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**ANNEX 1**

**MODEL CONTRACT**



**SUPPLY CONTRACT**

**for [***concise* *subject matter***]**

between

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

and

[*Full name of Contractor(s)*]

**(*F4E- [.]*)**

The footnotes/options in blue are internal instructions only and must be read and **deleted** before contracts are sent out.

Options [in roman in square brackets] are to be used or deleted.

Comments [*in grey italics in square brackets*] are to be deleted and/or replaced by appropriate data.

In order to avoid cross-referencing problems between the general conditions and the special conditions, re-numbering of the special conditions (and Annexes) **should be avoided**; unnecessary articles (and Annexes) can be replaced by "not applicable".

The general conditions should be left unchanged. Derogations should be inserted in the special conditions.

In case of any modification to the standard version of the model contract, Legal Officer is to be consulted.

CONTRACT NUMBER – [F4E-[*XXX*] - *complete*]

The European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter referred to as “**F4E**” or the “**Contracting Authority**”), established by Council Decision (Euratom) N° 2007/198 of 27 March 2007, [(hereinafter referred to as the “**Lead Contracting Authority**") and the following contracting authorities [*insert relevant list*] (collectively, the “**Contracting Authority**”) [[1]](#footnote-1)] represented for the purposes of signing this contract by [*forename, surname, function, department of authorising officer*] [[2]](#footnote-2)*,*

on the one part, and

[*Full Contractor’s official name*]

[*Official legal form*] [[3]](#footnote-3)

[*Statutory registration number or ID or passport number*] [[4]](#footnote-4)

[*Full official address*]

[*VAT registration number*] [[5]](#footnote-5)

[appointed as the leader of the group by the members of the group that submitted the joint tender]

*[For joint tenders, repeat these data as many times as there are Contractors and continue numbering]*

([collectively] the “**Contractor**”), represented for the purposes of the signature of this contract by[*forename, surname, function of legal representative and name of company in the case of a joint tender],*

on the other part,

(each of F4E and the Contractor, individually referred to as a “**Party**” and jointly referred to as “**Parties**”),

HAVE AGREED

to the **special conditions**, the **general conditions for supply contracts** and the following annexes:

**Annex A** N/A

**Annex B** Technical specifications (IDM reference [*complete*])

**Annex C** Excerpt of Contractor’s tender

**Annex D** Instructions for invoicing

**Annex E** Power of attorney

[*Insert* *other annexes*]

which form an integral part of this contract (the special conditions, the general conditions and the annexes, collectively, the “**Contract**”).

This contract sets out the rights and obligations of the Parties during and after the duration of this Contract.

All documents issued by the Contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this Contract. In all circumstances, in the event of contradiction between this Contract and documents issued by the Contractor, this Contract prevails, regardless of any provision to the contrary in the Contractor’s documents.

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# Special Conditions

* 1. Definitions and Order of priority of provisions

**I.1.1** **Definitions**

For the purpose of this Contract, in addition to the other terms specifically defined in the same Contract with initial capital letter, the following definitions, when used with capitalized terms, shall apply:

**‘Back Office’**: the internal system(s) used by the Parties to process electronic invoices;

**‘Breach of Obligations’:** failure by the contractor to fulfil one or more of its contractual obligations;

**‘Confidential Information or Document’**: any information or document received by either Party from the other or accessed by either Party in the context of the Performance of the Contract, that any of the Parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of Interest’**: a situation where the impartial and objective Performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest or any other shared interest with the Contracting Authority or any third party related to the subject matter of the contract;

**‘EDI** **Message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘DACC’:** Electronic platform developed by F4E for managing contracts’ signature, deviations, amendments and contract changes with Contractors and to process commercial operations in accordance with the contract (e.g. release of Options, Indexation). Approval of documents in DACC is legally binding.

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the Parties. This is done either through web services, with a machine-to-machine connection between the Parties’ Back Office systems (EDI Messages), or through a web application (the s*upplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic *requests for supplies*, electronic specific contracts, and electronic delivery of the certificate of conformity or electronic invoices between the Parties;

**‘Force Majeure’**: any unforeseeable, exceptional situation or event beyond the control of the Parties that prevents either of them from fulfilling any of their obligations under the Contract. The situation or event must not be attributable to error ornegligence on the part of the Parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure;

**‘Formal Notification’** (or ‘Formally Notify’): form of communication between the Parties made in writing by mail or email or DACC, which provides the sender with compelling evidence that the message was delivered to the specified recipient. Formal Notifications may take place through DACC;

**‘Fraud’:** an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Contracting Authority's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Contracting Authority’s budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Contracting Authority's financial interests;

**'Grave Professional Misconduct'**: a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a Related Person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a Related Person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence;

**‘Interface Control Document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of Union Law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Contracting Authority’s budget;

**‘Notification’** (or ‘Notify’): form of communication between the Parties made in writing including by electronic means;

**‘Performance of the Contract’**: the execution of tasks and delivery of the purchased Supplies by the Contractor to the Contracting Authority;

**‘Personnel’**: persons employed directly or indirectly or contracted by the Contractor to perform the contract;

**‘Professional Conflicting Interest’**: a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to perform the Contract to an appropriate quality standard;

**‘Related Person’**: any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

**‘Supplier Portal’**: the e-PRIOR portal, which allows the Contractor to exchange electronic business documents, such as invoices, through a graphical user interface;

‘**Working Day’**: any day other than (i) Saturday, Sunday or any other day in which banks are required or authorized by law to be closed in [*Barcelona (Spain)*][[6]](#footnote-6) and, if different, (ii) F4E public holidays in [*Barcelona (Spain)*], as published annually in the F4E Industry and Fusion Laboratories Portal website.

**I.1.2** **Order of priority of provisions**

If there is any conflict between different provisions in this Contract, the following rules must be applied:

1. The provisions set out in the special conditions take precedence over those in the other parts of the Contract.
2. The provisions set out in the general conditions take precedence over those in the annexes.
3. The provisions set out in the Technical Specifications (Annex B) take precedence over those in the Contractor’s tender (Annex C).
   1. Subject matter

**I.2.1** The subject matter of the Contract is [*description of subject*], as better detailed in [*Section [insert relevant section, if any] of*] of the Technical Specifications (Annex B) (the “**Supplies**”).

**I.2.2** TheContractor shall execute the Supplies in accordance with this Contract, and in particular with the Technical Specifications attached hereto as Annex B.

* 1. Entry into force and duration

**I.3.1** The Contract enters into force [on the date on which the last Party signs it][[7]](#footnote-7) [on [*insert date*] if both Parties have already signed it] (the “**Effective Date**”).

**I.3.2** The Performance of the Contract cannot start before the Effective Date.

**I.3.3** The duration of the Performance of the Contract must not exceed [*complete*] months (the date of expiration of the Contract in accordance with this Article I.3.3 [- or in case of [execution in phases] [renewal] pursuant to Article [I.3.4] [I.3.5] – the renewed date of expiration,] hereinafter referred to as the “**Expiration Date**”). Performance of the Contract starts from [the Effective Date] [*insert date*].

The period of Performance of the Contract may be extended only with the express written agreement of the Parties before the Expiration Date.

**I.3.4** The Supplies must be delivered at [*place and Incoterm*].*[[8]](#footnote-8)*

[The Contractor must notify the Contracting Authority of the exact date of delivery at least [*complete*] Working Days in advance. All deliveries must be made between [*complete*] hours and [*complete*] hours at the agreed place of delivery.] [Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.]

*[Option: execution in phases]*

**I.3.5** [The Performance of the Contract is divided in [*complete*] phases of [*complete*] months each. The Contractor is authorised to continue the Performance of the Contract in the [second/third/ …] phase [only with a written consent of the Contracting Authority, which will take a decision at its own discretion following an analysis of a progress report at the end of the preceding phase], [on the condition that the necessary funding is available from the Contracting Authority’s budget]. The Contracting Authority must *notify* the Contractor in writing about its consent [2 (two)] months before the start of the next phase.]

*[Option: renewal of the contract]*

**I.3.6 Renewal of the Contract[[9]](#footnote-9)**

**[**The Contract is renewed automatically - under the same terms and conditions - [*complete*] times for [*complete*] months each, unless either (i) the Contractor receives Formal Notification to the contrary by the Contracting Authority at least [3 (three)] months before the Expiration Date (or before the end of the subsequent expiration date, in case of renewal) or (ii) the Contracting Authority receives Formal Notification to the contrary by the Contractor at least [6 (six)] months before the Expiration Date (or before the end of the subsequent expiration date, in case of renewal). Renewal does not change or postpone any existing obligations.]

