



idm@F4E UID / VERSION

25P4P6 / 2.8

VERSION CREATED ON / STATUS

11 December 2019 / Approved

EXTERNAL REFERENCE

Template

Model Direct Supply Contract (as revised)

Model Direct Supply Contract

Approval Process			
	Name	Action	Affiliation
Author	Gathem G.	11 December 2019:signed	ADM
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RO: Gathem Gregoire (F4E)			
Read Access	LG: Legal_Team, LG: IP, LG: F4E_QAO, LG: Support_to_the_Owner, AD: IDM_F4E, GG: IAC, project administrator, RO		

Original Document MD5#: F2EDFB0569021E9EFFF5E8725DEAAF41

Change Log

Model Direct Supply Contract (as revised) (25P4P6)

<i>Version</i>	<i>Latest Status</i>	<i>Issue Date</i>	<i>Description of Change</i>
v1.0	Signed	08 June 2016	
v1.1	Approved	09 June 2016	Deletion of reference to Acceptance Note in line with new process and QA-115
v2.0	Signed	05 May 2017	<p>List of Main changes :</p> <p>(I) Risk Sharing between F4E and the Contractor</p> <ol style="list-style-type: none"> 1. Liability for third party actions (I.14): clarification where damage caused to IO 2. Liquidated damages (I.16): introduction of new ‘dual’ regime to enhance F4E’s remedy in case of delay 3. Termination for cause (II.20): New grounds and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done; Alignment of provision of Transfer of ownership (I.20) 4. Conditions for acceptance and remedy (II.12.2 and II.12.3): introduction of new ground for non- acceptance and termination related to timely delivery. <p>(II) Adaptation to New F4E policies, legal frameworks and tools</p> <ol style="list-style-type: none"> 1. Indexation (I.7): implementation of the new policy adopted in 2017 2. Mediation (II.27): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 3. Assembly and Installation (I.26) (optional) 4. Amendments (II.25): alignment with use of DACC <p>(III) Transportation</p> <p>Modifications due to the forthcoming Commencement date of Daher’s exclusivity.</p> <ol style="list-style-type: none"> 1. Definitions 2. Transportation, packaging etc. (I.13) : 3. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.16) 4. New Annex E :Terms of reference for the Use of the Designated Carrier 5. New applicable document : Model Transportation Contract) <p>(IV) General Improvement and Clarity</p> <ol style="list-style-type: none"> 1. Communication (I.12) 2. Guarantees (I.9 and II.4): Clarification and use of possibilities offered by FR/RAP. 3. Definitions: deletion of distinction Initial Items/Optional Items; Concept of Deliverable, etc. 4. Structure. For example: article on Settlement of Disputes moved to General conditions (II.27)
v2.1	Approved	15 May 2017	<p>List of Main changes :</p> <p>(I) Risk Sharing between F4E and the Contractor</p> <ol style="list-style-type: none"> 1. Liability for third party actions (I.14): clarification where damage caused to IO 2. Liquidated damages (I.16): introduction of new ‘dual’ regime to enhance F4E’s remedy in case of delay 3. Termination for cause (II.20): New grounds and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done; Alignment of provision of Transfer of ownership (I.20) 4. Conditions for acceptance and remedy (II.12.2 and II.12.3): introduction of new ground for non- acceptance and termination related to timely delivery. <p>(II) Adaptation to New F4E policies, legal frameworks and tools</p> <ol style="list-style-type: none"> 1. Indexation (I.7): implementation of the new policy adopted in 2017 2. Mediation (II.27): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 3. Assembly and Installation (I.26) (optional) 4. Amendments (II.25): alignment with use of DACC <p>(III) Transportation</p> <p>Modifications due to the forthcoming Commencement date of Daher’s exclusivity.</p> <ol style="list-style-type: none"> 1. Definitions 2. Transportation, packaging etc. (I.13) : 3. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.16) 4. New Annex E :Terms of reference for the Use of the Designated Carrier

			<p>5. New applicable document : Model Transportation Contract)</p> <p>(IV) General Improvement and Clarity</p> <ol style="list-style-type: none"> 1. Communication (I.12) 2. Guarantees (I.9 and II.4): Clarification and use of possibilities offered by FR/RAP. 3. Definitions: deletion of distinction Initial Items/Optional Items; Concept of Deliverable, etc. 4. Structure. For example: article on Settlement of Disputes moved to General conditions (II.27)
v2.2	Signed	01 June 2017	<p>List of Main changes :</p> <p>(I) Risk Sharing between F4E and the Contractor</p> <ol style="list-style-type: none"> 1. Liability for third party actions (I.14): clarification where damage caused to IO 2. Liquidated damages (I.16): introduction of new ‘dual’ regime to enhance F4E’s remedy in case of delay 3. Termination for cause (II.20): New grounds and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done; clarifications regarding reimbursable material, if any and Alignment of provision of Transfer of ownership (I.20). 4. Conditions for acceptance and remedy (II.12.2 and II.12.3): introduction of new ground for non- acceptance and termination related to timely delivery. <p>(II) Adaptation to New F4E policies, legal frameworks and tools</p> <ol style="list-style-type: none"> 1. Indexation (I.7): implementation of the new policy adopted in 2017 2. Mediation (II.27): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 3. Assembly and Installation (I.26) (optional) 4. Amendments (II.25): alignment with use of DACC <p>(III) Transportation Modifications due to the forthcoming Commencement date of Daher’s exclusivity.</p> <ol style="list-style-type: none"> 1. Definitions 2. Transportation, packaging etc. (I.13) : 3. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.16) 4. New Annex E :Terms of reference for the Use of the Designated Carrier 5. New applicable document : Model Transportation Contract) <p>(IV) General Improvement and Clarity</p> <ol style="list-style-type: none"> 1. Communication (I.12) 2. Guarantees (I.9 and II.4): Clarification and use of possibilities offered by FR/RAP. 3. Definitions: deletion of distinction Initial Items/Optional Items; Concept of Deliverable, etc. 4. Structure. For example: article on Settlement of Disputes moved to General conditions (II.27)
v2.3	Signed	21 June 2017	<p>List of Main changes for the June 2017 Revision :</p> <p>(I) Risk Sharing between F4E and the Contractor</p> <ol style="list-style-type: none"> 1. Liability for third party actions (I.14): clarification where damage caused to IO 2. Liquidated damages (I.16): introduction of new ‘dual’ regime to enhance F4E’s remedy in case of delay 3. Termination for cause (II.20): New grounds and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done; clarifications regarding reimbursable material, if any and Alignment of provision of Transfer of ownership (I.20). 4. Conditions for acceptance and remedy (II.12.2 and II.12.3): introduction of new ground for non- acceptance and termination related to timely delivery. <p>(II) Adaptation to New F4E policies, legal frameworks and tools</p> <ol style="list-style-type: none"> 1. Indexation (I.7): implementation of the new policy adopted in 2017 2. Mediation (II.27): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 3. Assembly and Installation (I.26) (optional) 4. Amendments (II.25): alignment with use of DACC <p>(III) Transportation Modifications due to the forthcoming Commencement date of Daher’s</p>

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v2.4	Approved	28 June 2017	<p>List of Main changes for the June 2017 Revision :</p> <p>(I) Risk Sharing between F4E and the Contractor</p> <ol style="list-style-type: none"> 1. Liability for third party actions (I.14): clarification where damage caused to IO 2. Liquidated damages (I.16): introduction of new ‘dual’ regime to enhance F4E’s remedy in case of delay 3. Termination for cause (II.20): New grounds and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done; clarifications regarding reimbursable material, if any and Alignment of provision of Transfer of ownership (I.20). 4. Conditions for acceptance and remedy (II.12.2 and II.12.3): introduction of new ground for non- acceptance and termination related to timely delivery. 5. Suspension: Clarification that the indemnity does not cover the first 3 months of suspension. <p>(II) Adaptation to New F4E policies, legal frameworks and tools</p> <ol style="list-style-type: none"> 1. Indexation (I.7): implementation of the new policy adopted in 2017 2. Mediation (II.27): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 3. Assembly and Installation (I.26) (optional) 4. Amendments (II.25): alignment with use of DACC <p>(III) Transportation Modifications due to the forthcoming Commencement date of Daher’s exclusivity.</p> <ol style="list-style-type: none"> 1. Definitions 2. Transportation, packaging etc. (I.13) : 3. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.16) 4. New Annex E :Terms of reference for the Use of the Designated Carrier 5. New applicable document : Model Transportation Contract) <p>(IV) General Improvement and Clarity</p> <ol style="list-style-type: none"> 1. Communication (I.12) 2. Suspension: clarification that the indemnity does not apply to the first 3 months period of suspension 3. Guarantees (I.9 and II.4): Clarification and use of possibilities offered by FR/RAP. 4. Definitions: deletion of distinction Initial Items/Optional Items; Concept of Deliverable, etc. 5. Structure. For example: article on Settlement of Disputes moved to General conditions (II.27)
v2.5	Signed	27 November 2018	<p>Main changes:</p> <p>(1) Adaptation to version 5.0 of Supplier Project Management and Quality Requirements (F4A-QA-115). This adaptation Implies among others: use of new concepts (Kick-off meeting, Corrective Actions, etc.) and a revised article on Amendment/Deviation.</p> <p>(2) Improvement of the provisions related to the use of DACC including DACC 2.0</p> <p>(3) Adaptation to new F4E-QA-113 Supplier Nuclear Safety Requirements (cfr.</p>

			<p>Definitions and article on safety)</p> <p>(4) Introduction of new provisions to address the withdrawal of a members state from the EU ('Brexit' clauses): change in legislation, Termination.</p> <p>(5) General wording improvement: simplification, clarification, corrections of typo</p>
v2.6	Signed	05 December 2018	<p>Main changes:</p> <p>(1) Adaptation to version 5.0 of Supplier Project Management and Quality Requirements (F4A-QA-115). This adaptation Implies among others: use of new concepts (Kick-off meeting, Corrective Actions, etc.) and a revised article on Amendment/Deviation.</p> <p>(2) Improvement of the provisions related to the use of DACC including DACC 2.0</p> <p>(3) Adaptation to new F4E-QA-113 Supplier Nuclear Safety Requirements (cfr. Definitions and article on safety)</p> <p>(4) Introduction of new provisions to address the withdrawal of a members state from the EU ('Brexit' clauses): change in legislation, Termination.</p> <p>(5) General wording improvement: simplification, clarification, corrections of typo (e.g. Settlement of dispute, Termination for cause)</p>
v2.7	Approved	10 December 2018	<p>Main changes:</p> <p>(1) Adaptation to version 5.0 of Supplier Project Management and Quality Requirements (F4A-QA-115). This adaptation Implies among others: use of new concepts (Kick-off meeting, Corrective Actions, etc.) and a revised article on Amendment/Deviation.</p> <p>(2) Improvement of the provisions related to the use of DACC including DACC 2.0</p> <p>(3) Adaptation to new F4E-QA-113 Supplier Nuclear Safety Requirements (cfr. Definitions and article on safety)</p> <p>(4) Introduction of new provisions to address the withdrawal of a members state from the EU ('Brexit' clauses): change in legislation, Termination.</p> <p>(5) General wording improvement: simplification, clarification, correction of typos (e.g. Settlement of dispute, Termination for cause, Data protection)</p>
v2.8	Approved	11 December 2019	<p>The main modifications are:</p> <p>A. Adaptation to New FR (2018) and F4E new FR (references)</p> <p>B. New obligations regarding Data Protection following the entre into force of Regulation (EU) 2018/1725 and Regulation (EU) 2016/679: New articles both in the special and General conditions</p> <p>C. Reference to new European Public Prosecutor's Office (cfr. Article on Rights regarding Checks and Audit)</p> <p>D. Improvement : a.Introducing a general early warning duty (cfr. Article on Performance); b.The new Concept of Compensation Event covers 3 situations: errors in documents, change in legislation and suspension beyond a certain period; c. Termination for Cause – Consequences: clarifications of F4E rights</p> <p>E. Other Correction, simplification, clarifications: wording and clarifications: a. Payment arrangements: Clarification regarding deadline for F4E to proceed to approval of ADP and payment.b. Bank accounts: confirmation of the use of DACC for changes, c.Communication: streamlining the article; d. Liability : various minor clarifications; e. Insurance: reorganization and wording f. Liquidated damages: additional precisions and extension of time-period for contractor submission of observation, g. Performance (article II.1): reorganization of the provisions/structure, h. Recovery: reorganization, clarification and simplification based on COM model contract, i.Termination for convenience: clarification; j. Brexit: a new option clause for Service and Framework Service Contracts</p>



ANNEX 1

MODEL CONTRACT

SUPPLY CONTRACT

between

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

and

[•]

F4E-[•]

CONTRACT NUMBER – [complete]

The European Joint Undertaking for ITER and the Development of Fusion Energy ("**Fusion for Energy**"), represented for the purposes of the signature of this contract (the "**Contract**") by [•] [*name in full, function, department*],

of the one part,

and

[*official name in full*]

[*official legal form*]

[*statutory registration number*]

