of this 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, notably those resulting from employment, tax and social 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 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 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 full 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 his 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 labour 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 the Annexes and Applicable Documents 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 or any Specific Contract, "Acceptance" shall mean acknowledgement that the Service and the deliverables are in compliance with the contractual requirements. Acceptance is without prejudice to Article I.13 (*Liability*).

Acceptance of the Service and the deliverables shall be evidenced by the signing of an Acceptance Note to this effect by Fusion for Energy.

Conformity shall be declared only where the conditions laid down in this Contract or any Specific 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 the Acceptance Data Package.

Approval of any deliverable or document by any means other than the Acceptance Note as set out in this Article shall not constitute an Acceptance within the meaning of this Article. No obligation and/or responsibility of the Contractor under this Contract or any Specific 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:

Fusion for Energy shall have 45 (forty-five) Day from receipt of an Acceptance Data Package (ADP) linked to a payment:

- (a) to approve it, by issuing an Acceptance Note; or
- (b) to reject it and require the Contractor to take corrective actions.

Any rejection by Fusion for Energy shall be based on objective reasons in accordance with the provisions of this Contract or any Specific 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 or any Specific 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. The payment periods referred to in Article I.6 (*Payment periods and formalities*) may be suspended by Fusion for Energy at any time if it informs the Contractor that its payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced.
- II.3.3. In case of doubt on the admissibility of the expenditure indicated in 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 expenditure is admissible.
- II.3.4. Fusion for Energy shall notify the Contractor accordingly in writing and set out the reasons for the suspension. Suspension shall take effect from the date of receipt of the notification. The remainder of the period referred to in Article I.6 (*Payment periods and formalities*) shall begin to run again once the suspension has been lifted.
- II.3.5. In the event of late payment the Contractor shall be entitled to interest. The Contractor may claim interest within two (2) months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "Reference Rate") plus seven (7) 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.

II.4. REIMBURSEMENT OF EXPENSES

- II.4.1. Where provided 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 or any Specific 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 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 or in the Specific 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.5. RECOVERY

- II.5.1. If total payments made exceed the amount actually due under the Contract or any Specific Contract or if recovery is justified in accordance with the terms of this Contract or any Specific 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.5.2. 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.5.3. 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.6. TAXATION

- II.6.1. 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 Union⁴.
- II.6.2. 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

⁴ OJ C 321 E of 29.12.2006 p. 0318-0324

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.6.3. 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.7. CHECKS AND ACCESS RIGHTS

- II.7.1. For the purposes of checking the performance of the Contract or any Specific Contract and subject to prior notification (which in any case shall not 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*).
- II.7.2. 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.7.3. 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.7.4. 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.7.5. 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 and also all appliances, materials and labour required for inspection or test
- II.7.6. The Contractor shall provide Fusion for Energy purposes for the purpose mentioned in this Article.
- II.7.7. Nothing under this Article II.7 (*Checks and Access Rights*) shall relieve the Contractor of any of its obligations and responsibilities under this Contract or any Specific Contract.

II.8. REPORTING

- II.8.1. The Contractor shall provide Fusion for Energy with reports providing details about the progress of the performance of this Contract and any Specific Contract, Acceptance Data Packages and Final Report, all of which shall be in accordance with the requirements set out in Annex A (*Management Specification*), Annex B (*Technical Specifications*) and in the Specific Contract.
- II.8.2. Should any unforeseen event, action or omission directly or indirectly negatively impact the execution of this Contract or any Specific 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.9. CONFLICT OF INTERESTS

- II.9.1. The Contractor shall take all necessary measures in order to prevent any situation that could compromise the impartial and objective performance of this Contract or any Specific Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of this Contract must be notified to Fusion for Energy in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it, being the sole responsible for making the replacement according to the labour applicable laws in force.
- II.9.2. 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 personnel*) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its Staff exposed to such a situation.
- II.9.3. The Contractor shall abstain from any contact likely to compromise its independence.
- II.9.4. 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 or any Specific 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 or any Specific Contract.