* 1. Price
     1. Price of the contract and maximum amount

The price payable under this Contract for the provision of all Supplies, excluding renewals and price revision, is EUR [*amount in figures and in words*].

[The maximum amount covering all purchases of the Supplies under the Contract and excluding price revision is EUR [*amount in figures and in words*]. It includes EUR [*amount in figures and in words*] for the [first] [second] renewal]].

* + 1. Price revision index

*Option 1: not applicable*

[Price revision is not applicable to this Contract.]

*Option 2: applicable formula*

[Price revision is determined by the formula set out in Article II.19 and using the trend in the harmonised indices of consumer prices (HICP) [*complete*][[10]](#footnote-10) published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc\_hicp\_midx)]

* 1. Payment arrangements[[11]](#footnote-11)
     1. Pre-financing[[12]](#footnote-12)

*Option 1: Not applicable*

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

*Option 2: Pre-financing applicable*

[Following signature of the Contract by the last Party and its receipt by the Contracting Authority, the Contractor (or leader in the case of a joint tender) may claim a pre-financing payment of [*complete*] % of the price referred to in Article I.4.1. The Contractor (or leader in the case of a joint tender) must send the Contracting Authority an invoice [in paper format] [via e*-PRIOR*] [via DACC] for the pre-financing payment.

[The Contractor must also provide a financial guarantee equal to [*complete*] % of the total price of the Contract.][[13]](#footnote-13)

The Contracting Authority must pay the pre-financing within 30 (thirty) days of receiving the invoice [provided it has received the guarantee].

[Each year, for contracts over EUR 5 million, the Contractor (or leader in the case of a joint tender) must inform the Contracting Authority by [31 December] [30 November] about the cumulative expenditure incurred under this Contract. This information is required for the Contracting Authority’s accounting purposes.][[14]](#footnote-14)

* + 1. Interim payment[s]

*Option 1: Not applicable*

[Interim payment is not applicable to this Contract.]

*Option 2: Interim payment(s) applicable*

[1[(a)]. The Contractor (or leader in the case of a joint tender) may claim an interim payment equal to [*complete*] % of the price referred to in Article I.4.1 in accordance with Article II.20.6 [minus the amount of the pre-financing payment paid in accordance to Article I.5.1].[[15]](#footnote-15)

The Contractor (or leader in the case of a joint tender) must send an invoice [in paper format] [via e-PRIOR] [via DACC] for the interim payment as provided for in this Contract, including Annex D (Instructions for invoicing), accompanied by the following:

* [*insert relevant progress report or certificate of conformity of supplies or reference to Technical Specifications or contract*]

***Repeat point 1(with 1(a), 1(b)…) as many times as there are interim payments as well as points 2 to 4 if they change for each interim payment.***

2. The Contracting Authority must approve any submitted documents or Supplies and pay within [30] [60] [90][[16]](#footnote-16) days from receipt of the invoice.

3. The Contracting Authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.20.7. Once the suspension is lifted, the Contracting Authority shall give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or Supplies.]

* + 1. Payment of the balance

1. The Contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.20.6. [The amount of the pre-financing paid in accordance to Article I.5.1 shall be cleared against the payment of the balance].[[17]](#footnote-17)

The Contractor (or leader in the case of a joint tender) must send an invoice [in paper format] [via e-PRIOR][[18]](#footnote-18) [via DACC] for payment of the balance due under the Contract, as provided for in this Contract, including Annex D (Instructions for invoicing), accompanied by the following:

* [*insert relevant progress report or certificate of conformity of supplies or reference to Technical Specifications or contract*]

2. The Contracting Authority must approve the submitted documents or Supplies and pay within [30] [60] [90][[19]](#footnote-19) days from receipt of the invoice.

3. The Contracting Authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.20.7. Once the suspension is lifted, the Contracting Authority shall give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or supplies.

**I.5.4 Other payments arrangements and value added tax**

Payments shall be made only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests cannot be made if previous payments have not been executed as a result of default or negligence of the Contractor.

F4E 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 Union[[20]](#footnote-20).

In accordance with Article II.18.1, the Contractor shall remain responsible for the proper application of the rules on VAT at the place where is taxable. The Contracting Authority reserves the right to communicate information on the Contract to the Member State in which the Contractor is liable to VAT.

Based on EC Directive 2006/112/EC and decision 2513 of Spanish Foreign Affairs Ministry published in BOE No 33 of 7 February 1997, F4E, as an European Communities body, is exempted from value added tax (VAT), for the delivery of goods and services for official use, if the amounts of each transaction are equal or higher than 300.05 €, VAT excluded (751.27 € if related to constructions).

Depending on the country where the Contractor is taxable, the VAT exemption may be direct or indirect:

* If direct exemption applies, the Contracting Authority shall not pay VAT to the Contractor and the latter, to this purpose, shall issue the invoice without applying VAT; or
* If indirect exemption applies, the Contracting Authority shall first pay VAT to the Contractor and subsequently will request reimbursement to the Member State where the Contractor is taxable.[[21]](#footnote-21)

I. In case of the so called direct exemption, invoices presented by the Contractor to F4E, for an amount equal or higher to the above mentioned value, shall apply a 0 % VAT rate and shall indicate the following statement:

A. For local purchases in Spain: “*Exoneración directa del I.V.A. en base a la disposición 2513 del Mtrio. de AA.EE. publicada en el BOE n° 33 del 7 de febrero de 1997, páginas 3917 a 3919*”; and

B. For intracommunity EU purchases: “*VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC*”.

F4E will provide the Contractor with a VAT exemption certificate in accordance with the note 125/08 from the “*Agencia tributaria*” (Spanish tax authorities), dated 25 April 2008 for local purchases in Spain, and with Directive 2006/112/EC (Article 151) and Directive 2008/118/EC (Article 13) for intracommunity EU purchases; [[22]](#footnote-22)

II. In case of indirect exemption, the Contractor shall present their invoices including VAT (VAT rate to be indicated separately), which F4E will recover later on from the Member State involved.]

* 1. Guarantees

[Guarantees are not applicable to this Contract.]

* + 1. Performance guarantee

*Option 1: Not applicable*

[Performance guarantee is not applicable to this Contract.]

*Option 2: performance guarantee applicable*

[A performance guarantee constituted by a bank guarantee in accordance with the conditions laid down in Article II.20.5 is requested for the amount of EUR [*amount in figures and in words*].]

* + 1. Retention money guarantee

*Option 1: Not applicable*

[Retention money guarantee is not applicable to this Contract.]

*Option 2: money retention guarantee applicable*

[A retention money guarantee is requested for an amount of EUR [*amount in figures and in words*] and constituted by a corresponding deduction on each payment. At the request of the Contractor, and subject to approval by the Contracting Authority, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.20.5.]

* 1. Bank account

Payments must be made to the Contractor’s (or leader’s in the case of a joint tender) bank account denominated in [Euro] [*insert local currency where the receiving country does not allow transactions in EUR*]*,* identified as follows:

Name of bank: [*complete*]

Full address of branch: [*complete*]

Exact denomination of account holder: [*complete*]

Full account number including bank codes: [*complete*]

[IBAN[[23]](#footnote-23) code:] [*complete*]

Unless otherwise indicated by F4E, any modification of the Contractor’s bank account shall be approved through DACC.

* 1. Communication details

For the purpose of this Contract, communications must be sent to the following addresses:

Contracting authority:

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

To the attention of: *[name of Responsible Officer]*

Email: [*insert functional mailbox*]

Contractor (or leader in the case of a joint tender):

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

To the attention of: *[complete]*

Email: [*complete*]

By derogation from this Article, different contact details for the Contracting Authority or the Contractor may be provided by a Party through a Formal Notification sent to the other Party by registered letter with acknowledgement of receipt.

Any communication or document sent, notified or approved through DACC is considered as equivalent to a paper document with a handwritten signature and shall be admissible as evidence in legal proceedings.