[*official address in full*]

[*VAT registration number*]

(the "**Contractor**"), represented for the purposes of the signature of this contract by [*name in full, function*]

of the other part,

hereinafter referred to individually as the "Party" and collectively as the "Parties";

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

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

HAVE AGREED

¹ OJ L 90 of 30.3.2007, p. 58

² OJ L 358 of 16.12.2006, p. 62

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

Annexes

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

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

Annex C – Intellectual Property (IP) Provisions

Annex D – Declaration of the Contractor’s Background

[Annex E – Terms of Reference for the Use of the Designated Carrier] [N/A]

Annex F – Terms of Reference on Mediation

Annex G - Contractor’s Tender

Annex H – Power of Attorney

Applicable documents

The following documents, not attached hereto but known to the Parties, apply to the Contract to the extent specified therein:

AD	Document title	Ref.	Version/Date
AD01	Supplier Project Management and Quality Requirements (F4E-QA-115)	[xxx]	[xxx]
AD02	Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project	INFCIRC/703	2006-11-21
AD03	<i>Pre-Financing Guarantee Form</i>	F4E_D_25RYM2 v1.0	[xxx]
AD04	<i>Declaration Regarding Nuclear Liability of the ITER IO</i>	[xxx]	[xxx]
AD05	<i>Insurance Certificates</i>	[xxx]	[xxx]
AD06	<i>Form for declaration of Foreground Intellectual Property</i>	[xxx]	[xxx]
AD07	<i>Model Transportation Contract</i>	[xxx]	[xxx]
AD08	<i>Common Site Rules on Assembly and Installation</i>		
AD09	<i>Performance Guarantee Form</i>		
AD10	<i>Supplier Nuclear Safety Management Requirements (F4E-QA-113)</i>		

I. SPECIAL CONDITIONS

I.1. DEFINITIONS

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

Acceptance	shall have the meaning set forth in Article II.12 (<i>Acceptance</i>).
Acceptance Data Package (ADP)	is defined in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Amendment	shall have the meaning set forth in Article II.25 (<i>Amendments</i>).
[<i>Assembly & Installation</i>	<i>Assembly is the putting together of manufactured parts to make a machine or other product or component to make an integrated and functional whole. Installation is the putting in place of components or sub-assemblies ready for use and their connection to interfaces.]</i>
Background	shall have the meaning set forth in Section 1.4 of Annex C (<i>Intellectual Property Provisions</i>).
Calendar Year	the one-year period that begins on January 1 and ends on December 31.
Commencement Date	shall have the meaning set forth in Article I.4.1 (<i>Entry into Force and Duration</i>).
Confidential Information	shall have the meaning set forth in Article II.24 (<i>Confidentiality</i>).
Conflict of Interest	shall mean a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract.
Contract	shall mean this contract and its Annexes.
Corrective Action	Is defined in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Cost	shall mean all expenditure reasonably incurred (or to be incurred) by the Contractor, including overhead and similar charges, but does not include profit.
Data Controller	the Fusion for Energy officer responsible for processing the personal data with respect to the Contract in accordance with Article II.10 (<i>Processing of Personal Data</i>).
Day(s)	shall mean calendar day(s) unless otherwise defined.
Deliverable	Is defined in Applicable Document AD-01

		(<i>Supplier Project Management and Quality Requirements</i>). The list of deliverables is identified in Section [.] of Annex B (<i>Technical Specification</i>).
[Designated Carrier]		Shall mean “ <i>DAHER INTERNATIONAL</i> ”, a company incorporated under the laws of France, registered in Marseille under no. 068 803 005, having its registered office at 10 place la Joliette 13667 Marseille Cedex 2 (France).]
[Delivery Location]		Shall have the meaning set out in Applicable Document AD-07 (<i>Model Transportation Contract</i>).]
Deviation Amendment and Contract Modifications Portal (DACC)	Contract	Electronic platform developed by F4E for managing 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.
Deviation		A permission to depart from the originally specified requirement of a product prior to realization. A Deviation Request is issued by the Contactor. A Deviation Notice and a Deviation Order are issued by Fusion for Energy. A Deviation Notice must be followed by a Deviation Order in order to be enforceable.
Dispute		shall mean any dispute, difference, or controversy of whatsoever nature arising under, out of, relating to, or in connection with the Contract, a breach, termination, or validity thereof, during its implementation or after its completion (including without limitation during the Warranty Period) and whether before or after suspension or termination of the Contract.
Dissemination		shall have the meaning set forth in Section 1.6 of Annex C (<i>Intellectual Property Provisions</i>).
Domestic Agency		shall mean a legal entity through which a Member of the ITER IO provides its contributions to the ITER IO as referred to in Article 8(4) of the ITER Agreement.
Dual-use Items		shall have the meaning set forth in the Council Regulation (EC/428/2009) of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering, and transit of dual-use items and be governed by Article II.26.1 (<i>Export Control Requirements</i>).
Exporter		shall have for the purpose of Article II.26.2, the meaning set forth in Article 2.3 of the Council Regulation (EC/428/2009) of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering, and transit of dual-use items.

Fair and Reasonable Conditions	shall have the meaning set forth in Section 1.3 of Annex C (<i>Intellectual Property Provisions</i>).
Final Acceptance	means Acceptance of the final Deliverable as per Section [•] of Annex B (<i>Technical Specifications</i>).
Force Majeure	shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents any of them from performing any of their obligations under the Contract and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, and (ii) could not have been avoided or overcome by the exercise of due diligence. Defects in, or delays in availability of, equipment or material, labour disputes, strikes, or financial problems cannot be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure.
Foreground	shall have the meaning set forth in Section 1.5 of Annex C (<i>IP Provisions</i>).
Fraud	shall mean any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation.
<i>[Free-issue Items</i>	<i>shall have the meaning set forth in Article I.17 (Free-issue Items Delivered to the Contractor).]</i>
F4E Documentation Management System	shall have the meaning set forth in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Information	shall have the meaning set forth in Section 1.2 of Annex C (<i>Intellectual Property Provisions</i>).
Contract Price	shall have the meaning set forth in Article I.6.1 (<i>Contract Price</i>).
Intellectual Property	shall have the meaning set forth in Section 1.1 of Annex C (<i>Intellectual Property Provisions</i>).
<i>[Inventory</i>	<i>shall have the meaning set forth in Article I.18.2 (Inventory and Identification).]</i>
Irregularity	shall mean any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union's budget.
Items	shall mean the goods and associated services referred to in Article I.2.1 (<i>Subject Matter</i>).
ITER Agreement	shall have the meaning set forth in the recitals.
ITER Annex on Information and	shall have the meaning set forth in Section

Intellectual Property	2.3 of Annex C (<i>Intellectual Property Provisions</i>).
ITER Immunities and Privileges Agreement	shall have the meaning set forth in Article I.13.4 (<i>Transportation, Packing and Importation for the Items to be Delivered by the Contractor</i>).
Kick-Off Meeting	Is defined in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Margin	shall have the meaning set forth in Article II.3.7 (<i>General Provisions Concerning Payments</i>).
[Model Transportation Contract]	<i>shall mean the Model Contract between the Contractor and the Designated Carrier (Applicable Document AD-07).</i>
Nonconformity	Is defined in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Notice of Referral	shall have the meaning set forth in Article II.27.2 (<i>Settlement of Disputes</i>).
[Optional Items]	<i>shall have the meaning set forth in Article I.3.1 (Options).</i>
[Optional Services]	<i>shall have the meaning set forth in Article I.3.1 (Options).</i>
[Options]	<i>shall have the meaning set forth in Article I.3 (Options).</i>
Party	shall mean either contracting party to the Contract.
[Performance Guarantee]	<i>shall have the meaning set forth in Article II.4.6 (Guarantees).</i>
[Point of Origin]	<i>Shall have the meaning set out in the Model Transportation Contract (AD-07).]</i>
[Pre-financing Payment]	<i>shall have the meaning set forth in Article I.8.1 (Pre-financing Payment).</i>
Professional Conflicting Interest	shall mean a situation in which the Contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.
Project Manager	shall have the meaning set forth in Article I.11 (<i>Representatives</i>).
[Protection Important Activity (PIA)]	<i>Shall have the meaning set forth in the Supplier Nuclear Safety Management Requirements (AD-10)]</i>
[Protection Important Component (PIC)]	<i>Shall have the meaning set forth in the Supplier Nuclear Safety Management Requirements (AD-10)]</i>
Reference Rate	shall have the meaning set forth in Article II.3.7 (<i>General Provisions Concerning Payments</i>).
Release Note	shall have the meaning given to in section II.6 of Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).
Remedial Action	Is defined in Applicable Document AD-01 (<i>Supplier Project Management and Quality Requirements</i>).

Repair	shall mean, bringing the Items into conformity with the Contract.
Representatives of Fusion for Energy	shall have the meaning set forth in Article II.7.2 (<i>Checks and Access Rights</i>).
Review Period	shall have the meaning set forth in Article II.11.1 (<i>Errors in Fusion for Energy's Requirements</i>) and [<i>shall not exceed [1/2/3 months] calculated from the Commencement Date/shall not exceed the Commencement date</i>].
Senior Representative	shall mean a representative of either Party at a senior executive level, appointed by that Party to attempt to resolve any Dispute in accordance with Article II.27.2 (<i>Settlement of Disputes</i>).
Significant Organisational Change	shall mean any of the following events: (i) the sale of more than 50% (fifty percent) of the Contractor's authorized or issued capital stock or any equivalent thereof, (ii) the sale, lease, exchange, or other disposition of all or substantially all of the Contractor's assets, (iii) the merger, consolidation, or reorganization of the Contractor with or into another entity, (iv) the change of a Subcontractor [<i>or Qualified Provider</i>]; (v) a change in the Contractor's legal, financial, technical or organisational situation which could adversely affect, alter, or impair the rights and/or interests of Fusion for Energy under or pursuant to the Contract and (vi) where the Contractor is a consortium, also any of the following: (i) a change in the lead firm representing the consortium, or (ii) a change in the composition of the consortium. Where the Contractor is a consortium, all events under (i) to (v) refer to any of its members.
<i>[Special Purpose Tooling</i>	<i>shall have the meaning set forth in Article I.18.1 (Special Purpose Tooling Supplied by the Contractor and Paid by Fusion for Energy).</i>
Staff	shall refer to individuals involved in the performance of this Contract.
<i>[Stages</i>	<i>shall have the meaning set forth in Article I.2.3 (Subject Matter).</i>
Subcontractor	An economic operator, who is not Party to this Contract and who enters into a legal commitment with the Contractor in order to perform a part of the Contract.
Substantial error	shall mean any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union's budget.
<i>[Qualified Provider</i>	<i>shall mean any economic operator other than Subcontractor, who does not perform part of the Contract, but who enters into a legal commitment with the Contractor to</i>

Responsible Officer	<i>provide resources that will be used for the performance of the Contract [as follows: insert criteria (volume, amount, type of material/ or list of Qualified Providers).]</i> shall have the meaning set forth in Article I.11.1 (<i>Representatives</i>).
Total Contract Price	shall have the meaning set forth in Article I.6.4 (<i>Prices</i>).
Warranty	shall mean, as set out in Article II.13 (<i>Warranty</i>), any undertaking by the Contractor to Fusion for Energy, given without extra charge, to bring the items into conformity, by Repair or replacement, if they do not meet the specifications set out in the Contract or to reimburse the respective part of the Total Contract Price paid.
Warranty Period	shall have the meaning set forth in Article II.13 (<i>Warranty</i>).