II.10. PERSONAL DATA PROTECTION

- II.10.1. Any personal data of natural persons (the "Data Subject") included in or relating to the Contract or any Specific 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.10.2. 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.10.3. Fusion for Energy shall inform the Data Subject of the name of the personal data protection officer of Fusion for Energy upon request.

II.11. RIGHTS ON DOCUMENTATION AND ITEMS PROVIDED BY FUSION FOR ENERGY

- II.11.1. Where for the purpose of this Contract or any Specific 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 or any Specific 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 or any Specific 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 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, 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 none the less remain bound by its obligations to Fusion for Energy under this Contract or any Specific 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 he enters into for the purpose of executing the Contract or any Specific Contract and the amounts paid to Subcontractors. The Contractor and/or the Subcontractor shall promptly 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 or any Specific 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 or any Specific 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 or any Specific Contract, including with

respect to the technical requirements, the quality assurance requirements, the progress requirements and the delivery requirements of the Contract or any Specific 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 the performance of the Contract and/or the ITER Project as a whole. 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 (n) (*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 or any Specific 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 that are reasonable, 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 or any Specific 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 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 or any Specific 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 or any Specific 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 or any Specific Contract, in whole or in part, without prior written authorisation from Fusion for Energy.
- II.16.2. In the absence of such consent, 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 or any Specific 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 THIS CONTRACT OR ANY SPECIFIC CONTRACT

- II.17.1. Fusion for Energy may at any time and for duly justified reasons suspend performance of the Contract or any Specific 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 or any Specific Contract.
- II.17.2. Should Fusion for Energy decide to suspend this Contract or any Specific 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 he 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 totaling a period of over eighteen (18) months. The one-month's 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 or any Specific 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, 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 or a Specific 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 or equivalent 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 (*Suspension of this Contract*) shall be the Contractor's exclusive remedy on this ground. The conditions of this Article II.17 (*Suspension of this Contract*) shall also apply to the contracts with the Subcontractors.
- II.17.6. It is agreed that within 15 (fifteen) 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 or any Specific Contract. Article II.23 (*Amendment*) shall apply.

II.18. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

- II.18.1. Fusion for Energy may terminate this Contract or any Specific Contract in the following circumstances:
- (a) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to this Contract or any Specific Contract or those of the country where this Contract or any Specific Contract is to be performed;
 - (b) where Fusion for Energy has evidence of professional misconduct by the Contractor. For the purposes of this paragraph evidence shall mean a final resolution from a public administration, professional association, an arbitrator or a court;
 - (c) where Fusion for Energy has evidence regarding the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Community's or European Union's financial interests this Contractor or any related entity or person by the Contractor;
 - (d) where Fusion for Energy has evidence with respect to the Contractor of substantial errors, irregularities or fraud in the award procedure or the performance of this Contract;
 - (e) where the Contractor is in breach of its obligations under Article II.9 (*Conflict of interest*);
 - (f) where the Contractor was guilty of misrepresentation in supplying the information required by Fusion for Energy as a condition of participation in this Contract procedure or failed to supply this information;
 - (g) where the Contractor has failed to submit a Task Offer in accordance with Article I.4.2;
 - (h) where for reasons due to the Contractor, performance of this Contract or any Specific Contract has not actually commenced thirty (30) Days after the date of entry into force of this Contract or any agreed date for the start of the execution of this Contract or any Specific Contract;
 - (i) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of this Contract or any Specific Contract;
 - (j) where the amount of liquidated damages paid or payable by the Contractor exceeds the maximum amount established in Article I.15 (*Liquidated damages*);

- (k) where the Contractor is in material breach of its obligation under this Contract or any Specific Contract 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, and remains in serious breach of its contractual obligations;
- (l) where the Contractor commits a material breach of his obligations under this Contract or any Specific 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 or any Specific Contract, in the case of a consortium, with effect to the consortium;
- (m) 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*);
- (n) where the Contractor is in breach of its obligations under Article II.24 (*Export Control Requirements*).