* 1. Processing of Personal Data

**I.9.1 Processing of personal data by the contracting authority**

For the purpose of Article II.9.1:

1. the data controller is [*insert position of the data controller and name of the organisational entity*];
2. the data protection notice is available at *[*<https://______________________>*]*

**I.9.2 Processing of personal data by the contractor**

*Option 1: Not applicable (no processing)*

[This clause is not applicable to this FWC.][[24]](#footnote-24)

*Option 2: processing applicable*

[For the purpose of Article II.9.2,

1. the subject matter and purpose of the processing of personal data by the contractor are [*provide a* *short and concise description of the subject matter and purpose*];
2. The localisation of and access to the personal data processed by the contractor shall comply with the following[[25]](#footnote-25):
3. the personal data shall only be processed within the territory of [the European Union and the European Economic Area][…] and will not leave that territory;
4. the data shall only be held in data centres located with the territory of [the European Union and the European Economic Area][…];
5. [no access shall be given to such data outside of [the European Union and the European Economic Area][…]] [access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data];
6. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;

any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725[[26]](#footnote-26).]

* 1. termination by f4e for convenience

The Contracting Authority may, at any time and at its discretion terminate the Contract or any part thereof in accordance with this Article.

Any such termination shall be effected by delivery to the Contractor of a Formal Notification sent by registered letter with acknowledgement of receipt. This notice shall specify the extent to which performance under the Contract is to be terminated and the effective date of termination.

Upon receipt of a notice under this Article, the Contractor shall discontinue performance of the 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.

The Contracting Authority shall reimburse the Contractor for those direct costs actually and reasonably incurred, if applicable, and claimed in accordance with this Article by the Contractor as a direct result of termination of the Contract or of any portion thereof, as well as a cancellation fee corresponding to 3% (three percent) of the remaining payments of any works that have been explicitly ordered but not yet delivered in accordance with the Contract.

As promptly as possible and in no event later than 30 (thirty) days after the effective date of termination, the Contractor shall submit to F4E its claim for reimbursement in writing by registered letter with acknowledgement of receipt. Such claim for reimbursement shall include a cost breakdown of unavoidable direct costs reasonably and actually incurred as a result of termination that he is seeking to recover from F4E with supporting evidence.

The amount of reimbursement payable under this Article shall be fixed on the basis of the evidence produced by the Contractor and accepted by the F4E. It shall take account of the proportion of the Contract completed and accepted by F4E in accordance with the provisions of the Contract, and shall be consistent with this Article. The Contractor hereby expressly waives the right to claim any loss of profit in respect of the uncompleted or outstanding works which were to be performed after the termination date.

Without prejudice to the above, F4E 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 the Contract, exceeds the total contract price payable under the Contract.

Within 60 (sixty) days as from the date of termination, the Contractor must submit any report, deliverable or result and any invoice required for Supplies that were provided before the date of termination. Ownership of all materials, parts and unfinished work paid for by F4E under the provisions of the Contract shall be vested in or transferred to F4E as soon as they have been paid for.

* 1. Applicable law and settlement of disputes

**I.11.1** The Contract is governed by Community and European Union law (the “**Union Law**”), complemented, where necessary, by the national substantive laws of Spain other than its rules of private international law (conflict of laws/renvoi rules). The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) adopted in Vienna on 11 April 1980 does not apply to the Contract.

**I.11.2** The courts ofBarcelona (Spain) have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the Contract.

* 1. Inter-institutional Contract[[27]](#footnote-27)

*Option 1: Not applicable*

[This Article is not applicable to this Contract]

*Option 2: Inter-institutional contract applicable*

[This Contract is inter-institutional. The Lead Contracting Authority acts on its own behalf and on behalf of the bodies listed in the title of the Contract as the contracting authorities, which provided the Lead Contracting Authority with a power of attorney before Contract signature. The Lead Contracting Authority signs the Contract and any amendments on behalf of itself and of all other contracting authorities.]

* 1. Liquidated damages

**I.13.1 Delay in delivery**

If the Contractor fails to perform its contractual obligations within the applicable time limits set out in this Contract, the Contracting Authority, without prejudice to the other rights and remedies provided in this Contract and by applicable laws, may claim liquidated damages for each day of delay using the following formula:

0.3 x (V/d)

where

V is the price of the relevant purchase or supply;

d is the duration specified in the Contract for delivery of the relevant purchase or supply or, failing that, the duration of performance of the Contract specified in Article I.3 expressed in days.

The procedure under Article II.14 shall apply.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.15.

* 1. [Other special conditions[[28]](#footnote-28)

***IMPORTANT: Other special conditions or derogations to the general conditions may be considered. Please liaise with LO in that respect.***

***Certain provisions which are usually applicable to service contracts, such as the ‘security clause’, may be used also for certain supply contracts, subject to adaptation.***

**[I.14.[ ] Security**

Contractors working in F4E premises must conform to any internal F4E security rules, including the F4E’s Information Systems Security Policy.

In certain cases, when required by the Contracting Authority’s services for security reasons, the Contracting Authority may ask the Contractor to agree to a security clearance of the Personnel involved for the provision of certain services. This will be considered as a specific requirement for a specific project, and not influence the other conditions.

The Contracting Authority may request to the Contractor that all the people working at F4E as part of this Contract sign a confidentiality and non-disclosure agreement.]

**[I.14.[ ]** [**Limitation of liability**

By partially derogating to the first paragraph of Article II.6.3, the Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of Performance of the Contract, including in the event of subcontracting, only up to an amount not exceeding [*complete*] the payable price of the Contract]

**[I.14.[ ]** **[Joint and several liability between the Contractor and other entities**

The Contractor and [*name of the entity/ies*] are jointly and severally liable for the performance of the Contract and for any related Specific Contract or Order Form.][[29]](#footnote-29)

**I.14.[ ] Non-disclosure agreements[[30]](#footnote-30)**

In light of the sensitivity of information to which the Personnel will have, or may have, access to in the context of the supply provision, and in connection with Article II.8 (Confidentiality), F4E is entitled to request to the Contractor - and/or directly to the Personnel accessing to Confidential Information, as the case may be – which shall have to accept, signature of specific non-disclosure agreement with the Contracting Authority with a text substantially consistent with Annex [ ] (NDA template). ]

**I.14.[ ] Intellectual property rights[[31]](#footnote-31)**

For the purpose of this Article, in addition to the other terms specifically defined in the Contract with initial capital letter, the following definitions when used with capitalized terms, shall apply:

**‘Creator’**: means any natural person who contributes to the production of the Result;

**‘Pre-existing Material’**: any material, document, technology or know-how which exists prior to the Contractor using it for the production of a Result in the Performance of the Contract;

**‘Pre-existing Right’**: any industrial and intellectual property right on Pre-existing Material; it may consist in a right of ownership, a licence right and/or right of use belonging to the Contractor, the Creator, the Contracting Authority as well as to any other third parties;

**‘Result’**: any intended outcome of the Performance of the Contract, whatever its form or nature. A Result may be further defined in this Contract as a deliverable. A Result may, in addition to newly created materials produced specifically for the Contracting Authority by the Contractor or at its request, also include Pre-existing Materials.

**I.14.[ ].1 Ownership of the rights in the Results**

F4E acquires irrevocably worldwide ownership of the Results and of all intellectual property rights on the newly created materials produced specifically for the Contracting Authority under the Contract and incorporated in the Results, without prejudice however to the rules applying to Pre-existing Rights on Pre-existing Materials, as per Article II.14.[ ].2.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the Results and in all technological solutions and information created or produced by the Contractor or by its subcontractor in Performance of the Contract. The Contracting Authority may exploit and use the acquired rights as stipulated in this Contract. The F4E acquires all the rights as from the moment the Contractor has created the Results.

The payment of the price includes any fees payable to the Contractor about the acquisition of ownership of rights by the Contracting Authority including for all modes of exploitation and of use of the Results.

**I.14.[ ].2 Licensing rights on Pre-existing Materials**

The Contracting Authority does not acquire ownership of Pre-existing Rights under this Contract.

The Contractor licenses the Pre-existing Rights on a royalty-free, non-exclusive and irrevocable basis to F4E, which may use the Pre-existing Materials for all the modes of exploitation set out in this Contract. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

(a) the Pre-existing Rights can be sub-licensed by the Contracting Authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for F4E;

(b) if the Result is a "document" such as a report or a study, and it is meant to be published, the existence of Pre-existing Materials in the Result may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the Result as a whole and not of the Pre-existing Materials taken separately from the Result; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All Pre-existing Rights are licensed to F4E from the moment the Results are delivered and approved by the Contracting Authority.