I.2. SUBJECT MATTER

- I.2.1.** The subject matter of the Contract is the supply of [•] (the "**Items**") as described in Annex B (*Technical Specifications*).
- I.2.2.** The Contractor shall supply the Items and related goods and services in accordance with the provisions of the Contract.
- I.2.3.** [*The subject matter of the Contract is divided into [•] stages (the "**Stages**"):*
- (a) *Stage 1: [description of scope]*
 - (b) *Stage 2: [description of scope]*
- [*Pursuant to the Contract, the Contractor shall exclusively undertake the work concerning Stage 1, the only Stage coming into force on the Commencement Date.*]

I.3. [OPTIONS

- I.3.1.** *Fusion for Energy may request the Contractor to supply the following items (the "**Optional Items**") and/or to perform the following services (the "**Optional Services**") (the *Optional Items* and the *Optional Services*: together the "**Options**"):*
- (a) *Option 1 – Storage of the Items /Optional Items [...] in accordance with Article I.3.8;*
 - (b) *Option [...] – Assembly and Installation of the Items [...] in accordance with Article [...]*
 - (c) [...]
- I.3.2.** *The exercise of each of the Options shall be subject to a written instruction by Fusion for Energy. Such written instruction shall:*
- (a) *explicitly inform the Contractor that Fusion for Energy has decided to exercise 1 (one) or several of the Option(s);*
 - (b) *indicate the date on which exercise of the Option(s) shall enter into force;*
 - (c) *indicate the date on which performance of the Option is to commence or to be agreed by the Parties;*

- (d) any other matter relevant for the execution of the Option; and
 - (e) be sent through DACC or by registered letter.
- I.3.3.** *Performance of the Options may under no circumstances start before the date indicated in the instruction. The Contractor shall perform the exercised Options in accordance with the provisions of the Contract.*
- I.3.4.** *Fusion for Energy shall be entitled to exercise the Options within the time frame specified below [or as specified in Annex [•]]:*
- (a) *With respect to Option [•], within [•] months of [the Commencement Date or [•]];*
 - (b) *With respect to Option [•], within [•] months of [the Commencement Date or [•]].*
- I.3.5.** *The duration of the Options [•]-[•] shall be [as follows/or as specified in Annex [•] (•)]:*
- (a) *Option [•]: [•] months from the Commencement Date/from the date on which performance of the Option is to commence ;*
 - (b) *Option [•]: [•] months from the Commencement Date/from the date on which performance of the Option is to commence.]*
- I.3.6.** *The exercise of any of the Options is subject to Fusion for Energy's sole discretion. The Contractor shall not be entitled to any compensation, should Fusion for Energy decide not to exercise one or several of the Options.*
- I.3.7.** *Should Fusion for Energy exercise any Option, requests for payments of such Option shall be admissible together with any of the payment periods referred to in Article I.8(Payment Arrangements), after completion of the work under the option and approval by Fusion for Energy of the Acceptance Data Package for that Option unless otherwise indicated in Article I.8.8 (Payment Arrangements) of the Contract or otherwise indicated by Fusion for Energy in the written instruction.*
- I.3.8.** *Should Fusion for Energy release Option 1 and request postponement of delivery of the whole or part of the Items, the Contractor shall provide storage and appropriate maintenance of the Items concerned under its own responsibility for a period of maximum [number in figures and words] months dating from the date of delivery. During such storage period the Items shall be at the Contractor's risk.*
- I.3.9.** *Should Fusion for Energy release Option 1, payment periods, payment modalities and Final Acceptance of the Items shall be modified and agreed in good faith by the Parties by means of an amendment to the Contract. It is understood that the modification of the payment periods shall reflect the proportion of the task achieved and accepted by Fusion for Energy in accordance with the requirements of the Contract) and the proportion of tasks still to be completed such as transportation.]*

I.4. ENTRY INTO FORCE AND DURATION

- I.4.1.** The Contract shall enter into force on the date on which it is signed by the last Party (the "**Commencement Date**").
- I.4.2.** Performance of the Contract may under no circumstances begin before the Commencement Date.
- I.4.3.** Performance of the Contract shall last until completion of the obligations of the Parties under the Contract without prejudice to Article I.24 (*Survival of Obligations*). Performance of the Contract shall be consistent with the milestones set out in Section [•] of Annex B (*Technical Specifications*).
- I.4.4.** *[Performance of the Stages shall be as follows:*

- (a) *Stage 1: performance shall start on the Commencement Date and shall last for up to • months;*
- (b) *Stage 2: performance shall start no later than [•] months after [Commencement Date or [•]] and last for [•] (•) months.*

I.5. DELIVERY

- I.5.1. Delivery of the Items shall take place in accordance with the schedule and milestones referred to in Section [•] of Annex B (*Technical Specifications*).
- I.5.2. The Contractor shall notify Fusion for Energy of the exact date of delivery at least [*number in figures and words*] days in advance, together with the Release Note to be approved by Fusion for Energy before shipment of the Items. The Contractor shall not dispatch or put at the disposal for dispatch any Items until it has reached a prior agreement with Fusion for Energy on the planned date for the shipment. The Contractor shall bear the financial consequences of any delivery executed without Fusion for Energy's prior approval.
- I.5.3. The Items shall be delivered [*DDP (INCOTERMS 2010)*] at [*named place of destination*]. Deliveries shall be made on any working day between [•] AM and [•] PM. Fusion for Energy reserves the right to change the delivery address [*to another location in Europe*] no later than 6 (six) months before the scheduled delivery of the Items. The Contractor will be entitled to the payment of any such duly documented Costs that are directly caused by the change of delivery address communicated less than 6 (six) months before the scheduled delivery of the Items. [*In the event Option [.] is released, Optional Items shall be delivered [appropriate INCOTERMS reference] at [named place of destination].*]
- I.5.4. Each delivery of Items shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier. One copy of the consignment note shall be sent in good time to arrive at its destination before the delivery of the Items
 One copy of the consignment note shall be countersigned by Fusion for Energy and returned to the Contractor or to its carrier. The consignment note shall mention at least the following:
 - (a) the Contract reference number;
 - (b) the destination of each delivery by sub-assembly;
 - (c) the dispatching date;
 - (d) a detailed list of Items indicating the number of packages, their gross and net weight and, if applicable the TARIC or HSIS Code;
 - (e) the Contractor's name;
 - (f) the reference numbers of the parts and of the corresponding drawings;
 - (g) indications about hazardous products and materials;
 - (h) indications about Dual-use Items.

I.6. PRICES

- I.6.1. The amount payable by Fusion for Energy is EUR [*amount in figures and in words*] covering the supply of all Items and execution of all related obligations in accordance with the conditions of the Contract, excluding Options (the "**Contract Price**").
- I.6.2. [*The amount corresponding to each Stage, when released, is the following:*]
 - (a) *Stage 1: EUR [amount in figures and words] covering the execution of all obligations relating to Stage 1 (Contract Price relating to Stage 1);*

(b) Stage 2: EUR [amount in figures and words] covering the execution of all obligations relating to Stage 2 (Contract Price relating to Stage 2).]

I.6.3. [The amount to be paid by Fusion for Energy for the Options, if exercised, shall be as follows:

(a) Option 1: EUR [amount in figures and words] [per month/week/Day];

(b) Option 2: EUR [amount in figures and words] [per month/week/Day].

I.6.4. The Total Contract Price shall be the sum of the Contract Price, plus the price of any exercised Options (**‘Total Contract Price’**).

I.6.5. All prices shall be expressed in EURO.

I.6.6. All prices shall be fixed and firm, not subject to revision during the lifetime of the Contract, regardless of any variations in the price of materials, equipment or labour, except as otherwise stipulated in the Contract. Prices shall be deemed to include all expenses related to the execution of the Contract.

I.7. [INDEXATION

I.7.1. [N/A] OR [From the second anniversary of the Commencement Date, indexation may be applied once a year at the request of one of the Parties. The request must be made in writing, with acknowledgment of receipt, and must be received by the other Party at the latest on 30 September of the year prior to the Calendar Year from which the application of indexation is requested.

I.7.2. The indexation requested from the second anniversary date of the Commencement Date applies to the invoices for which the related ADP(s) are uploaded on F4E Documentation Management System from that date. Any subsequent indexation applies to the invoices for which the related ADPs are uploaded on F4E Documentation Management System during the Calendar Year following the request.

I.7.3. The indexation coefficient is determined by application of the following formula using [indicate appropriate index as defined in Indexation Policy] published by [see Indexation Policy: e.g. the Office for Official Publications of the European Union in the EUROSTAT monthly bulletin at <http://www.ec.europa.eu/eurostat>].

$$I = \left[A + B \frac{n1(r)}{n1(o)} + C \frac{n2(r)}{n2(o)} + D \frac{n3(r)}{n3(o)} + \dots \right]$$

where:

I = the indexation coefficient (rounded to 8 decimals).

A = [the fixed coefficient representing the non-adjustable portion of the Contract].

B, C, D = [the variable coefficients]

$n1(r), n2(r), n3(r)$ = the current indexes. For each of them an average shall be calculated of the indexes published from 01 July until included 30 September prior to the Calendar Year in which the indexation coefficient applies.

$n1(o), n2(o), n3(o)$ = the base indexes [indexes for the month corresponding to the tender submission deadline];

I.7.4. Where the Contractor fails to fulfil its obligations by the completion date of the Contract and the delay is not caused by Fusion for Energy or a Force Majeure, the Contractor shall not be entitled to request the application of a new indexation for the period following the completion date.

I.8. PAYMENT ARRANGEMENTS

[STAGE 1 – if applicable]

I.8.1. **[Pre-financing Payment]**

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

[Fusion for Energy shall pay the Contractor a pre-financing payment of EUR [amount in figures and words] [corresponding to 10/20/30 % (ten/twenty/thirty percent)] of the amount referred to in Article [I.6.1 (Contract Price)/ I.6.2(a)(Contract Price relating to Stage 1)] (the "Pre-financing Payment") within 30 (thirty) days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.]

I.8.2. *[Fusion for Energy will only pay, if it has received a duly constituted financial guarantee in the form provided in the Applicable Documents AD-03 (Pre-financing Guarantee Form) equal to the amount of the Pre-financing payment].]*

I.8.3. **Interim Payment(s)**

[Interim payment is not applicable to this Contract.]

[Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [□] % ([□] percent) of the amount referred to in Article [I.6.1/I.6.2(a)] [minus the Pre-financing Payment [if applicable]/minus [a percentage] of the Pre-financing Payment].

The Contractor must send a request for interim payment accompanied by the relevant invoice indicating:

- (a) the reference number of the Contract;*
- (b) the Acceptance Data Package (ADP) related to milestone [□] referred to in Section [□] of Annex B (Technical Specifications);*
- (c) the amount;*
- (d) a breakdown of the payment amount(s) as foreseen in the Contract (before indexation) and the indexation amount, if applicable.*

Fusion for Energy has 60 (sixty) days from receipt of the ADP and the request for payment: (a) to approve the submitted Acceptance Data Package (ADP) and make the payment; or (b) reject it and request the Contractor to submit another ADP; or (c) to make observations, suspend the time-limit for payment and request the Contractor to take corrective actions.

I.8.4. **Payment of the Balance**

Fusion for Energy shall pay the Contractor the balance payment of EUR [amount in figures and words] [corresponding to [·] % ([·] percent) of the amount referred to in Article [I.6.1/I.6.2(a)]].

The Contractor must send a request for the payment of the balance accompanied by the relevant invoice indicating:

- (a) the reference number of the Contract;*
- (b) the Acceptance Data Package (ADP) related to milestone [□] referred to in Section [□] of Annex B (Technical Specifications);*
- (c) the amount;*
- (d) a breakdown of the payment amount(s) as foreseen in the Contract (before indexation) and the indexation amount, if applicable.*

Fusion for Energy has 60 (sixty) days from receipt of the ADP and the request for payment : (a) to approve the submitted Acceptance Data Package (ADP) and make the payment; or (b) reject it and request the Contractor to submit another ADP; or (c) to make observations, suspend the time-limit for payment and request the Contractor to take corrective actions

[STAGE 2-if applicable]

I.8.5. [Pre-financing Payment

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

[Fusion for Energy shall pay the Contractor an Pre-financing Payment of EUR [amount in figures and words] equal to [10/20/30] % (ten/twenty/thirty percent) of the amount referred to in Article I.6.2(b) within 30 (thirty) days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.]

Fusion for Energy will pay only if it has received a duly constituted financial guarantee in the form provided in the Applicable Document AD-03 (Pre-financing Guarantee Form) equal to the amount of the Pre-financing Payment:

- (a) receipt of a request for a Pre-financing Payment with a corresponding invoice indicating the reference number of the Contract; and*
- (b) receipt of a duly constituted financial guarantee in the form provided in the Applicable Document AD-03 (Pre-financing Guarantee Form) (using the 'Pre-financing Guarantee Form' provided) equal to the amount of the relevant Pre-financing Payment.]*

I.8.6. Interim Payments

[Interim payment is not applicable to this Contract.]

[Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [.]% ([.] percent) of the amount referred to in Article I.6.2 (b) minus [.]% ([.] percent) of the Pre-financing Payment [for Stage 2]].

The Contractor must send a request for interim payment accompanied by the relevant invoice indicating:

- (a) the reference number of the Contract ;*
- (b) the Acceptance Data Package (ADP) related to milestone [□] referred to in Section [□] of Annex B (Technical Specifications)*
- (c) the amount;*
- (d) a breakdown of the payment amount(s) as foreseen in the Contract (before indexation) and the indexation amount, if applicable.*

Fusion for Energy has 60 (sixty) days from receipt of the ADP and the request for payment : (a) to approve the submitted Acceptance Data Package (ADP) and make the payment; or (b) reject it and request the Contractor to submit another ADP; or (c) to make observations, suspend the time-limit for payment and request the Contractor to take corrective actions

I.8.7. Payment of the balance

Fusion for Energy shall pay the Contractor the balance of EUR [amount in figures and words] [corresponding to % [□] percent) of the amount referred to in Article I.6.2(b)].

The Contractor must send a request for payment of the balance accompanied by the relevant invoice indicating:

- (a) the reference number of the Contract;*

- (b) the Acceptance Data Package (ADP) related to milestone [] referred to in Section [] of Annex B (Technical Specifications);
- (c) the amount;
- (d) a breakdown of the payment amount(s) as foreseen in the Contract (before indexation) and the indexation amount, if applicable.