II.18.2. Prior to termination under Article II.18.1 (a), (h), (i), (i), (k), (k), (l), (m) or (n) (*Termination by Fusion for Energy for cause*), the Contractor shall be given the opportunity to submit his observations within a reasonable time but in no event later than five (5) working 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 jure without any legal formalities.

II.18.4. Consequences of termination:

Upon termination of the Contract, any Specific 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 its commitments. The Contractor shall draw up the documents required by this Contract or any Specific 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 from that date. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents and 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 Services performed in compliance with this Contract provisions and its Annexes and accepted by Fusion for Energy in accordance with the provisions of this Contract or any Specific 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 or any Specific 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 or any Specific Contract, without prejudice to any other rights or guarantees it has under this Contract or any Specific

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 (Liability), Fusion for Energy may claim from the Contractor compensation for any loss or damage suffered due to the early termination of the Contract or a Specific Contract. This paragraph shall not apply in the case of termination due to Force Majeure in accordance with Article II.15 (*Force majeure*).
- (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 event of Fusion for Energy terminating this Contract or any Specific Contract or any portion thereof in accordance with this Article II.18 (*Termination by Fusion for Energy for cause*) and without prejudice to any other measures provided for in this Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work.

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 or any Specific 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 any Specific Contract or which might adversely affect the implementation of this Contract or any Specific 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 or any Specific 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 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 case of a group of companies or consortium, the termination of the commercial activities or the winding up of any member of the same),;
- (c) not pass any resolution, according to the applicable law to the Contractor (in case of a group of companies or 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 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 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 or any Specific Contract as Fusion for Energy may from time to time request.

The Parties agree that the breach of the covenants and/or the obligations 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 or any Specific Contract.

II.19. TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

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- II.19.1. Fusion for Energy may, at any time, at its discretion terminate this Contract or any Specific 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 or any Specific Contract is to be terminated and the effective date of termination.
- II.19.3. Upon receipt of a notice under this Article II.19(*Termination by Fusion for Energy for convenience*), the Contractor shall discontinue performance of this Contract or any Specific 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 and reasonably 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 any Specific 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 reasonably and actually incurred as a result of termination which it is seeking to recover from Fusion for Energy with supporting evidence.
- II.19.6. The amount of reimbursement payable under this Article II.19(*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 or any Specific 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 or any Specific Contract, exceeds the Total Contract Price for the Services set forth in this Contract.
- II.19.8. The ownership of all materials, parts and unfinished work paid for by Fusion for Energy under the provisions of this Contract or any Specific 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 or 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 or on-the-spot checks and inspections, over natural or legal persons (including Contractor, Subcontractor(s) and any other third parties) receiving payments from the budget of Fusion for Energy from the Commencement Date of this Contract or any Specific 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 in relation to this Contract or any Specific 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 conduct audit and carry-out investigations including on-the-spot checks and inspection 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 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with this Contract or any Specific Contract from the Commencement Date of this Contract or any Specific 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 or any Specific 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 or any Specific 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 or any Specific 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 or any Specific 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 or any Specific 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 or any Specific Contract.

In such cases, the provisions of this Article II.23 (*Amendments*) 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 legislations 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 and any Specific Contract contain the whole agreement between the Parties relating to the subject matter of this Contract or any Specific Contract as at the date of this Contract or any Specific 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 or any Specific Contract.
- II.25.2. Wherever possible, each provision of this Contract or any Specific Contract shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Contract or any Specific Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract or any Specific Contract, except to the extent that any greater burden is imposed upon any Party in consequence thereof. The Parties hereto 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 or

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any Specific Contract and the Service provided under this Contract or any Specific 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.