The licensing of Pre-existing Rights to F4E under this Contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the Contract is deemed to also include any fees payable to the Contractor in relation to the licensing of Pre-existing Rights to the Contracting Authority, including for all forms of exploitation and of use of the Results.

Where Performance of the Contract requires that the Contractor uses Pre-existing Materials belonging to the Contracting Authority, the Contracting Authority may request that the Contractor signs an adequate licence agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this Contract.

**I.14.[ ].3 Exclusive rights**

F4E acquires the following exclusive rights:

1. reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the Results by any means (mechanical, digital or other) and in any form, in whole or in part;
2. communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the Results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication on Internet and broadcasting by cable or by satellite;
3. distribution: the exclusive right to authorise or prohibit any form of distribution of Results or copies of the Results to the public, by sale or otherwise;
4. rental: the exclusive right to authorise or prohibit rental or lending of the Results or of copies of the Results;
5. adaptation: the exclusive right to authorise or prohibit any modification of the Results;
6. translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the Results, and any other alteration of the Results, subject to the respect of moral rights of authors, where applicable;
7. where the Results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
8. where the Results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
9. where the Results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
10. where the Results are or include know-how: the right to use such know-how as is necessary to make use of the Results to the full extent provided for by this Contract, and the right to make it available to contractors or subcontractors acting on behalf of the Contracting Authority, subject to their signing of adequate confidentiality undertakings where necessary;
11. where the Results are documents:

the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to them by this Decision;

the right to store and archive the Results in line with the document management rules applicable to the Contracting Authority, including digitisation or converting the format for preservation or new use purposes;

1. where the Results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:

end-user rights, for all uses by the Contracting Authority or by subcontractors which Result from this Contract and from the intention of the Parties;

the rights to receive both the source code and the object code;

1. the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this Contract; however, for Pre-existing Materials which are only licensed to the Contracting Authority the right to sub-license does not apply, except in the two cases foreseen by Article II.14.[ ].2;
2. to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this Contract, to publish the Results with or without mentioning the Creator(s)’ name(s), and the right to decide when and whether the Results may be disclosed and published.

The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by F4E on all parts of the Results, be it via a transfer of ownership of the rights, on those parts which were specifically created by the Contractor or via a licence of the Pre-existing Rights, on those parts consisting of Pre-existing Materials.

Where Pre-existing Materials are inserted in the Results, the Contracting Authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the Results, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the Contracting Authority. In such case, the Contractor will have to clearly inform the Contracting Authority before making such choice and the Contracting Authority has the right to refuse it.

**I.14.[ ].4 Identification of Pre-existing Rights**

When delivering the Results, the Contractor must warrant that, for any use that the Contracting Authority may envisage within the limits set in this Contract, the Result newly created parts and the Pre-existing Material incorporated in the Results are free of claims from Creators or from any third parties and all the necessary Pre-existing Rights have been obtained or licensed.

To that effect, the Contractor must identify when delivering each Result the Pre-existing Rights to each Result of this Contract or parts thereof, including identification of the rights’ owners.

**I.14.[ ].5 Evidence of granting of Pre-existing Rights**

Upon request by the Contracting Authority, the Contractor must, in addition to the list mentioned under Article II.14.[ ].4, provide evidence that it has the ownership or the right to use all the listed Pre-existing Rights, except for the rights owned or licensed by the Contracting Authority. The Contracting Authority may request this evidence even after the end of this Contract.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, ,sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs (‘background technology’), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

1. the name and version number of a software product;
2. the full identification of the work and its author, developer, Creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
3. a copy of the licence to use the product or of the agreement granting the relevant rights to the Contractor or a reference to this licence;
4. a copy of the agreement or extract from the employment contract granting the relevant rights to the Contractor where parts of the Results were created by its Personnel;
5. the text of the disclaimer notice if any.

Provision of evidence does not release the Contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The Contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Results.

**I.14.[ ].6 Quotation of works in the Result**

In the Result, the Contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

**I.14.[ ].7 Moral rights of Creators**

By delivering the Results, the Contractor warrants that the Creators will not object to the following on the basis of their moral rights under copyright:

1. that their names be mentioned or not mentioned when the Results are presented to the public;
2. that the Results be divulged or not after they have been delivered in their final version to the Contracting Authority;
3. that the Results be adapted, provided that this is done in a manner which is not prejudicial to the Creator’s honour or reputation.

If moral rights on parts of the Results protected by copyright may exist, the Contractor must obtain the consent of Creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

**I.14.[ ].8 Image rights and sound recordings**

If natural persons appear in a Result or their voice or any other private element is recorded in a recognisable manner, the Contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the Contracting Authority. The Contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

**I.14.[ ].9 Copyright notice for Pre-existing Rights**

When the Contractor retains Pre-existing Rights on parts of the Results, reference must be inserted to that effect when the Result is used, with the following disclaimer: ‘© — year — Fusion for Energy. All rights reserved. Certain parts are licensed under conditions to F4E’, or with any other equivalent disclaimer as the Contracting Authority may consider best appropriate, or as the Parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

**I.14.[ ].10 Visibility of F4E funding and disclaimer**

When making use of the Results, the Contractor must declare that they have been produced under a contract with F4E and that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority’s official position. The Contracting Authority may waive this obligation in writing or provide the text of the disclaimer.

**I.14.[ ].11** **Use of the Results by the Contractor**

The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Contracting Authority has specifically given prior written authorisation to the contrary.]

# General Conditions

* 1. Independent contractor – Personnel of the Contractor

The Contractor is, and shall act as, an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Contracting Authority and the Contractor.

Personnel is, and shall remain during the performance of the Contract, personnel of the Contractor and (a) shall not have any direct contractual relationship with F4E, (b) shall not have direct power to represent or commit the Contracting Authority and (c) shall not be allowed to manage the Contracting Authority’s personnel.

The Contractor will have sole responsibility for complying with all legal obligations incumbent on it, notably those arising from employment law, tax law and social security legislation regarding its Personnel. The Contractor will be responsible for the Personnel carrying out the work, who is not, and may not be, placed in a position of dependency in relation to F4E.

The Contractor is responsible for, and shall have to duly comply with, applicable laws regarding Personnel, with particular reference to labour law applicable in the country where the Contractor is established but also to mandatory labour law provisions applicable in the country where Personnel carry out the activity (if different from the country where the Contractor is established). The mentioned applicable laws include, but are not limited to, laws relevant to salaries and qualifications, social contributions, health & safety in the workplace, risk prevention and fitness to work, in relation to its Personnel and, if applicable, also to staff of subcontractors or F4E. Upon request of the Contracting Authority, the Contractor shall have to provide evidence on the fulfilment of any related applicable laws.

* 1. Roles and responsibilities in the event of a joint tender

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

* 1. Severability

Each provision of this Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the Parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

* 1. Delivery of supplies

**II.4.1** The Contractor must comply with the minimum requirements provided for in the Technical Specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union Law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU[[32]](#footnote-32), compliance with data protection obligations resulting from Regulation (EU) 2016/679[[33]](#footnote-33) and Regulation (EU) 2018/1725[[34]](#footnote-34).

**II.4.2** All periods specified in the Contract are calculated in calendar days, unless otherwise specified.

**II.4.3** The Contractor must not present itself as a representative of the Contracting Authority and must inform third parties that it is not part of the European public service.

**II.4.4** The Contractor is responsible for the Personnel who perform the Contract and exercises its authority over its Personnel without interference by the Contracting Authority. The Contractor must inform its Personnel that:

1. they may not accept any direct instructions from the Contracting Authority; and
2. their participation in providing the Supplies does not result in any employment or contractual relationship with the Contracting Authority.

The Contractor undertakes to indemnify and hold harmless the Contracting Authority – for the whole amount of costs incurred - for any claim towards the latter brought by the Contractor’s Personnel invoking any right arising from, or in connection with, the contractual relationship between the Contractor and the Contracting Authority.

**II.4.5** The Contractor must ensure that the Personnelperforming the Contract and any future replacement personnel possess the professional qualifications and experience required to provide the Supplies, as the case may be on the basis of the selection criteria set out in the procurement documents (Invitation to tender).

**II.4.6** At the Contracting Authority’s reasoned request, the Contractor must replace any member of Personnel who:

1. does not have the expertise required to provide the Supplies; or
2. has caused disruption at the premises of the Contracting Authority.