Fusion for Energy has 60 (sixty) days from receipt of the ADP and the request for payment : (a) to approve the submitted Acceptance Data Package (ADP) and make the payment; or (b) reject it and request the Contractor to submit another ADP; or (c) to make observations, suspend the time-limit for payment and request the Contractor to take corrective actions.

I.8.8. [Payment of the Options

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

I.9. GUARANTEES

[Guarantees are not applicable]

- I.9.1.** *[If the amount of the Pre-financing payment equals or exceeds EUR 300,000 (three hundred thousand Euro), the Contractor must provide a Pre-Financing guarantee for the amount of EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.4.][By derogation to Article II.4.2, the Pre-financing Guarantee may be replaced by a first demand guarantee by a third party, after prior acceptance by Fusion for Energy and subject to the conditions it determines].*
- I.9.2.** *[A Performance Guarantee constituted in accordance with the conditions laid down in Article II.4 is requested for the amount of EUR [amount in figures and in words³]. By derogation to Article II.4.2, the Performance Guarantee may be replaced by a first demand guarantee by a third party, after prior acceptance by Fusion for Energy and subject to the conditions it determines].*
- I.9.3.** *[A Retention money guarantee is requested for an amount of EUR [amount in figures and in words]⁴ and constituted by a corresponding deduction from the final payment. At the request of the Contractor and subject to approval by Fusion for Energy, the deduction on payment may be replaced by a first demand bank guarantee in accordance with the conditions laid down in Article II.4.]*

I.10. BANK ACCOUNT

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

Name of bank: *[complete]*

Address of branch in full: *[complete]*

Exact designation of account holder: *[complete]*

Full account number including codes: *[complete]*

IBAN⁵ code: *[complete]*

³ Instructions: The performance guarantee shall be at least 5% but may not exceed 10 % of the Total Price of the Contract.

⁴ Instructions: The retention money guarantee shall be at least 5% but may not exceed 10 % of the Total Price of the Contract.

⁵ BIC code for countries with no IBAN code

- I.10.2.** The same bank account and the value added tax (VAT) registration number must be indicated on each invoice.
- I.10.3.** Any request for modification of the Contractor's bank account shall be made by letter duly accompanied by all the supporting documents. Unless otherwise indicated by Fusion for Energy, any modification of the Contractor's bank account shall be approved through DACC.

I.11. REPRESENTATIVES

I.11.1. Fusion for Energy's Responsible Officer

Fusion for Energy appoints the following Responsible Officer for the Contract.

[Select as appropriate: Technical Responsible Officer (TRO)/Project Manager] for technical matters: *[name]*;

[Select as appropriate: Commercial Manager (CMO)] for commercial matters: *[name]*;

The acts and decisions of the Responsible Officer of Fusion for Energy shall only bind Fusion for Energy within the limits set out in the Contract, if made in writing and duly signed by the Responsible Officer.

I.11.2. Contractor's Project Manager

The Contractor nominates *[name]* as Project Manager responsible for coordinating the performance of the Contractor's obligations under the Contract. The Project Manager is deemed to be vested with sufficient power and authority to perform such tasks and represent the Contractor under the Contract.

[The Contractor nominates the following additional key persons:

Technical person responsible for [•]: [name];

[Commercial person responsible for [•]: [name]].

The Project Manager shall be the main contact point regarding any issue raised in connection with the performance of the Contractor's obligations under the Contract.

[The Project Manager and the key persons listed above shall be dedicated full time to the execution of the Contract/ fully available for the execution of the Contract during the Contract's duration.]

- I.11.3.** The Parties shall give prior written notice of any modification of their Representatives listed in this Article at least 15 (fifteen) days prior to any modification.
- I.11.4.** *[Any modification of the Contractor's Project Manager and/or additional key persons shall be subject to prior approval by Fusion for Energy.]*

I.12. COMMUNICATION

- I.12.1.** Communications relating to the Contract shall be made in writing, in English, and shall bear the Contract number. All communications shall be made by mail, DACC or, electronic mail, save as otherwise provided in the Contract. An ordinary mail is deemed to have been received on the date on which it is registered by Fusion for Energy in accordance with this article.
- I.12.2.** 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.

I.12.3. All communications between the Contractor and Fusion for Energy shall be in accordance with the following arrangement throughout the duration of the Contract:

Fusion for Energy	Contractor
For technical matters	
<p><i>[Insert Title.]: [name]</i></p> <p>In copy to: <i>[name]</i></p> <p><i>[and add the Commercial Manager M in case the technical matters have a commercial impact]</i></p>	<p>Project Manager or its office: <i>[name]</i></p> <p><i>[In copy to: additional key persons [name(s)]]</i></p>
For commercial matters	
<p><i>[Insert Title.]: [name]</i></p> <p>In copy to: <i>[Insert Title] [name]</i></p>	<p>Project Manager or its office: <i>[name]</i></p> <p><i>[In copy to: additional key persons [name(s)]]</i></p>

I.12.4. Communications shall be sent to the following addresses:

For Fusion for Energy:

[name of the Responsible Officer]

Contract number: *[•]*

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

c/ Josep Pla 2

Torres Diagonal Litoral

Building B3

08019 Barcelona

Spain

For the Contractor

[.]

I.13. TRANSPORTATION, PACKING AND IMPORTATION FOR THE ITEMS TO BE DELIVERED BY THE CONTRACTOR⁶

I.13.1. *[N/A] or [The Contractor shall enter into the Model Transportation Contract (Applicable Document AD-07) with the Designated Carrier, under its own responsibility, for the shipment of the Items from the Point of Origin to the Delivery*

⁶ *Instruction on I.13: Specific provisions are necessary where transportation concerns Highly Exceptional Loads (HEL). Please consult the Legal Officer.*

Location. The Contractor shall comply with the terms set out in Annex E (Terms of Reference for the Use of the Designated Carrier).^{7]}

I.13.2. Unless otherwise explicitly specified in the Contract, all packing materials, including pallets, delivered by the Contractor shall be considered as non-returnable and their cost as having been included in the Total Contract Price.

I.13.3. The Items shall be packaged in an appropriate way that ensures that the contents remain intact and prevents damage or deterioration [*and in accordance with specifications set out in Section [•] of Annex B (Technical Specifications)*] [*and other specifications if applicable*]. Procedure for packaging and transportation shall be subject to prior written approval by Fusion for Energy. This approval shall not release the responsibility of the Contractor.

Each box shall be clearly labelled with the following information:

- Fusion for Energy and address for delivery;
- name of Contractor;
- reference number of the Contract
- description of contents;
- date of delivery;
- EC code number of article, if applicable.

I.13.4. [*The Contractor shall complete or cause to be completed all forms and formalities involved in the transport, in compliance with Articles 5 and 6 of the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project⁸ (the "ITER Immunities and Privileges Agreement") referred to as Applicable Document AD-02, and for their transit through any country. The Contractor shall provide any requested documentation to Fusion for Energy]. [The goods shall be clearly labelled and provided with the official documentation stating that export is on behalf of the ITER International Fusion Energy Organization (the "ITER IO"). If required documents are missing and the goods thereby delayed all the resulting additional expenses, such as but not limited to demurrage and warehousing, shall be borne by the Contractor.]*

I.13.5. [N/A] or [*Without prejudice to the right of recourse of the Contractor vis-à-vis the Designated Carrier pursuant to the Model Transportation Contract, the Contractor shall remain fully responsible for the transportation of the Items vis-à-vis Fusion for Energy, in accordance with this Contract*].

I.13.6. [N/A] or [*The Contractor shall take out a proper insurance for the Items during transportation. Upon request, the Contractor shall provide Fusion for Energy with copies of the insurance certificate and evidence that the premium payable under its policy has been paid and that the policy is in full force and effect*].

I.14. LIABILITY

I.14.1. Contractor's Liability

The Contractor is liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor's total liability under the Contract shall not exceed 1 (one)

⁷ Instruction on I.13.1: Select [N/A] in case the transportation agreement with DAHER does not apply. Please see [Link to relevant MANUAL section for scope of application].

⁸ OJ L 358, 16.12.2006, p. 62

time the Total Contract Price, subject to the sole exceptions set out in this Article I.14.1.

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

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

[The Contractor shall be responsible, within the limitation laid down in this Article, for loss or damage caused to items and material delivered to him as Free-Issue Items [Section [.] Annex B (Technical Specifications)]. Compensation shall be effected by replacement, or repair, or by payment of a sum equivalent to the replacement cost at the date of such loss or damage according to the preference expressed by Fusion for Energy.]

I.14.2. Third Party Actions

If a third party brings any action or claim against Fusion for Energy in connection with the performance of the Contract, the Contractor must assist Fusion for Energy in the legal proceedings, including by intervening in support of Fusion for Energy, upon request.

If Fusion for Energy's liability towards the third party is established and such liability is caused by the Contractor during or as a consequence of the performance of the Contract, the Contractor shall be liable, without any limitation as to the amount.

The indemnification shall not exceed the amount of damage and costs sustained by F4E as a result of the third party action within the meaning of this Article.

The ITER IO is not considered a third party for the purposes of this Article unless the damage or loss suffered by the ITER IO was caused by the Contractor's wilful misconduct or gross negligence. In such a case, the indemnification shall not exceed the limit indicated in Article I.14.1, subject to the exceptions mentioned therein.

I.14.3. Consortium

If the Contractor is a group of economic operators, a consortium *[or another entity without legal personality]*, each of the economic operators forming such group, consortium or entity shall be jointly and severally liable to Fusion for Energy for any loss or damage arising as a result of the performance or breach of Contractor's obligations by any of them, under the conditions established in Article I.14.1.

I.14.4. Fusion for Energy's Liability

Notwithstanding anything to the contrary in this Contract, Fusion for Energy shall not be liable for any loss or damage sustained by 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 by Fusion for Energy.

Fusion for Energy is not liable for any loss or damage caused by the Contractor, including any damage or loss to a third party during or as a consequence of performance of the Contract.

I.14.5. *[Nuclear Liability]*

The Parties hereby acknowledge that nuclear fusion installations are currently not covered by international nuclear liability conventions and that ITER Organisation assumes by virtue of the declaration in the Applicable Documents (AD04-Declaration regarding Nuclear Liability of ITER) the responsibility of a nuclear operator for

indemnifying the Contractor in the event of claims, damage and losses caused by radiological damage arising from a nuclear incident as defined by the Paris Convention 'Third Party Liability in the Field of Nuclear Energy' of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982.]

I.15. INSURANCE

I.15.1. The Contractor must take out a suitable insurance policy against risks and damage or loss relating to the performance of the Contract as required by the relevant applicable legislation as well as any additional insurance policy reasonably required by the best practices in the industry taking into account the specificities of the Contract.

I.15.2. *[In any case, without limiting the obligation defined in Article **Error! Reference source not found.**, the Contractor shall effect and maintain the following insurance with the standards defined above:*

(a) Third party and public liability insurances to cover each and every liability which the Contractor may incur in relation to the performance of the Contract with a limit of indemnity of not less than EUR [x] for any single occurrence and of not less than EUR [x] in the yearly aggregate, notwithstanding any termination of the present Contract .

(b) Professional indemnity insurance without unusual or onerous conditions or excesses to cover each and every liability which the Contractor may incur relating to the performance of the Contract including joint and several liability of its members and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty execution, with a limit of indemnity of not less than EUR [x] for any single occurrence and of not less than EUR [x] in the yearly aggregate, notwithstanding any termination of the present Contract]

(c) [Employer's liability insurance with limit of no less than Euro [x] per accident for bodily injury or disease.]

I.15.3. The insurance policies listed above shall cover the duration of the obligations of the Contractor and allow direct payment of the compensation for the insured damage suffered. The Contractor shall provide the necessary support for the execution of the policy, including payment of self-insured retentions or deductibles, in case such payments are necessary.

I.15.4. Upon request, the Contractor shall provide evidence of effective insurance coverage to Fusion for Energy and, in any case, shall timely inform Fusion for Energy in case of modification to the mentioned policies.

I.15.5. For avoidance of doubt, demonstration by the Contractor of the fulfilment of this Article I.15 and disclosure of effective insurance coverage to Fusion for Energy does not in any way relieve the Contractor from its other obligations and from its liability under the Contract.

I.15.6. **[Contract Implementation in the ITER site in Cadarache**

[N/A] or [Specific requirements apply in case of Contract implementation in the ITER Site in Cadarache, including where the Contract contains assembly and Installation activities on the site. Please add the relevant provision.]

I.16. LIQUIDATED DAMAGES

I.16.1. Where *[the completion date is not met/the due dates are not met for [Deliverables/milestones [•] defined in Section [•] of Annex B (Technical Specifications)]* and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to [•]% ([•]

percent) of the [Total Contract Price at the date of the Formal Notification/Stage Price] per [day/week/month] of delay, up to a maximum of [10% (ten percent)] of the Total Contract Price. Fusion for Energy may, at its sole discretion, apply a lower amount. [For each incomplete [week/month] of delay, the amount of liquidated damages is determined on a pro-rata working day basis].