ANNEX G**SPECIFIC CONTRACT TEMPLATE****Specific Contract No [insert number]**

implementing framework Contract No 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 specific contract (the “**Specific Contract**”) by [name in full, department/Project Team],

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 the Specific Contract by [name in full, function],

of the other part,

HAVE AGREED

1. SUBJECT

- 1.1. The Specific Contract implements the Contract No [.] signed by Fusion for Energy and the Contractor on [insert date] (the “**Contract**”).
- 1.2. In the Specific Contract, unless the context otherwise requires or unless otherwise defined herein, the expressions defined in the Contract shall have the same meanings as in the Specific Contract.
- 1.3. The subject of the Specific Contract is [short description of subject including the Options if any].
- 1.4. The Contractor undertakes, on the terms and conditions set out in the Contract and in the Specific Contract and the Appendices hereto, which form an integral part hereof, to execute the tasks specified in Appendix I (*Task Order*).
- 1.5. The Parties declare that, with the specifications set out in the Specific Contract, the terms and conditions of the Contract shall apply to the Specific Contract, even after termination or expiry of the Contract for whatever reason. In the case of discrepancies between the Specific Contract, its Appendices and the Contract and/or the Annexes to the Contract, the

F4E - [Contract reference]

Specific Contract and its Appendices shall prevail. The priority of the Appendices to the Specific Contract shall be in accordance with the numeric sequence of the Appendices.

2. ENTRY INTO FORCE AND DURATION

- 2.1. The Specific Contract shall enter into force [on the date on which it is signed by the last Party].
- 2.2. The duration of the tasks shall not exceed [Days/months]. Execution of the tasks shall start from [date of entry into force of the Specific Contract or insert date]. The period of execution of the tasks may be extended only with the express written agreement of the Parties before such period elapses.

3. CONTRACT PRICE

- 3.1. The total amount to be paid by Fusion for Energy under the Specific Contract for the Services shall be EUR [insert amount] ([insert amount] Euros) covering all tasks executed (the “**Specific Contract Price**”). [including the Options].
- 3.2. [In addition to the Specific Contract Price [no reimbursable Costs are foreseen] [Costs up to the amount of EUR [insert amount] EUR will be reimbursed according to the terms and conditions of the Contract]].
- 3.3. [Reimbursement of travel and subsistence expenses] [Pursuant to Article I.5.5 of the Contract, the amount of the lump sum for travel and subsistence expenses shall be EUR [amount in figure and words]. Payment of the lump sum shall be adjusted to the extent that the Mission has not been executed according to the Specific Contract].
- 3.4. [Price for Options]
- 3.5. [Any other relevant provision].

4. PAYMENT PERIODS AND FORMALITIES

4.1. [Pre-financing

Fusion for Energy shall pay the Contractor pre-financing payment of EUR [amount in figures and word] corresponding to 10/20/30% (ten/twenty/thirty percent) of the Specific Contract Price as referred in Article I.5.2. [(Specific Contract Price) (the “Pre-financing payment”) within 45 (forty-five) Days of the later of:

- (a) *the receipt by Fusion for Energy of a request for the Pre-financing payment related to the Specific Contract with a corresponding invoice and, if applicable as per Article I.8. of the Contract (Pre-financing Guarantee);*
- (b) *the receipt by Fusion for Energy of 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]*

4.2. Payment of the balance

The Contractor is entitled to payment of the balance in the amount of EUR [insert amount] ([insert amount] Euros) [...].

5. [FREE-ISSUE ITEMS DELIVERED TO THE CONTRACTOR

- 5.1. The Free-Issue Items are as follows:

- (a) [insert description];
- (b) [insert description].]

F4E - [Contract reference]

6. OTHERS

6.1. [Any provision that is considered necessary for the Specific Contract.]

7. APPENDICES

Appendix I – Task Description

Appendix II –Task Offer

SIGNATURES

For the Contractor,
[company name/forename/surname/function]

For Fusion for Energy,
[forename/surname/function]

signature[s]: _____

signature: _____

Done at [complete], [date]

Done at Barcelona, [date]

In [two (2)] originals in English.