The Contractor bears the cost of replacing its Personnel and is responsible for any delay in providing the Supplies resulting from the replacement of Personnel.

**II.4.7** The Contractor must record and report to the Contracting Authority any problem that affects its ability to deliver the Supplies. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

**II.4.8 Delivery**

1. Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.3.

1. Date, time and place of delivery

The Contracting Authority must be notified in writing of the exact date of delivery within the period indicated in Article I.3. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.3.

The Contractor must bear all costs and risks involved in delivering the Supplies to the place of delivery.

1. Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier, giving the contract number and particulars of the Supplies delivered. One copy of the consignment note must be countersigned by the Contracting Authority and returned to the Contractor or to its carrier.

**II.4.9 Certificate of conformity**

Signature of the consignment note by the Contracting Authority, as provided for in point (c) of Article II.4.8 is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the Supplies with the contract.

Conformity of the Supplies delivered must be evidenced by the signature of a certificate to this effect by the Contracting Authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the Technical Specifications.

Conformity must be declared only where the conditions laid down in the Contract are satisfied and the Supplies conform to the Technical Specifications.

If, for reasons attributable to the Contractor, the Contracting Authority is unable to accept the Supplies, the Contractor must be notified in writing at the latest by the deadline for conformity.

**II.4.10 Conformity of the supplies delivered with the contract**

The Supplies delivered by the Contractor to the Contracting Authority must be in conformity in quantity, quality, price and packaging with the contract.

The Supplies delivered must:

1. correspond to the description given in the Technical Specifications and possess the characteristics of the Supplies provided by the Contractor to the Contracting Authority as a sample or model;
2. be fit for any specific purpose required of them by the Contracting Authority and made known to the Contractor at the time of conclusion of this Contract and accepted by the Contractor;
3. be fit for the purposes for which supplies of the same type are normally used;
4. demonstrate the high quality standards and performance which are normal in supplies of the same type and which the Contracting Authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the Supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this Contract, in particular the Technical Specifications and the terms of its tender.
5. be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

**II.4.11 Remedy**

The Contractor must be liable to the Contracting Authority for any lack of conformity which exists at the time the Supplies are verified.

In case of lack of conformity, without prejudice to Articles II.6 (Liability) and II.14 (Liquidated Damages) applicable to the total price of the Supplies concerned, the Contracting Authority is entitled to apply at its own discretion one of the following remedies:

1. to have the Supplies brought into conformity, free of charge, by repair or replacement; or
2. to have an appropriate reduction made in the price.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the Contracting Authority, taking account of the nature of the Supplies and the purpose for which they are required by the Contracting Authority.

The term ‘free of charge’ in paragraph (a) refers to the costs incurred to bring the Supplies into conformity, particularly the cost of postage, labour and materials.

**II.4.12 Assembly**

If required by the Technical Specifications, the Contractor must assemble the Supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the Supplies must be deemed to be equivalent to lack of conformity of the Supplies if installation forms part of the Contract and the Supplies were installed by the Contractor or under its responsibility. This applies equally if the product was to be installed by the Contracting Authority and was incorrectly installed owing to a shortcoming in the installation instructions.

**II.4.13 Services provided to supplies**

If required by the Technical Specifications, services to Supplies must be provided accordingly.

**II.4.14 General provisions concerning supplies**

1. Packaging

The Supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the Technical Specifications, pallets must be considered as one‑way packaging and must not be returned. Each box must be clearly labelled with the following information:

* name of Contracting Authority and address for delivery;
* name of Contractor;
* description of contents;
* date of delivery;
* number and date of contract;
* EC code number of article.

1. Warranty

The Supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the Technical Specifications.

The Contractor must guarantee that any permits and licences required for manufacturing, selling and delivering the Supplies have been obtained.

The Contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the Parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, Supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other Supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

**II.4.15 Changes in exclusion situation**

The Contractor must immediately inform the Contracting authority of any changes in the exclusion situations as declared, according to Article 137(1) of Regulation (EU) 2018/1046.

* 1. Communication between the parties
     1. Form and means of communication

Any communication of information, notices or documents under the Contract must:

1. be made in writing in paper or electronic format in the language of the contract;
2. bear the Contract number;
3. be made using the relevant communication details set out in Article I.8; and
4. be sent by mail, email or, for the documents specified in the special conditions (if any), via e-PRIOR.

If a Party requests written confirmation of an e-mail within a reasonable time, the other Party must provide an original signed paper version of the communication as soon as possible.

The Parties agree that any communication made by email in accordance with Articles II.5.1, II.5.2 and I.8 has full legal effect and is admissible as evidence in judicial proceedings.

Without prejudice to the above, communication through DACC is considered valid and equivalent to written communication.

* + 1. Date of communications by mail and email

Any communication is deemed to have been made when the receiving Party receives it, unless this Contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving Party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending Party must be able to prove the date of dispatch. In the event that the sending Party receives a non-delivery report, it must make every effort to ensure that the other Party actually receives the communication by email or mail. In such a case, the sending Party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Contracting Authority is deemed to have been received by the Contracting Authority on the date on which the department responsible referred to in Article I.8 registers it.

Formal Notifications are considered to have been received by the receiving Party on the date of receipt indicated in the proof received by the sending Party that the message was delivered to the specified recipient.

* + 1. Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the Parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the Supplier Portal).

The Contracting Authority takes the necessary measures to implement and maintain electronic systems that enable the Supplier Portal to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the Parties’ Back Offices. In this case, the Parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the Interface Control Document. The Contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the Supplier Portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one Party, it must *notify* the other immediately and the Parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one Party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the Supplier Portal or the machine-to-machine connection is restored.

When a change in the Interface Control Document requires adaptations, the Contractor (or leader in the case of a joint tender) has up to six months from receipt of the Notification to implement this change. This period can be shortened by mutual agreement of the Parties. This period does not apply to urgent measures required by the security policy of the Contracting Authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

* + 1. Validity and date of e-documents

The Parties agree that any e-document, including related attachments exchanged via e-PRIOR:

1. is considered as equivalent to a paper document;
2. is deemed to be the original of the document;
3. is legally binding on the Parties once an e-PRIOR authorised person has performed the ‘sign’ action in e-PRIOR and has full legal effect; and
4. constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The Parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the Parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the Parties’ Back Offices to allow electronic transfer of documents, the Parties agree that an e-document, sent as mentioned in the Interface Control Document, qualifies as an EDI Message.

If the e-document is dispatched through the Supplier Portal, it is deemed to have been legally issued or sent when the Contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the Contracting Authority.

In the event that an e-document is dispatched using a direct connection established between the Parties’ Back Offices, the e-document is deemed to have been legally issued or sent when its status is ‘received’ as defined in the Interface Control Document.

When using the Supplier Portal, the Contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the Supplier Portal.

* + 1. Authorised persons in e-PRIOR

The Contractor submits a request for each person who needs to be assigned the role of ‘user’ in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the Contracting Authority has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific tenders or Specific Contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the Contractor.

* 1. Liability

**II.6.1** The Contracting Authority is not liable for any direct or indirect damage or loss caused by the Contractor, including any direct or indirect damage or loss to third parties during or as a consequence of Performance of the Contract.

**II.6.2** If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the Performance of the Contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

**II.6.3** The Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of Performance of the Contract, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the Contract. However, in case of (i) damage or loss caused by the gross negligence or wilful misconduct of the Contractor, its Personnel or subcontractors (including their Personnel), (ii) personal injuries or death, caused by the Contractor, its Personnel or its subcontractors (including their Personnel) and/or (iii) damage or loss resulting from an infringement of intellectual property rights of a third party, then the Contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the Contracting Authority in connection with the Performance of the Contract, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.

If the Contracting Authority’s liability towards the third party is established and that such liability is caused by the Contractor, its Personnel or subcontractors (including their Personnel) during or as a consequence of the Performance of the Contract, then the Contractor must indemnify and hold the Contracting Authority harmless for the whole amount of damages and costs incurred by the latter..

**II.6.5** If the Contractor is composed of two or more economic operators, which submitted a joint tender (*e.g.*, they are members of a consortium or another entity not having legal personality), they are all jointly and severally liable to the Contracting Authority for the Performance of the Contract.

**II.6.6** Notwithstanding anything to the contrary in this Contract, the Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of Performance of the Contract, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

* 1. Conflict of interests and professional conflicting interests

**II.7.1** The Contractor must take all the necessary measures to prevent any situation of Conflict of InterestorProfessional Conflicting Interest.