- I.16.2.** Without prejudice to Fusion for Energy's right to terminate the Contract in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*), the liquidated damages payable under this Article constitute the sole remedy available to Fusion for Energy in respect of delay up to the maximum amount indicated in Article I.16.1. From the Day the maximum amount of payable liquidated damages is reached, Fusion for Energy shall be entitled to compensation for any loss or damage resulting from any additional delay attributable to the Contractor, under the conditions set out by Article I.14 (*Liability*).
- I.16.3.** [N/A] [By derogation to article I.16.1, where the [completion date/any other milestone] is not met due to a delay in transportation caused by the Designated Carrier and not attributable in whole or in part to an act or omission of the Contractor, the amount of liquidated damages payable by the Contractor pursuant to Article I.16.1 (*Liquidated Damages*) is reduced to the amount set out in Article 9 (*Terms of Delivery and Delay Damages*) of the Model Transportation Contract (*Applicable Document AD-07*).]
- I.16.4.** Fusion for Energy must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) Days following the date of receipt of the Notification to submit observations or any longer period communicated by Fusion for Energy. Failing that, the decision becomes enforceable the Day after the time limit for submitting observations has elapsed. If the Contractor submits observations, Fusion for Energy, taking into account the relevant observations, shall 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.
- I.16.5.** The Parties expressly agree and acknowledge that any amounts payable under this Article I.16 (*Liquidated Damages*) represent a reasonable estimate of fair compensation for the damages and losses that may be reasonably anticipated by Fusion for Energy from the above-mentioned delays of the Contractor.

I.17. [FREE-ISSUE ITEMS DELIVERED TO THE CONTRACTOR]

- I.17.1.** All supplies delivered to the Contractor by Fusion for Energy or third parties designated by Fusion for Energy in connection with the Contract (Section [•] of Annex B (*Technical Specifications*)) (the "**Free-issue Items**"), shall never become the property of the Contractor and shall be used only for the execution of the Contract and for no other purpose whatsoever, without prior approval in writing by Fusion for Energy.

Free-issue Items are delivered in accordance with [DAP (INCOTERMS 2010)] to the Contractor's premises or another place of destination, as the case may be, on behalf of Fusion for Energy, ITER IO, or another Domestic Agency and within the following time periods:

[•] (Section [•] of Annex B (*Technical Specifications*)) shall be delivered by [•].

[•] (Section [•] of Annex B (*Technical Specifications*)) shall be delivered by [•].

[•] (Section [•] of Annex B (*Technical Specifications*)) shall be delivered by [•].

Free-issue Items will be clearly labelled and delivered with the official documentation mentioning that export is on behalf of ITER IO. The Articles 5 and 6 of the ITER

Immunities and Privileges Agreement shall apply and then Free-issue Items will be exempt from all duties and taxes.

For these Free-issue Items belonging to Fusion for Energy, or to ITER IO, or a Domestic Agency, the Contractor shall be responsible for the custom clearance and formalities, the unloading and, as may arise, free-storage on site. The transfer of risks to the Contractor shall happen at the moment the goods are made available to him at the place of destination, in accordance with the INCOTERMS referred to in this Article I.17.1.

From the moment of the transfer of risks, the Contractor shall bear the risks of any damage, loss, or destruction of any or all the supplies delivered on behalf of Fusion for Energy, ITER IO, a Domestic Agency, or third parties designated by Fusion for Energy in connection with the Contract (Article [•] of Annex B (Technical Specifications)) that it has in its possession for execution of the Contract. The Contractor shall be responsible for providing surveillance and guarding for these Free-issue Items, including for contracting any suitable insurance, at its expense until Final Acceptance.

[In case Free-issue Items are delivered in advance of the provided time schedule, the Contractor shall provide free storage at its own cost.]

- I.17.2.** *In relation with the technical acceptance of the Free-issue Items delivered to the Contractor on behalf of Fusion for Energy by a third party designated by Fusion for Energy, provisions in Annex B (Section [•] of Annex B (Technical Specifications)) are applicable.*

[Before starting the assembly work, the Contractor shall be under the strict obligation to carry out the tests stipulated in Section [•] of Annex B (Technical Specifications) or any other tests that Fusion for Energy may reasonably deem appropriate. All the tests shall be carried out after prior approval of and in presence of Fusion for Energy and recorded in writing to be delivered to Fusion for Energy for approval.]

If the results of the tests are not compliant with the conditions stipulated in Section [•] of Annex B (Technical Specifications), the reasons of the refusal by the Contractor shall be explained and detailed in writing.

A final series of tests shall be carried out by a third party especially designated for this purpose or by Fusion for Energy under the supervision of this third party. The resulting expenses and delays shall be borne by the Party shown to be wrong by the results of this new series of tests.

- I.17.3.** *The Contractor must prove the existence of a Nonconformity and that the Nonconformity is not attributable to it. Normal wear and tear shall not be considered as Nonconformity.*

In case of Nonconformity the Contractor may be required to carry out Remedial Actions. The Parties shall negotiate in good faith a revision of the price in order to take into account the extra work performed by the Contractor.

Fusion for Energy or third parties shall have the right of access in order to repair or replace the Free-issue Items, as necessary.

- I.17.4.** *Fusion for Energy commits itself to deliver the Free-issue Items at the latest by the dates indicated in Article I.17.1 (Free-issue Items Delivered to the Contractor).*

[If Fusion for Energy fails to deliver the Free-Issue Items within said time limits, the Parties shall negotiate in good faith a compensation to be paid by Fusion for Energy for any reasonable and evidenced direct damage incurred by the Contractor, for which the Contractor shall provide duly documented evidence. The negotiations related to the determination of the extra costs shall not constitute a cause of delay on the part of the Contractor for the performance of the Contract. In addition, should the parties fail to reach an agreement on the determination of the costs, this shall not be deemed a cause

of termination of the Contract on the part of the Contractor. In the absence of an agreement Article II.27 (Settlement of Disputes) shall apply.]

OR

[Should Fusion for Energy fail to deliver the Free-issue Items within the said time limits, the Contractor may decide to impose liquidated damages on Fusion for Energy for delay as follows:

- (a) The liquidated damages related to the delivery of [•] are fixed at EUR [to be indicated in euro] per calendar week of delay in the completion of the deliverable to which it is connected.
- (b) The liquidated damages related to the delivery of [•] are fixed at EUR [to be indicated by in Euro] per calendar week of delay in the completion of the deliverable to which it is connected.

The request for liquidated damages from the Contractor to Fusion for Energy shall be admissible only in case the Contractor can demonstrate that the delay in the delivery of the Free-issue Item has caused a delay in the completion of the deliverable to which it is connected. No liquidated damages shall be imposed for delays which do not exceed 2 (two) weeks.

The aforementioned liquidated damages shall be payable for each Free-issue Item, up to [•] weeks of delay. For any delay exceeding [•] weeks, the Parties shall negotiate in good faith to find a suitable solution for both Parties as to the amount of additional costs to be paid to the Contractor by Fusion for Energy with the aim of reducing at a minimum the costs. In no event, shall failure to reach an agreement constitute a cause of termination on the part of the Contractor.

[The compensation foreseen under this Article shall apply in accordance with the following conditions:

- [.] (Section [.] of Annex B (Technical Specifications) Free-issue Items is subject to a 60 (sixty) days grace period.
- [.] (Section [.] of Annex B (Technical Specifications) Free-issue Items are not subject to any compensation.]

Liquidated damages payable under this Article shall constitute the sole, full, and final remedy available to the Contractor in respect of delays in delivery of Free-issue Items.]

I.17.5. Return of the Free-Issue-Items]

[Include provision for the delivery, transfer of risk/ownership and required tests if any in case Free Issue Items must be returned or delivered to another entity].

I.18. [SPECIAL PURPOSE TOOLING SUPPLIED BY THE CONTRACTOR AND PAID BY FUSION FOR ENERGY

I.18.1. Definition and Ownership

Special purpose tooling manufactured or purchased by the Contractor for the execution of the Contract, and duly paid by Fusion for Energy shall become or remain the property of Fusion for Energy (the "**Special Purpose Tooling**") from the moment it is purchased or manufactured by the Contractor. [This tooling is further specified in Section [•] of Annex B (Technical Specifications)].

At any stage during the execution of the Contract and no later than 1 (one) month following Final Acceptance, Fusion for Energy may request the Contractor to dispose of the Special Purpose Tooling. The costs of such disposal shall be borne by the Contractor.

At any stage before Fusion for Energy informs the Contractor if the Special Purpose Tooling shall be disposed of Fusion for Energy may propose to sell the Special

Purpose Tooling or any part thereof to the Contractor. Should the Contractor be interested, the Parties shall determine in good faith the resale value of the Special Purpose Tooling to be transferred to the Contractor. Such value shall be set off against the amount of the next invoice issued by the Contractor.

In case Fusion for Energy wishes to take possession of the Specific Purpose Tooling or part of it, the Contractor shall deliver the Specific Purpose Tooling EXW (INCOTERMS 2010) at its premises.

I.18.2. Inventory and Identification

The Special Purpose Tooling shall be identified within an inventory list (the "Inventory"). The Contractor shall maintain the Inventory and a up-to-date utilisation account of the Special Purpose Tooling placed under its control until Fusion for Energy has provided the communication on disposal referred to in Article I.18.1.

The Inventory shall be regularly updated to include all Special Purpose Tooling during the course of the Contract implementation. The updated Inventory shall be transmitted to Fusion for Energy upon request.

The Special Purpose Tooling shall be marked in an unambiguous way as being Fusion for Energy's property.

I.18.3. Liabilities with Regards to the Special Purpose Tooling

The Contractor shall be liable for the Special Purpose Tooling, which it has in its possession for execution of the Contract.

The Contractor shall be responsible for providing maintenance in good work conditions, surveillance, and guarding for them at its expense until Fusion for Energy has provided the communication on disposal referred to in Article I.18.1.

If any Special Purpose Tooling is destroyed, lost, or damaged, the Contractor shall, at Fusion for Energy's discretion:

- (a) replace it with an identical one; or*
- (b) shall repair it; or*
- (c) shall repay its replacement cost.*

I.18.4. Use of the Special Purpose Tooling

Special Purpose Tooling shall be used exclusively for tasks stipulated in the Contract. However, Fusion for Energy may authorise in writing its use for other works provided the performance of the Contract is not affected and prior agreement of Fusion for Energy on the procedure is followed.]

I.19. SAFETY OF THE ITEMS

I.19.1. The design and manufacture of the Items shall be carried out in a manner which ensures that the Items comply with any current health and safety legislation and standards applicable at the place of manufacture and at the place of delivery.

I.19.2. *If the Contract involves PIC or PLA, the Contractor must comply with the requirements set out in the Supplier Nuclear Safety Management Requirements (AD-10).*

I.19.3. Where applicable, the Contractor shall be responsible for the implementation of the CE Markings requirements.

I.20. TRANSFER OF OWNERSHIP AND TRANSFER OF RISKS

I.20.1. Transfer of Ownership

Unless otherwise indicated in the Contract, all Items, goods, material or work to be delivered by the Contractor under the Contract shall become the property of Fusion for Energy upon Acceptance in accordance with the Contract.

In case Fusion for Energy decides [*not to release any of the Stages or*] to exercise its rights under Article II.20 (*Termination by Fusion for Energy for Cause*) and Article II.21 (*Termination by Fusion for Energy for Convenience*), any good or work which has been accepted or requested by Fusion for Energy shall become property of Fusion for Energy as from their Acceptance or approval of the related Deliverable, unless otherwise stated in the Formal Notification mentioned in Article II.20.2 and in Article II.21.3.

I.20.2. Transfer of risks

Unless otherwise indicated in the Contract, the Contractor shall bear all risks of loss or damage to the Items in accordance with the provisions of the INCOTERMS referred to in Article I.5 (*Delivery*).

It shall affect insurance to the extent necessary to cover the risk of such loss or damage in accordance with the specific conditions of Article I.15 (*Insurance*).

I.21. INTELLECTUAL PROPERTY

The provisions of Annex C (*Intellectual Property Provisions*) shall be applicable.

I.22. PROCESSING OF PERSONAL DATA

I.22.1. Processing of personal data by Fusion for Energy

For the purpose of Article II.10:

- (a) the data controller is [*insert F4E responsible "organizational entity", i.e. unit/function (fmb.....@f4e.europa.eu).*]
- (b) the data protection Privacy Notice is available at: [*insert the respective PN(s) on procurement / contract implementation / claims etc.*]

I.22.2. Processing of personal data by the Contractor

For the purpose of Article II.10:

- (a) 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*];
- (b) The localisation of and access to the personal data processed by the Contractor shall comply with the following⁹:
 - i. the personal data shall only be processed within the [territory of the European Union and Switzerland] and will not leave that territory;
 - ii. the data shall only be stored (incl. back-up storage) in data centers or similar premises, located within the territory mentioned above under (i). Every additional data storage and/or treatment location within the European Union Member States or within the territory of a Member of the Joint Undertaking envisaged during the period of implementation of the Contract, must be communicated in advance to Fusion for Energy;
 - iii. the Contractor may not change the location of data processing without the prior written authorisation of Fusion for Energy;

⁹ This clause may be further adapted with care on the basis of a risk assessment related to the processing of personal data for the relevant contract.