**II.7.2** The Contractor must Notify the Contracting Authority in writing as soon as possible of any situation that could constitute a Conflict of Interest or a Professional Conflicting Interest during the Performance of the Contract. The Contractor must immediately take action to rectify the situation.

The Contracting Authority may do any of the following:

1. verify that the Contractor’s action is appropriate;
2. require the Contractor to take further action within a specified deadline;

**II.7.3** The Contractor must pass on all the relevant obligations in writing to:

1. its Personnel;
2. any natural person with the power to represent it or take decisions on its behalf;
3. third parties involved in the Performance of the Contract, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to Conflicts of Interest.

**II.7.4** Without prejudice to the other provisions of this Article II.7, the Contractor represents and warrants 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the Performance of the Contract.

* 1. Confidentiality

**II.8.1** The Contracting Authority and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the Performance of the Contract and identified in writing as confidential.

**II.8.2** Each Party must:

(a) not use Confidential Information or Documents for any purpose other than to perform its obligations under the Contract without the prior written agreement of the other Party;

(b) ensure the protection of such Confidential Information or Documents with the same level of protection as its own Confidential Information or Documents, and in any case with due diligence;

(c) not disclose directly or indirectly Confidential Information or Documents to third parties without the prior written agreement of the other Party.

**II.8.3** The confidentiality obligation set out in this Article are binding on the Contracting Authority and the Contractor during the Performance of the Contract and, after its expiry or termination, for a period of 5 (five) years as from the date of the payment of the balance and, in any case, for as long as the information or documents remain confidential, unless:

(a) the disclosing Party agrees to release the receiving Party from the confidentiality obligation earlier;

(b) the Confidential Information or Documents become public through other means than in breach of the confidentiality obligation

(c) the applicable law requires the disclosure of the Confidential Information or Documents.

For the sake of clarity it is agreed and understood that any information or document for which the relevant confidentiality obligation has a duration exceeding the 5-years period indicated above shall have to bear specific reference of its extended duration.

**II.8.4** The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from Personnel and third parties involved in the performance of the Contract, a commitment that they will comply with this Article .At the request of the Contracting Authority, the Contractor must provide a document providing evidence of this commitment.

* 1. Processing of personal data

**II.9.1** **Processing of personal data by the Contracting Authority**

Any personal data included in or relating to the Contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the Contract by the data controller.

The Contractor or any other person whose personal data is processed by the data controller in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the Contractor or any other person whose personal data is processed in relation to this Contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.9.

**II.9.2 Processing of personal data by the Contractor**

The processing of personal data by the Contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The Contractor shall assist the controller for the fulfilment of the controller’s obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The Contractor shall inform without delay the controller about such requests.

The Contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The Contractor shall grant Personnel access to the data to the extent strictly necessary for the Implementation, management and monitoring of the Contract. The Contractor must ensure that Personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

The Contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

1. the pseudonymisation and encryption of personal data;
2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
5. measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The Contractor shall Notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:

1. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
2. likely consequences of the breach;
3. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The Contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union Law or Member State data protection provisions as referred to in this Contract.

The Contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

1. ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
2. Notify a personal data breach to the European Data Protection Supervisor;
3. communicate a personal data breach without undue delay to the data subject, where applicable;
4. carry out data protection impact assessments and prior consultations as necessary.

The Contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The Contracting Authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.9.2) and data security, which includes personal data held on behalf of the Contracting Authority in the premises of the Contractor or subcontractor.

The Contractor shall Notify the Contracting Authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the Contracting Authority made by any national public authority, including an authority from a third country. The Contractor may not give such access without the prior written authorisation of the Contracting Authority.

The duration of processing of personal data by the Contractor will not exceed the period referred to in Article II.24.2. Upon expiry of this period, the Contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union Law or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the Contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the Contracting Authority, the Contractor shall provide a document providing evidence of this commitment.

* 1. Subcontracting

**II.10.1** The Contractor must not subcontract and have the Contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Contracting Authority.

**II.10.2** Even if the Contracting Authority authorises subcontracting, the Contractor remains bound by its contractual obligations and is solely responsible for the Performance of the Contract*.*

**II.10.3** The Contractor must ensure that the subcontract does not affect the rights of the Contracting Authority under this Contract, particularly those under Article II.8 and II.22.

**II.10.4** The Contracting Authority may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

**II.10.5** Save as provided by mandatory law, under no circumstance will the Contracting Authority be responsible or obliged to pay any sum to any subcontractors or to any of its employees and the Contractor undertakes to indemnify and hold fully harmless the Contracting Authority for any claim towards the latter in that respect.

* 1. Amendments

**II.11.1** Any amendment to the Contract must be made in writing before all contractual obligations have been fulfilled.

**II.11.2** Any amendment must not make changes to the Contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

**II.11.3** Unless otherwise instructed by F4E, amendments are processed in DACC. An electronic signature provided in DACC, in accordance with the rules defined in the FWC, is valid and binding for the purpose of this Article.

* 1. Assignment

**II.9.1** The Contractor must not assign any of the rights and obligations arising from the Contract, including claims for payments or factoring, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.

**II.9.2** Any right or obligation assigned by the Contractor without authorisation is not enforceable against the Contracting Authority.

* 1. Force majeure

**II.13.1** If a Party is affected by Force Majeure*,* it must immediatelyNotify the other Party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.10.3** A Party is not liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of Force Majeure. If the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it has the right to remuneration only for the Supplies actually delivered and which obtain a certificate of conformity.

**II.13.3** The Parties must take all necessary measures to limit any damage due to Force Majeure.

* 1. Liquidated damages - Procedure
     1. Procedure

The Contracting Authority must Formally Notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

* + 1. Nature of liquidated damages

The Parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the Supplies within the applicable time limits set out in this contract.

**II.14.3 Claims and liability**

Any claim for liquidated damages does not affect the Contractor’s actual or potential liability or the Contracting Authority’s rights under Article II.17.

* 1. Reduction in price[[35]](#footnote-35)
     1. Quality standards

If the Contractor fails to deliver the supply in accordance with the Contract (‘unperformed obligations’) or if it fails to deliver the supply in accordance with the expected quality levels specified in the Technical Specifications (‘low quality delivery’), the Contracting Authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Contracting Authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.5 after the Contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

* + 1. Procedure

The Contracting Authority must Formally Notify the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

* + 1. Claims and liability

Any reduction in price does not affect the Contractor’s actual or potential liability or the Contracting Authority’s rights under Article II.17.

* 1. Suspension of the performance of the contract
     1. Suspension by the contractor

If the Contractor is affected by Force Majeure*,* it may suspend the Performance of the Contract.

The Contractor must immediately notify the Contracting Authority about the suspension. The Notification must include a description of the force majeure and state when the Contractor expects to resume the performance of the Contract.

The Contractor must *notify* the Contracting Authority as soon as it is able to resume performance of the Contract, unless the Contracting Authority has already terminated the Contract.

* + 1. Suspension by the contracting authority

The Contracting Authority may suspend the *performance of the contrac*t or any part of it:

(a) if the procedure for awarding the Contract or the Performance of the Contract proves to have been subject to Irregularities*,* FraudorBreach of Obligations;

(b) in order to verify whether the presumed Irregularities*,* Fraud or Breach of Obligationsactually occurred.

The Contracting Authority must Formally Notify the Contractor of the suspension and the reason for it. Suspension takes effect on the date of Formal Notification, or at a later date if the Formal Notification so provides.

The Contracting Authority must *notify* the Contractor as soon as the verification is completed:

(a) it is lifting the suspension; or

(b) it intends to terminate the Contract under Article II.17.1(f) or (j).

The Contractor is not entitled to compensation for suspension of any part of the contract.

In addition the Contracting Authority may suspend the time allowed for payments in accordance with Article II.20.7.

* 1. Termination of the contract
     1. Grounds for termination by the contracting authority

The Contracting Authority may terminate the Contract in the following circumstances:

(a) if provision of the Supplies under the ongoing Contract has not actually started within 15 days of the scheduled date and the Contracting Authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;

(b) if the Contractor is unable to obtain any permit or licence required for Performance of the Contract;

(c) if the Contractor does not perform the Contract in accordance with the Technical Specifications or is in breach of another substantial contractual obligation.

(d) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation;[[36]](#footnote-36)

(e) if the Contractor or any Related Person is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation.