- iv. any transfer of personal data under this Contract to third countries or International Organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725¹⁰.]

I.23. APPLICABLE LAW

The Contract shall be governed by the Community and European Union Law, complemented by national substantive law of Spain other than its rules of private international law (conflict of law/renvoi rules). 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.24. SURVIVAL OF OBLIGATIONS

Obligations under the Contract, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in the Article I.14 (*Liability*), Annex C (*Intellectual Property Provisions*), Article II.13 (*Warranty*), Article II.23 (*Checks and Audits*), Article II.24 (*Confidentiality*) shall survive the termination or expiration of the Contract.

[OTHER SPECIFIC PROVISIONS]

I.25. [Warranty for Limited Occurrences

[Without prejudice to Article II.13.1 (Warranty), the Contractor shall repair or replace the Items for [•] years from the acceptance of the Items by Fusion for Energy and for the following occurrences:

- (a) [•] as defined in Annex B (Technical Specifications);*
- (b) [•] as defined in Annex B (Technical Specifications).]*

I.26. [Qualified Providers

Article II.14 (Subcontracting) applies to Qualified Providers.]

I.27. [ASSEMBLY AND INSTALLATION

I.27.1. *The Contractor shall assemble [and install] the Items in accordance with Section [•] of Annex B (Technical Specifications) and the [Common Site Rules¹¹ (AD-10)] within a period of [•] month(s), unless otherwise specified in the Contract or in Annex B (Technical Specifications).*

I.27.2. *[Insert any derogating rule to INCOTERM and/or Article I.20.1 (Transfer of Ownership), Article I.20.2 (Transfer of Risk) and Article I.5.3 (Delivery)]. In the event that prior storage under ITER IO's responsibility is needed, a transfer of risk for any loss or damage of the Items to ITER IO shall occur at delivery upon visual inspection and acceptance by ITER IO. During the storage period under IO's responsibility, ITER IO shall bear the risks for any damage, loss or destructions of any or all of the*

¹⁰ 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://eurlex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG ; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002D1247&from=EN>

¹¹ *Instructions: Please note that this name may change as the IO/F4E Working Group has not finalised the development of the whole documentation package for A&I. Another name under consideration is Contractor's Work Handbook.*

Items that are under its possession. Upon the end of this storage period, all risks of loss and damage shall be transferred to the Contractor until the relevant Acceptance of those Items as specified in Section [•] of Annex B (Technical Specifications).

- I.27.3.** *The Contractor shall be responsible for any loss or damage during assembly and installation of the Items and shall affect insurance as may be necessary to cover the risk of such loss or damage from any cause.*
- I.27.4.** *Any lack of conformity resulting from incorrect assembly and/or installation of the Items delivered shall be deemed to be equivalent to lack of conformity of the Items if the Items were assembled and/or installed by the Contractor or under its responsibility. This shall apply equally if the Items were to be installed by Fusion for Energy and were incorrectly installed owing to a shortcoming in the installation instructions.*

[...]

II. GENERAL CONDITIONS

II.1. PERFORMANCE

II.1.1. General Performance Requirements

- (a) The Contractor shall perform the Contract with due skill, care and diligence, in accordance with the high professional standards which can be expected from an experienced contractor in the field of the Contract.
- (b) The Contractor shall follow the instructions of Fusion for Energy given in writing by the Responsible Officer. If the Contractor receives instructions that jeopardize the economical, expeditious, and safe performance of this Contract, it shall immediately call the attention of Fusion for Energy in writing thereto. However, if the Responsible officer repeats the instructions in writing, the Contractor shall execute them at the risk and expense of Fusion for Energy.
- (c) The Contractor shall neither represent Fusion for Energy nor behave in any way that would give such an impression. The Contractor shall inform third parties that it and its employees do not belong to the European public service.

II.1.2. General Provisions Regarding the Contractor's Staff

- (a) *The* Contractor must ensure that any Staff performing the Contract (including that of Subcontractors) has the professional qualifications, skills and experience required for execution of the Contract.
- (b) Upon request of Fusion for Energy, the Contractor shall justify the deployment of the human resources, regarding the number and the professional qualification of the personnel involved for the execution of the Contract.
- (c) The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him with respect to its Staff, notably those resulting from employment, tax, social security, health and safety legislation. The Contractor shall indemnify and hold harmless Fusion for Energy from any claim in that respect including those claims related to salary, remuneration, tax, social security and health and safety obligations of the Contractor. If requested by Fusion for Energy, the Contractor shall submit copies of forms evidencing compliance with the aforementioned obligations.
- (d) The Contractor shall be responsible for the submission of any information required by the labour or tax authorities, or other authority, having jurisdiction over the work in respect of the employees working or from time to time employed or hired by the Contractor and its subcontractors to carry out any work under this Contract. The Contractor shall also be responsible to submit copies of that documentation to Fusion for Energy. The Contractor shall keep at all times in the site the legally required books and records containing information on its employees and those of its subcontractors working on the site. Fusion for Energy shall have access to the information contained in such registry book.
- (e) The Contractor shall have sole responsibility for the Staff executing the tasks under the Contract. The Contractor has the duty to manage the team in charge of the execution of this Contract.
- (f) The Contractor shall make provision for the following employment or service relationships with its Staff: (1) Staff executing the tasks assigned to the Contractor may not be given orders directly by Fusion for Energy; and (2) Fusion for Energy may not under any circumstances be considered to be the

Staff's employer and the said Staff shall undertake not to invoke in respect of Fusion for Energy any right arising from the contractual relationship between Fusion for Energy and the Contractor.

- (g) The Contractor shall use reasonable efforts to minimize the risk of labour-related delays or disruption of the progress of the work. The Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labour jurisdictional disputes. The Contractor shall advise Fusion for Energy promptly in writing of any actual or threatened labour dispute of which the Contractor has knowledge that might materially affect the performance of this Contract by the Contractor or by any of its subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labour disputes shall be at the discretion of the Party having the difficulty.
- (h) In the event of disruption resulting from the action or omission of a member of the Contractor's Staff or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by this Contract, the Contractor shall replace him without delay.
- (i) Fusion for Energy shall have the right to request the replacement of any such member of Staff, stating its reasons for so doing. Replacement Staff must have the necessary qualifications and be capable of performing this Contract under the same contractual conditions. The Contractor shall ensure the continuity of the service and the transfer of knowledge from the replaced Staff to the replacement Staff. The Contractor shall be responsible for any delay in the execution of this Contract resulting from the replacement of Staff.

II.1.3. Compliance

- (a) The Contractor shall comply during the performance of this Contract with the quality and management requirements laid down in the Annexes and Applicable Documents of this Contract.
- (b) The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU¹² and compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.
- (c) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required to perform this Contract under the laws and regulations in force at the place where this Contract is to be executed.
- (d) The Contractor must ensure compliance with the health and safety regulations and standards applicable in the places where the Contract is executed

II.1.4. Early Warning

- (a) The Contractor shall notify Fusion for Energy of any event or circumstance that affects or should reasonably be expected to affect the performance of its contractual obligations promptly and in the absence of shorter period mentioned in the Contract, in any case not later than within 10 (ten) Days since the Contractor became aware of such event or circumstance or should have become aware of it (unless another shorter period is foreseen in the Contract).
- (b) The Contractor shall be responsible for the costs and delays resulting from a breach of the duty of early warning as defined in this article.

¹² OJ L 94 of 28.03.2014, p. 65

- (c) The Contractor shall use its best efforts to mitigate the consequences of such an event or circumstance for the performance of the Contract.

II.2. APPROVAL OF THE ACCEPTANCE DATA PACKAGES LINKED TO PAYMENTS

II.2.1. Where the Contractor must submit an Acceptance Data Package (ADP) linked to a payment, Fusion for Energy has 60 (sixty) days from receipt of the relevant request for payment:

- (a) to approve it and make the payment; or
- (b) to reject it and to require the Contractor to submit another ADP; or
- (c) to make observations, suspend the time-limit for payment and require the Contractor to take Corrective Actions.

II.2.2. Any rejection by Fusion for Energy must be based on objective reasons in accordance with the provisions of the Contract and be transmitted in writing to the Contractor.

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

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

II.3. GENERAL PROVISIONS CONCERNING PAYMENTS

II.3.1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the request for payment is submitted.

II.3.2. Should the Contractor fail to perform its contractual obligations, Fusion for Energy may – without prejudice to its right to terminate the Contract and any other remedies it may have at law– suspend, reduce or recover payments in proportion to the scale of the non-performance.

II.3.3. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.

II.3.4. Fusion for Energy may suspend the payment periods referred to in Article I.8 (*Payment Arrangements*) at any time, if it informs the Contractor that its payment request is not admissible. A payment request is not admissible for one of the following reasons:

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

II.3.5. In the event of doubt on the admissibility of the payment request, Fusion for Energy may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the request is admissible.

II.3.6. Fusion for Energy shall notify the Contractor as soon as possible of the suspension and set out the reasons for it. Suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension of payment exceeds two months, the Contractor may request Fusion for Energy's decision on whether the suspension must be continued.

II.3.7. In the event of late payment, Contractor shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "**Reference Rate**") plus 8 (eight) percentage points (the "**Margin**"). The Reference Rate in force on the first Day of the month in which the payment is due shall apply. Interest shall be payable for the period elapsing from the Day following expiry of the time limit for payment up to the Day of payment. Suspension of payment by Fusion for Energy does not constitute late payment. When the calculated interest is lower or equal to EUR 200, it must be paid only if the Contractor requests it within two months of receiving late payment.

II.4. GUARANTEES

- II.4.1.** If so required by Fusion for Energy, the Contractor shall provide a guarantee (the "**Guarantee**") for the performance of his obligations under the Contract for the amount and exact format stipulated in the Contract.
- II.4.2.** The guarantee(s) shall be issued in favour of Fusion for Energy by an authorised bank or any other financial institution (the "**Guarantor**") established in the EU or Switzerland having a public credit rating of no less than "BBB" by Standard and Poors or equivalent credit rating from a reputable ratings agency accepted by Fusion for Energy credit. It shall be denominated in EURO.
- II.4.3.** Notwithstanding any indication to the contrary, the Guarantor shall stand as first-call guarantor and shall not require Fusion for Energy to have recourse against the principal debtor, being the Contractor.
- II.4.4.** The Contractor shall bear the costs of providing the Guarantee and any extension thereof.
- II.4.5.** The pre-financing guarantee must remain in force until the pre-financing is cleared against (an) interim payment(s) 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 3 (three) months after the debit note is sent to the Contractor. Fusion for Energy must release the guarantee within the following month.
- II.4.6.** Performance guarantees cover compliance with contractual obligations from the execution of the balance payment. Fusion for Energy must release the performance guarantee fully 30 (thirty) Days after expiry of the Warranty Period.
- II.4.7.** Retention money guarantees cover full delivery of the supplies in accordance with the Contract including during the Warranty Period. Fusion for Energy must release the Retention money guarantee at the latest after the expiry of the Warranty Period.
- II.4.8.** Fusion for Energy may not request a retention money guarantee where it has requested a performance guarantee and not released it.

II.5. RECOVERY

- II.5.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EUR on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.
- II.5.2.** In the event of failure to pay by the deadline specified in the debit note, Fusion for Energy may, after informing the Contractor in writing, recover the amounts due by: (a) offsetting them against any amount owed to the Contractor by Fusion for Energy; (b) calling a financial guarantee if the Contractor has submitted one; (c) taking legal action..
- II.5.3.** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article **Error! Reference source not found.** (*General Provisions Concerning Payments*). Interest shall be payable from the Day

following the expiry of the due date up to the Day on which the full debt is repaid in full. Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

- II.5.4.** If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article I.14 (Liability). Fusion for Energy first claims the full amount to the leader of the group. If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article **Error! Reference source not found.**(a), Fusion for Energy may claim the full amount to any other member of the group by notifying the debit note already sent to the leader

II.6. TAXATION

- II.6.1.** The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union¹³.
- II.6.2.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Items and services required for performance of the Contract are exempt from taxes and duties, including VAT. The Contractor shall remain responsible for the proper application of the rules on VAT at the place where is taxable. Fusion for Energy reserves the right to communicate information on the Contract to the Member State in which the contractor is liable to VAT.
- II.6.3.** Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

II.7. CHECKS AND ACCESS RIGHTS

- II.7.1.** For the purposes of checking the performance of the Contract and subject to prior notification (which in any case shall not be less than 5 (five) days), Fusion for Energy or any entity it designates shall have the right to carry out onsite checks in the premises of, and access to the facilities (including documentation) of the Contractor and its Subcontractors as set out in detail in Applicable Document AD-01 (*Supplier Project Management and Quality Requirements*).
- II.7.2.** Fusion for Energy shall notify in writing to the Contractor the names of the persons entitled or designated to execute the checks (the "**Representatives of Fusion for Energy**"). The Contractor shall grant access to its facilities for the above purposes and shall ensure that any contracts entered into with Subcontractors also provide such unlimited and unrestricted access.
- II.7.3.** In carrying out the checks, the Representatives of Fusion for Energy shall comply with the internal rules of procedure, safety and security of the Contractor and Subcontractors as well as with any restriction imposed by any applicable safety and security law.
- II.7.4.** In addition to the rights of Fusion for Energy set out in Applicable Document AD-01 (*Supplier Project Management and Quality Requirements*), Fusion for Energy shall be entitled to a reasonable number of copies (and unless otherwise indicated by Fusion for Energy, not less than 3 (three)) in paper and electronic form of the documents required in accordance with Applicable Document AD-01 (*Supplier Project Management and Quality Requirements*) at any time at no cost for Fusion for Energy.