(f) if the procedure for awarding the Contract or the Performance of the Contract prove to have been subject to Irregularities*,* Fraud *or* Breach of Obligations;

(g) if the Contractor does not comply with applicable obligations under environmental, social labour and tax laws established, as the case may be, by Union Law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

(h) if the Contractor is in a situation that could constitute a Conflict of Interest or a Professional Conflicting Interest as referred to in Article II.7;

(i) if a change to the Contractor’s legal, financial, technical, organisational or ownership situation is likely to substantially affect the Performance of the Contract or substantially modify the conditions under which the Contract was initially awarded or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;

(j) in the event of Force Majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the Contract would mean that the Technical Specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

(k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;

(l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

* + 1. Grounds for termination by the contractor

The Contractor may terminate the Contract if the Contracting Authority fails to comply with its material obligations provided in the Contract and, notwithstanding Formal Notification in this respect by the Contractor, the Contracting Authority is unable to remedy the breach within 30 (thirty) Working Days as from the receipt of such notification.

* + 1. Procedure for termination

A Party must Formally Notify the other Party of its intention to terminate the Contract and the grounds for termination. Without prejudice to the right of the Contracting Authority to remedy its breach in accordance with Article II.17.2, the following procedure shall apply in case of termination pursuant to Articles II.17.1 and II.17.2.

The other Party has 30 days following the date of receipt of the Formal Notification to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other Party submits observations, the Party intending to terminate must Formally Notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the Formal Notification.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the Contractor receives Notification of termination.

In addition, at the request of the Contracting Authority and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Contracting Authority to complete, continue or transfer the delivery of the Supplies to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the delivery of the Supplies. The Parties may agree to draw up a transition plan detailing the Contractor’s assistance unless such plan is already detailed in other contractual documents or in the Technical Specifications. The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the Parties will negotiate an arrangement in good faith.

* + 1. Effects of termination

The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the Contract including the additional cost of appointing and contracting another Contractor to provide or complete the Supplies, unless the damage was caused by the situation specified in Article II.17.1 (j) or in Article II.17.2; in addition, the Contractor shall not be liable if the damage was caused by the situation specified in in Article II.17.1(b), provided that lack of permit or license is not attributable to negligence of the Contractor. The Contracting Authority is entitled to claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract, unless the loss was caused by the situation specified in Article II.17.2. Notwithstanding the foregoing, in no event the Contracting Authority will be liable for any indirect or consequential damages incurred by the Contractor, including, without limitation, loss of anticipated profits.

The Contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the Contractor must submit any report and any invoice required for Supplies that were provided before the date of termination.

In the case of joint tenders, the Contracting Authority may terminate the Contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

* 1. Invoices, value added tax and e-invoicing
     1. Invoices and value added tax

Invoices must contain the Contractor’s (or leader’s in the case of a joint tender) identification data, the amount, the currency and the date, as well as the Contract reference.

Invoices must indicate the place of taxation of the Contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The Contracting Authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

The Contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the Supplies and services required for Performance of the Contract are exempt from taxes and duties, including VAT.

* + 1. E-invoicing

If provided for in the special conditions, the Contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

* 1. Price revision

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the Contract, each price may be revised upwards or downwards at the request of one of the Parties.

A Party may request a price revision in writing no later than three months before the anniversary date of entry into force of the Contract. The other Party must acknowledge the request within 14 days of receipt.

At the anniversary date, the Contracting Authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The Contractor establishes the new price on this basis and communicates it as soon as possible to the Contracting Authority for verification.

The price revision is calculated using the following formula:

Ir

Pr = Po x ( — )

Io

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

* 1. Payments and guarantees
     1. Date of payment

The date of payment a is deemed to be the date on which the Contracting Authority’s account is debited.

* + 1. Currency

Payments are made in euros, unless another currency is provided for in Article I.7.

* + 1. Conversion

The Contracting Authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The Contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

<http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm>

* + 1. Costs of transfer

The costs of the transfer are borne as follows:

1. the Contracting Authority bears the costs of dispatch charged by its bank,
2. the Contractor bears the costs of receipt charged by its bank,
3. the Party causing repetition of the transfer bears the costs for repeated transfer.
   * 1. Pre-financing, performance and money retention guarantees

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

1. the financial guarantee is provided by a bank or a financial institution approved by the Contracting Authority or, at the request of the Contractor and with the agreement of the Contracting Authority, by a third party;
2. the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the Contractor’s obligations without requiring that the Contracting Authority to has recourse against the principal debtor (the Contractor).

The Contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the Contractor. The Contracting Authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the Contracting Authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the Contract. The Contracting Authority must release the guarantee fully after final approval of the supply, as provided for in the Contract.

Retention money guarantees cover full delivery of the Supplies in accordance with the Contract including during the contract liability period and until their final approval by the Contracting Authority. The retention money guarantee must not exceed 10 % of the total price of the Contract. The Contracting Authority must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The Contracting Authority must not request a retention money guarantee where it has requested a performance guarantee.

* + 1. Interim payments and payment of the balance

The Contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in this Contract, including its Annexes.

The Contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the Supplies, as provided for in the Contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

* + 1. Suspension of the time allowed for payment

The Contracting Authority may suspend the payment periods specified in Article I.5 at any time by Notifying the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the Contracting Authority may cite for not being able to process an invoice are:

1. because it does not comply with the contract;
2. because the Contractor has not produced the appropriate Supplies or documents or
3. because the Contracting Authority has observations on the Supplies or documents submitted with the invoice.

The Contracting Authority must *notify* the Contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall notify the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

Suspension takes effect on the date the Contracting Authority sends the Notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor (or leader in the case of a joint tender) may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the Contract in accordance with Article II.17.1(c)*.*

* + 1. Interest on late payment

On expiry of the payment periods specified in Article I.5, the Contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate), plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union* on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.7 is not considered as a giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the Contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

* 1. Recovery

**II.21.1 Recovery**

If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Contracting Authority the amount in question.

**II.21.2 Recovery procedure**

Beforerecovery, the Contracting Authority must Formally Notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by Formally Notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.

If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

1. by offsetting them against any amounts owed to the Contractor by F4E, the European Union or the European Atomic Energy Community;
2. by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority; and/or
3. by taking legal action.

**II.21.3 Interest on late payment**

If the Contractor does not honour the obligation to pay the amount due by the date set by the Contracting Authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the Contracting Authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

**II.21.4 Recovery rules in the case of joint tender**

If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount cannot be offset or can only be offset partially in accordance with Article II.21.2 (a), then the Contracting Authority may claim the amount still due to any other member(s of the group by respectively notifying them with a debit note in conformity with the provisions laid down in Article II.21.2.

* 1. Checks and audits

**II.22.1.**The Contracting Authority and the European Anti-Fraud Office may check or require an audit on the Performance of the Contract. This may be carried out either by OLAF’s own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the Supplies and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits are carried out on a confidential basis.

**II.22.2.**The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

**II.22.3.**The Contractor must grant the Contracting Authority’s staff and outside personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.22.4.**On the basis of the findings made during the audit, a provisional report is drawn up. The Contracting Authority or its authorised representative must send it to the Contractor, who has 30 days following the date of receipt to submit observations. The Contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measure which it considers necessary.

**II.22.5.**In accordance withCouncil Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on‑the‑spot checks and inspections, to establish whether there has been Fraud, corruption or any other illegal activity under the Contract affecting the financial interests of F4E or the European Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the performance of the Contract and up to five years starting from the payment of the balance.

**II.22.6** The Court of Auditors, the European Public Prosecutor’s Office established by Council Regulation (EU) 2017/1939[[37]](#footnote-37) (‘the EPPO’) and, in connection with processing of personal data, the European Data Protection Supervisor have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks, audits and investigations.

**SIGNATURES**

|  |  |
| --- | --- |
| For the Contractor  [***Company name****/forename/surname/position*]  Signature[s]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | For the Contracting Authority  **The European Joint Undertaking for ITER and the Development of Fusion Energy**  [*forename/surname/position*]  Signature[s]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Done at [*place*], [*date*] | Done at [*Barcelona*], [*date*] |

In duplicate in English.