¹³ OJ C 321 E of 29.12.2006 p. 0318-0324

II.7.5. The Contractor shall provide at no cost for Fusion for Energy (also in the case of permanent Representatives of Fusion for Energy) suitable office accommodation and facilities as may be required for the use of the Representative(s) of Fusion for Energy for the purpose mentioned in this Article II.7 and also all appliances, materials, and labour required for inspection or test purposes for the purpose mentioned in this Article II.7.

II.7.6. Nothing under this Article II.7 shall relieve the Contractor of any of its obligations and responsibilities under the Contract.

II.8. REPORTING AND TESTING

II.8.1. The Contractor shall provide Fusion for Energy with reports providing details about the progress of the performance of the Contract, Acceptance Data Packages, and Final Report, all of which shall be in accordance with the requirements set out in Annex A (*Management Specification*) and Annex B (*Technical Specifications*).

II.8.2. Should any unforeseen event, action or omission directly or indirectly negatively impact execution of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem, an indication of the date on which it started and of the Remedial and Corrective Action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.8.3. The Contractor shall give Fusion for Energy at least 2 (two) weeks' notice in writing of any tests that are to be carried out in accordance with the Contract in the presence of Representatives of Fusion for Energy, unless otherwise indicated in the Annex A (*Management Specification*) or Annex B (*Technical Specifications*).

II.8.4. The expense of visits of Representatives of Fusion for Energy connected with such tests will be borne by Fusion for Energy. If 1 (one) or more of the tests has to be repeated for reasons attributable to the Contractor, the Contractor shall pay the additional costs attributable to extended participation or for any extra visit(s).

II.8.5. If during the course of a test the Representatives of Fusion for Energy present at the test wish to make minor modifications to the test procedures or programmes which has no impact on the schedule, i.e. modifications involving little extra work or expense, the Contractor shall not unreasonably withhold its consent. Substantial modifications to test procedures or programmes shall be agreed in good faith by the Parties in advance.

II.8.6. Each test procedure has to be approved by Fusion for Energy prior to the test. Each test report has to be approved by Fusion for Energy. One copy of the test report shall be delivered to Fusion for Energy within 10 (ten) days from the end date of each test.

II.8.7. If the Parties disagree on the results of the tests, a final series of tests shall be carried out by or under the supervision of a third party especially designated for this purpose by Fusion for Energy. The resulting expenses and delays shall be borne by the Party shown to be wrong by the results of this new series of tests.

II.9. CONFLICT OF INTERESTS

II.9.1. The Contractor shall take all necessary measures in order to prevent any situation of Conflict of Interest or Professional Conflicting Interest. Any Conflict of Interest or Professional Conflicting Interest which could arise during performance of the Contract must be notified to Fusion for Energy in writing without delay. The Contractor shall immediately take all necessary steps to rectify it.

II.9.2. Fusion for Energy reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it

shall set. The Contractor shall ensure that its staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1.2 (*General Provisions Regarding the Contractor's Staff*) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its staff exposed to such a situation.

II.9.3. The Contractor shall abstain from any contact likely to compromise its independence.

II.9.4. The Contractor declares:

- (a) that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract;
- (b) that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of the Contract.

II.10. PROCESSING OF PERSONAL DATA

II.10.1. Processing of Personal Data by Fusion for Energy

Any personal data included in or relating to this Contract, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of this 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) No 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 their personal data, they shall address themselves 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 (EDPS).

Details concerning the processing of personal data are available in the Privacy Notice referred to in Article I.22.1.

II.10.2. Processing of Personal Data by the Contractor

The processing of personal data by the Contractor shall meet the requirements of Regulation (EU) No 2018/1725 and be processed on behalf of Fusion for Energy, as "processor" solely for the purposes set out by the controller.

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 have measures in place to ensure that the data subjects can exercise their rights in an easy manner.

The Contractor may be asked by F4E to use some ITER Organization IT applications that store information in data centers or similar premises, located on the territory of the European Union Member States (incl. back-up storage).

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) No 2018/1725. The Contractor shall inform without delay the controller about such requests.

The Contractor shall grant its 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.24.

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:

- (a) the pseudonymisation and encryption of personal data; Data in transit on public networks (e.g. internet) shall be encrypted. Other security measures than encryption of stored data may be defined during contract implementation
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, erasure, unauthorised disclosure and use of or access to personal data transmitted, stored or otherwise processed.

The Contractor shall, on Fusion for Energy's written request, inform Fusion for Energy in writing about the implementation of those measures within 30 days following receipt of the request.

In case the Contractor is asked by Fusion for Energy to use systems and IT applications provided by the ITER Organisation the above mentioned technical and organizational security measures apply to the extent falling under the Contractor's responsibility.

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:

- (a) 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;
- (b) likely consequences of the breach;
- (c) 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 or Member State data protection provisions as referred to in the tender specifications.

The Contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 39 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users; In case the Contractor is asked by F4E to use systems and

IT applications provided by the ITER Organisation this applies to the extent falling under the Contractors responsibility.

- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) 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 Contractor acknowledges that the potential costs with the implementation of its obligations are under its entire responsibility with no right to be reimbursed.

Fusion for Energy 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.22 and data security, which includes personal data held on behalf of Fusion for Energy in the premises of the Contractor or subcontractor.

The Contractor shall notify Fusion for Energy without delay of any legally binding request for disclosure of the personal data processed on behalf of Fusion for Energy 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.23. 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 or national law requires a longer storage of personal data.

For the purpose of Article II.14, 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.22 and II.10.2 in writing to those parties, including subcontractors. At the request of Fusion for Energy, the Contractor shall provide a document providing evidence of this commitment.

II.11. ERRORS IN FUSION FOR ENERGY'S REQUIREMENTS

II.11.1. The Contractor hereby expressly declares and warrants that it shall carefully review the Contract and its Annexes within the Review Period and that it shall notify without delay and in any case, no later than the end of the Review Period, any errors, faults, omissions, discrepancies or ambiguities in any drawings, documents or data contained therein.

II.11.2. Errors, faults, omissions, discrepancies or ambiguities in any drawings, documents or data contained in the Contract and Annexes which are not notified in accordance with paragraph 1 of this article cannot be a ground for an extension of time and/or additional payment save under the conditions set out in article II.16 (*Compensation Event*).

II.12. ACCEPTANCE

II.12.1. General

Acceptance is the acknowledgment that the Items delivered are in conformity with the contractual requirements.

Signing of the consignment note by Fusion for Energy, as provided for in Article I.5 (*Delivery*) is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the Items with the Contract.

Conformity of the Items delivered shall be evidenced by a written communication to this effect or, in the case of a Deliverable linked to a payment, by the payment. Conformity shall be declared only where the conditions for acceptance laid down in Article II.12.2 of the Contract are satisfied.

Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Items, it shall send a Formal Notification to the Contractor.

Approval of any Deliverable or document by any means other than those set out in this Article II.12 shall not constitute an Acceptance within the meaning of this Contract.

No obligation and/or responsibility of the Contractor under this Contract shall be released until Final Acceptance.

II.12.2. Conditions for Acceptance: Conformity of the Items Delivered

- (a) The Items delivered by the Contractor to Fusion for Energy must be in conformity in quantity, quality, price and packaging with the Contract.
- (b) The Items delivered shall:
 - correspond to the specifications given in Annex A (*Management specification*) and Annex B (*Technical Specifications*) and appendixes;
 - be packaged in accordance with the provision of Article I.13 (*Packing, Transport, Insurance and Importation for the Goods to be Delivered by the Contractor*);
- (c) The Items must be delivered in accordance with the schedule and milestones defined in the Contract.

II.12.3. Remedy

- (a) The Contractor shall be liable to Fusion for Energy for any Nonconformity which exists at the time the Items are verified.
- (b) In case of Nonconformity, without prejudice to Article I.16 (*Liquidated Damages*), Fusion for Energy shall be entitled, at its own discretion:
 - to have the Items brought into conformity, free of charge, by repair or replacement; or
 - to have an appropriate reduction made in the price.
- (c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking account of the nature of the goods and the purpose for which they are required by Fusion for Energy;
- (d) Where it is established that the Contractor will not be able to bring the Items into conformity or that delivery loses its purpose as a result of the repair or replacement, Fusion for Energy may refuse the delivery of the Items and terminate the contract in accordance with Article II.20.1(i);
- (e) The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

II.12.4. Assembly

If required by Annex B (*Technical Specifications*), the Contractor shall assemble the Items delivered within a period of 1 (one) month unless otherwise specified in the Contract or in Annex B (*Technical Specifications*).

The Contractor shall be responsible for any loss or damage during assembly of the Items and shall affect insurance as may be necessary to cover the risk of such loss or damage from any cause.

Any Nonconformity resulting from incorrect installation of the Items delivered shall be deemed to be equivalent to a Nonconformity of the Items if installation forms part of the Contract and the Items were installed by the Contractor or under its responsibility. This shall apply equally if the Items were to be installed by Fusion for Energy and were incorrectly installed owing to a shortcoming in the installation instructions.

II.13. WARRANTY

II.13.1. Scope and Duration

The Contractor warrants the Items against all defects falling under the responsibility of the Contractor as a result of the performance of the Contract for 2 (two) years from the date of the Final Acceptance or, in case of early termination of the Contract, for 2 (two) years from the effective date of termination (the “**Warranty Period**”). The Contractor does not warrant the Items against normal wear and tear and does not cover defects resulting from lack of maintenance by Fusion for Energy or third parties.

The Contractor shall only be exempted from the above obligations during the Warranty Period if it is able to prove that the defect was exclusively caused after Final Acceptance by Fusion for Energy, a Third Party or a Force Majeure. Notwithstanding, the Contractor shall start to execute the necessary actions to remedy the defect rather than determine liability, without prejudice to the Contractor’s right to have its documented Costs reimbursed where it proves that the defect did not fall under the Warranty.

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

If a defect is found to originate in a systematic flaw in design for which the Contractor shall be deemed responsible, the Contractor shall replace or modify all identical parts incorporated in other Items that are part of the Contract, even though they may not have been the cause of any incident. In this case, the parts replaced or modified shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

Any defect resulting from incorrect installation of the Items shall be deemed to be equivalent to defect of the Items if the Items were installed by the Contractor or under its responsibility. This shall apply equally if the Items are installed by Fusion for Energy and the incorrect installation is due to a shortcoming in the installation instructions provided by the Contractor.

II.13.2. Remedies

In the case of defect, Fusion for Energy shall be entitled, to have the Items brought into conformity free of charge by Repair or replacement, or to have an appropriate reduction made in the Total Contract Price or the Contract terminated with regard to those Items.

In the first place, Fusion for Energy may require the Contractor to Repair the Items or to replace them, in either case free of charge, unless this is impossible or disproportionate, in which case the other remedy will apply.

A remedy is disproportionate if it imposes costs on the Contractor which, in comparison with the alternative remedy, are unreasonable, taking into account:

- the value the Items would have, if there were no defect;
- the significance of the defect; and
- whether the alternative remedy could be completed without significant inconvenience to the Contractor.

In case of replacement of an Item or the termination of the Contract within the Warranty Period, Fusion for Energy shall not be required to make reimbursement for any depreciation in the value of the Items resulting from proper use.

Any and all of the expenses incurred in relation to performance of an obligation based on a Warranty shall be borne by the Contractor. Therefore, the term ‘free of charge’ in this Article refers to any and all costs incurred to bring the Items into conformity, particularly the cost of transportation, labour, accommodation, travel and materials.

II.13.3.Repair and Replacement

Any Repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking account of the nature of the Items and the purpose for which Fusion for Energy required the Items.

If the Contractor fails to undertake or carry out repair of the Items or to replace them by a reasonable deadline, Fusion for Energy shall be entitled to Repair or replace the Items himself or have them Repaired or replaced by another person at the Contractor’s expense.

In the case of Repair, the Warranty Period shall be suspended by the time commencing from notification of the defect during which Fusion for Energy could not use the Items properly because of the defect until completion of the Repair and Acceptance. In the case of replacing the Items or one of its major components, the Warranty Period provided for enforcement of the Warranty rights shall recommence in respect of the replaced Items (components).

II.13.4.Reduction of Price and Termination

Fusion for Energy may require an appropriate reduction of the Total Contract Price or have the Contract terminated in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*):

- if Fusion for Energy is entitled to neither Repair nor replacement; or
- if the Contractor has not completed the remedy within a reasonable time; or
- if the Contractor has not completed the remedy without significant inconvenience to Fusion of Energy, including where completion of the remedy has lost its purpose.