1. ADVICE: Include this option if it is an inter-institutional procurement. See point 2.4 of the Vademecum for more information on inter-institutional procurements. Note also that in case of an inter-institutional procurement, an Article on this issue needs to be included (see Article I.14 of this template). Please note that any reference to ‘Vademecum’ in this contract is to be considered as reference to the Vademecum version of February 2016, updated as of September 2018. [↑](#footnote-ref-1)
2. ADVICE: According to the Director’s Communication to the Staff of 28/05/2013, budgetary and legal commitments for contracts with a value equal or superior to 10 million euros shall be authorised by the Director. [↑](#footnote-ref-2)
3. *Delete if Contractor is a natural person or a body governed by public law.* [↑](#footnote-ref-3)
4. *Delete if Contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.* In some countries, companies may not have a registration number other than their VAT registration number. In Spain, the NIF (Número de Identificación Fiscal, formerly called CIF – Código de Identificación Fiscal – when referring to companies) is the fiscal identification number and is used in practice for identification purposes in all official documents, including the Commercial Register. [↑](#footnote-ref-4)
5. In Spain, this is the NIF (*Número de Identificación Fiscal*), which has 9 characters. Other EU countries may have other formats. [↑](#footnote-ref-5)
6. To be taken into account that for contracts/services to be managed/carried out in other F4E offices (e.g., Cadarache, France), it might be opportune to add reference to such other office/country (in addition to, or in lieu of, referring to Barcelona). [↑](#footnote-ref-6)
7. As a rule the contracting authority signs last. In this case, the Contractor should be duly informed of the date on which the contract enters into force (date of signature by the contracting authority). [↑](#footnote-ref-7)
8. Incoterms 2010 of the International Chamber of Commerce are legal clauses on delivery of supplies, transfer of risk and insurances. If they are used, the DG should purchase a copy (for sale on the website) and fully respect the attached copyrights. The procurement documents should announce that these terms are for sale to tenderers on the website <http://www.iccwbo.org>. Please note that, as from 1 January 2020, an updated version, i.e., Incoterms 2020 is available. F4E may decide to use the 2010 or 2020 versions, provided that reference to the year of Incoterms is provided. [↑](#footnote-ref-8)
9. VADEMECUM (section 4.3.2.6): *It is recommended to use automatic contract renewal, i.e. … the contract is renewed with no action by the parties, and if the contract is not renewed, the party refusing renewal should notify the other party at least three months before**the anniversary date of the contract.* In order to ensure continuity of services in favour of F4E, it is strongly recommended to provide that the contractor must provide for six months prior notice. [↑](#footnote-ref-9)
10. Specify the consumer price index or any other index adapted to the purchase, e.g.:

    * ‘Euro area (19 countries)’: for contracts expressed in euro (as a general rule);
    * ‘European Union (current composition): for contracts performed in the European Union outside the euro area;
    * consumer price index of the state in whose currency the contract price is expressed:

    a) index of the state where the Contractor is mainly based; or

    b) index of the state where the supply will be mainly delivered.

    * Any other index corresponding to the main cost of the contract (e.g. index linked to salaries for interim services, oil prices for transport-related contracts, etc.).

    [↑](#footnote-ref-10)
11. The insertion of pre-financing and interim payment articles is optional but the contract must always include provision for payment of the balance. [↑](#footnote-ref-11)
12. In procurement contracts, pre-financing should be proposed in exceptional circumstances only. If applicable it should not exceed 30% of the total price of the contract. VADEMECUM *(section 4.3.2.2): Pre-financing is meant to provide a float to the contractor, and normally it is used in grants, not so much in procurement because it is considered as a risk for the Union's budget (payment with nothing in return). It should be exceptional in procurement and be used in justified cases (procurement requiring high start-up costs e.g. for works contracts, or purchase of patents or practice of the sector such as booking of conference room).* [↑](#footnote-ref-12)
13. Requesting a pre-financing guarantee is not allowed for contracts of less than EUR 60 000.In cases where pre-financing is envisaged, use of a guarantee should be duly justified through a documented risk assessment. [↑](#footnote-ref-13)
14. To be added only in the case of contracts of more than EUR 5 000 000 for which a pre-financing is paid and for which the reporting periods for interim payments or payments of the balance exceed 18 months. [↑](#footnote-ref-14)
15. Should the contract provide for pre financing, the relevant amount has to be cleared against either the interim payment (if any) or the payment of the balance. [↑](#footnote-ref-15)
16. Maximum 90 days for complex contracts, 60 days for other contracts for which payment depends on the approval of a report or a certificate and 30 days for all other contracts.. [↑](#footnote-ref-16)
17. Should the contract provide for pre financing, the relevant amount has to be cleared against either the interim payment (if any) or the payment of the balance. [↑](#footnote-ref-17)
18. WARNING: E-prior system is not yet implemented by F4E but it is expected to be developed soon. Before such implementation takes place, any reference to [e-prior] has to be deleted while tailoring the draft model contract for a specific procurement procedure. Nevertheless, [e-prior] system may be used for receiving invoices from the contractor: as a consequence, reference to [e-prior] should be kept – on a case-by-case basis – under Article I.6 (payments) with reference to receipt of invoice. This comment applies, *mutatis mutandis*, also for pre-financing (I.5.1) and interim payments (I.5.2), if any. [↑](#footnote-ref-18)
19. Maximum 90 days for complex contracts and 60 or 30 days for other contracts. [↑](#footnote-ref-19)
20. OJ C 321 E of 29.12.2006 p. 0318-0324. [↑](#footnote-ref-20)
21. Example 1: for a contractor providing goods taxable in Spain, delivered to F4E in Spain, direct exemption will apply: the Contractor shall issue the invoice applying a 0% VAT rate. Example 2: for a contractor providing goods taxable in France, indirect exemption will apply if the goods are ordered by, and delivered to, F4E in France: the Contractor shall issue the invoice applying VAT. [↑](#footnote-ref-21)
22. The VAT exemption certificates are available in all official EU languages on <https://myintracomm.ec.europa.eu/budgweb/EN/imp/vat/Pages/imp-140-020_vatmanual.aspx> For more information on direct or indirect exemptions and the criteria to be applied, please refer to F4E VAT manual available on:

    <http://f4emanual.f4eda.local/Administrative%20Manual%20Of%20Procedures/VAT.aspx> [↑](#footnote-ref-22)
23. BIC or SWIFT code for countries with no IBAN code. [↑](#footnote-ref-23)
24. Clause I.9.2 is not applicable to contracts where personal data is not intended to be processed by the contractor, which can occur, for example: in logistics, most evaluation services, studies and translation services. Assessment on a case-by-case basis may be necessary. [↑](#footnote-ref-24)
25. This clause must be adapted with care on the basis of a risk assessment related to the processing of personal data for the relevant contract. [↑](#footnote-ref-25)
26. Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN> [↑](#footnote-ref-26)
27. Delete the article if the contract is not inter-institutional. [↑](#footnote-ref-27)
28. Please consult the competent LO for any substantial change to the model contract. [↑](#footnote-ref-28)
29. Where the Contractors relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the Contracting Authority may require that the Contractor and those entities be jointly liable for the performance of the Contract (art. 146, Par 5 of General RAP). In this circumstance, please refer to the competent LO as the clause must be completed. [↑](#footnote-ref-29)
30. In case of Contractor’s Personnel working on a stable basis at F4E premises, or for Contracts whose implementation entails access to F4E’s sensitive information, it is recommended to sign a specific NDA at Contract level (simultaneously with signature of the Contract): NDA can be signed by the Contractor or by the natural person(s)-employee who carries out the supplies. In case this Article is used, it is recommended to attach to the Contract the applicable NDA template. Please consult the LO on this matter. [↑](#footnote-ref-30)
31. In case that the (FWC or direct) supply contract also includes the procurement of Intellectual Property relevant services such as training, consultancy, software development, etc., Article I.14 has to be kept in its entirety. In case that the supply contract exclusively refers to the procurement of catalogue items, such as office supplies, Article I.14 has to be deleted. In case of doubt, the Intellectual Property Officer has to be consulted. [↑](#footnote-ref-31)
32. OJ L 94 of 28.03.2014, p. 65 [↑](#footnote-ref-32)
33. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG> [↑](#footnote-ref-33)
34. Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN> [↑](#footnote-ref-34)
35. Article on reduction in price may only be used if clear quality standards per supply have been defined in the Technical Specifications or the Contract. [↑](#footnote-ref-35)
36. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046> [↑](#footnote-ref-36)
37. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office. [↑](#footnote-ref-37)