II.13.5.Services

The provisions regarding Warranty shall be duly applied even if an obligation is not aimed at the provision of an Item; in such cases, replacement shall be construed as repeated performance of the related service in accordance with the Contract.

II.14. SUBCONTRACTING

II.14.1.The Contractor shall neither subcontract any part of the work to any Subcontractor without prior written authorisation from Fusion for Energy, nor cause or allow the Contract to be performed in fact by third parties. Fusion for Energy may waive its right for prior authorization by registered letter for specific parts of the Contract and subject to the conditions it defines.

II.14.2.The request for authorization mentioned in Article II.14.1 shall be made in writing to Fusion for Energy, accompanied by references of the proposed Subcontractor’s qualifications and experience, its place of establishment, the part of the service/supply

to be subcontracted, the total amount estimated to be paid for such service/supply and whether the Subcontractor qualifies as small and medium-sized enterprise. Together with the invoice for payment of the balance, the Contractor shall declare the total amount paid or to be paid to each Subcontractor for the part of the service/supply which was subcontracted.

II.14.3. Even where Fusion for Energy authorises the Contractor to subcontract to third parties, it shall nonetheless remain bound by its obligations to Fusion for Energy under the Contract and shall bear exclusive liability for proper performance of the Contract. The Contractor shall at all times be responsible towards Fusion for Energy for the acts and omissions of Subcontractors. Fusion for Energy does not undertake any obligation to pay or be responsible for the payment of any sums to any Subcontractor or their employees. Where Fusion for Energy authorises the Contractor to subcontract to third parties, a written agreement applying the same obligations as apply to him with regard to the personal data is obligatory. The initial processor remains fully liable to the controller for the performance of those other processor obligations.

II.14.4. If required by Fusion for Energy, the Contractor shall list all the legal commitments it enters into for the purpose of executing the Contract and the amounts paid to Subcontractors. The Contractor and/or the Subcontractor shall promptly (and except if otherwise indicated, no later than 30 (thirty) days from the receipt of Fusion for Energy's request) submit copies of forms evidencing payment of salaries and social security contributions, as well as the labour benefits of its employees and the Subcontractor's employees, as the case may be, and provide evidence that the Contractor and the Subcontractor comply with all their legal obligations (of any nature) in respect to their employees.

II.14.5. The Contractor shall make sure that the legal commitment with the Subcontractor does not affect rights and guarantees to which Fusion for Energy is entitled by virtue of the Contract.

II.14.6. All contracts between the Contractor and Subcontractors shall be made in writing, shall be consistent with the terms and conditions of this Contract (including imposing any relevant obligations under this Contract to the Subcontractor) and shall include any provisions which are necessary to guarantee the rights of Fusion for Energy under the Contract.

II.15. SIGNIFICANT ORGANISATIONAL CHANGE

II.15.1. The Contractor shall inform Fusion for Energy without delay of any contemplated Significant Organisational Change by Formal Notification. This notification shall clearly state (i) the reasons for the contemplated Significant Organisational Change, and (ii) the impact thereof on the performance of the Contract, including with respect to the technical requirements, the quality assurance requirements, the progress requirements and the delivery requirements of the Contract. In addition, the notice shall be accompanied by the following supporting information:

- (a) legal entity form (if applicable);
- (b) bank account form (if applicable);
- (c) evidence that the Contractor and/or its Subcontractors, after the Significant Organizational Change has been effected, do or will not fall within any of the exclusion criteria according to Articles 136(1) or Article 136(2) of the Financial Regulation¹⁴; and

¹⁴ 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,

(d) evidence of professional and financial capacity to perform the Contract.

II.15.2. Fusion for Energy shall be entitled to object to the proposed Significant Organisational Change if it adversely affects the performance of the Contract and/or the ITER Project as a whole and/or whether it would amount to a substantial modification of the Contract not allowed under F4E Financial Regulation. Fusion for Energy shall notify the Contractor of its decision on the proposed Significant Organisational Change no later than 30 (thirty) days of receipt of notice thereof.

II.15.3. Failure to inform Fusion for Energy in accordance with Article II.15.1 or to comply with Fusion for Energy's decision mentioned in Article II.15.2 is a ground for termination under the conditions set out in Article II.20.1(k) (*Termination by Fusion for Energy for Cause*).

II.16. COMPENSATION EVENT

II.16.1. The following events are Compensation Events:

- (a) Errors in the Fusion for Energy's Requirements: If the Contractor suffers a delay or incurs additional costs as a result of an error, fault or omission regarding any drawings, documents or data contained in the Contract or in its Annexes, the Contractor will be entitled to an extension of time and/or payment of any such Cost only in case:
- a. the Contractor notified the error, fault or omission to Fusion for Energy in accordance with article II.11.III.11 and provided the Contractor submits the necessary details to substantiate the claim ; or
 - b. the Contractor proves that such an error, fault or omission could not have been discovered and notified by an experienced contractor exercising due care during the Review Period, in accordance with Article II (*General Provisions on Performance of the Contract*) and the Contractor has given a written notice to Fusion for Energy as soon as practicable and in any case, within ten (10) Days since the Contractor became aware of it or should have become aware of it, provided the Contractor submits the necessary details to substantiate the claim.
- (b) Change in the Legislation: If, as a result of a change in the applicable law or in the judicial or governmental interpretation of such applicable law (but not related to employment, tax, or social legislation) occurring after the Commencement Date and directly affecting the performance of the Contract, and, the Contractor will be forced to delay and/or incur additional costs in performing its obligations hereunder, the Contractor will be entitled to an extension of time and/or payment of any such Cost only in case the Contractor has given a written substantiated notification to Fusion for Energy of any such delay and/or additional costs within thirty (30) days from the date the change entered into force, provided that:
- a. Fusion for Energy has decided not to terminate the Contract pursuant to Article II.21 (*Termination by Fusion for Energy for Convenience*) and to continue with its execution, and
 - b. The impact of the Change in Legislation is not already covered by the application of another provision of the Contract, and
 - c. the Contractor is a national of or is legally established in the European Union or Switzerland at the time of the filing of the written notice mentioned in this Article.

Euratom) No 966/2012 (OJ L 193, 30.07.2018, p. 1 to which article 89 of F4E Financial Regulation refer. (http://fusionforenergy.europa.eu/downloads/procurements/F4E_Financial_Regulation.pdf) .

- (c) Suspension of the Contract: if the Contract is suspended, in accordance with Article II.19 (*Suspension of the Contract*) for more than three (3) months continuously for the same cause, the Contractor will be entitled to a compensation corresponding to additional Cost it incurred as a result of the suspension from the beginning of the fourth (4th) month of suspension of the Contract providing that the Contractor submitted to Fusion for Energy a notice of such additional Cost by registered letter with acknowledgment of receipt or equivalent means within thirty (30) Days after the end of the Contract's suspension. The notice shall be substantiated with the relevant proof of the precise nature and extent of the additional Cost, including their detailed breakdown. For the sake of clarity, the Contractor is not entitled to payment of any cost incurred during the first three (3) months of suspension of the Contract. The Contractor shall take all necessary measures to prevent and minimize damage.

II.16.2. Provided the Compensation Event is notified to Fusion for Energy within the period defined in the Contract, the Parties shall agree in good faith whether and to what extent, under the Contract, the possible extension of time and determination of additional Costs apply. Additional Costs that may be claimed under this Article shall be limited to duly documented, through submission of relevant proof, direct Costs. The agreement on the additional Costs and/or extension of time shall be included into the Contract pursuant to Article II. 25 (*Amendments*).

II.16.3. The application of Article II.16 is subject to compliance with the Contractor's obligations defined under Article II.1.4 (*Early Warning Scheme*).

II.17. FORCE MAJEURE

II.17.1. If a Party is affected by a Force Majeure, it shall immediately notify the other Party, but in any case within 14 (fourteen) days after the Party became aware, or should have become aware of the circumstance of Force Majeure. The notification shall state the nature of the circumstance, their likely duration and foreseeable effects of the Force Majeure, including the obligations whose performance is or will be prevented by the Force Majeure.

II.17.2. No Party shall be liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of a Force Majeure, subject to Article II.17.1 and for so long as the Force Majeure prevents the Party from performing its obligations. If the Contractor is unable to perform its contractual obligations owing to a Force Majeure, it has the right to remuneration only for the Items delivered and accepted.

II.17.3. The Parties shall promptly take all necessary measures to minimize any delay and to reduce any damage due to a circumstance of Force Majeure.

II.17.4. The Party invoking Force Majeure shall immediately notify the other Party when it ceases to be affected by the Force Majeure.

II.17.5. In case of Force Majeure exceeding 6 (six) months notified in accordance with this Article, a Party may terminate the Contract with immediate effect, where performance thereof cannot be resumed before an additional period of minimum 6 (six) months. Article II.20 (*Termination by Fusion for Energy for Cause*) shall apply *mutatis mutandis* to the effects of such termination, unless otherwise indicated.

II.18. ASSIGNMENT

II.18.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.

II.18.2.In the absence of the written authorisation referred to in Article II.18.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on Fusion for Energy.

II.18.3.Fusion for Energy may assign the rights and obligations arising from the Contract, in whole or in part, without prior authorisation from the Contractor, to the ITER IO, any other entity which may have taken over all or a substantial part of the ITER IO's/Fusion of Energy's role in respect of the ITER project, another Domestic Agency or the European Commission.

II.19. SUSPENSION OF THE CONTRACT

II.19.1.Fusion for Energy may at any time and for duly justified reasons suspend performance of the Contract or any part thereof by sending a Formal Notification to the Contractor. The suspension shall take effect on the date of receipt of the Formal Notification, or at a later date indicated therein. Fusion for Energy shall provide the Contractor with available details of the expected duration of the suspension and may at any time following suspension give notice to the Contractor to resume performance of the Contract.

II.19.2.Should Fusion for Energy decide to suspend the Contract for a period of over 12 (twelve) months, the Contractor is entitled to ask for the Contract to be terminated, by sending a Formal Notification within 1 (one) month of the date of notification of the suspension. The same shall apply in the event of a series of suspensions totalling a period of over 18 (eighteen) months. The 1 (one) month's deadline mentioned above for the request to terminate shall commence on the date of the reception of the decision resulting in the suspension of the Contract for over 12 (twelve) months or for 18 (eighteen) months respectively. If the Contract is suspended for more than 12 months (twelve) without prior indication of the period of suspension in the Formal Notification, the 1 (one) month deadline mentioned above for the request to terminate shall commence on the Day following the expiration of the 12 (twelve) months period.

II.19.3.In case of termination by the Contractor in the conditions mentioned in this Article, the provisions regarding termination for convenience established in Articles II.21.3 to II.21.7 (*Termination by Fusion for Energy for Convenience*) shall apply.

II.19.4.The compensation for the Contract suspension exceeding three (3) months, referred to in article II.16.1(c) shall be the Contractor's exclusive remedy on this ground. The conditions of this Article II.19 shall also apply to the contracts with Subcontractors.

II.19.5.It is agreed that within 15 (fifteen) days from the date on which performance of the Contract is resumed by Fusion for Energy the Parties shall convene to re-negotiate in good faith an adequate updated schedule of performance of the Contract. Article II.25 (*Amendments*) shall apply.

II.20. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

II.20.1.Grounds for Termination

Fusion for Energy may terminate the Contract in the following circumstances:

- (a) where the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and
- (b) of Article 136(1) of the Financial Regulation¹⁵;

¹⁵ 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,

- (b) where the Contractor or any related person is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- (c) where the procedure for awarding the contract or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;
- (d) where the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (e) where the Contractor is in a situation that could constitute a Conflict of Interest or a Professional Conflicting interest as referred to in Article II.9 (*Conflict of Interest*);
- (f) where, for reasons due to the Contractor, the performance of the Contract has not actually commenced 15 (fifteen) days after the date of entry into force of the Contract or any agreed date for the start of the execution of the Contract;
- (g) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (h) where the total amount of liquidated damages due to Fusion for Energy in accordance with Article I.16 (*Liquidated Damages*) is equal or higher than the maximum amount established in Article I.16.1 (*Liquidated Damages*);

where the Contractor does not perform the Contract in accordance with the tender specifications or is in breach of one of its substantial contractual obligations. For the purpose of this Article, a failure to meet the progress and/or delivery requirements to such an extent as to jeopardize the performance of the Contract or the purpose of the delivery is a breach of a substantial contractual obligation;

- (i) where the Contractor commits a material breach of his obligations under this Contract as set out in Article II.20.4 (*Covenants*). For the avoidance of doubt, under this Article II.20.4 (*Covenants*), Fusion for Energy is entitled to terminate the Contract, in the case of a group of companies or consortium, with effect to the group of companies or consortium;
- (j) where 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 where the Contractor failed to notify the Significant Organisation Change in accordance with the Contract;
- (k) where the Contractor is in breach of its obligations under Article II.26 (*Export Control Requirements*);
- (l) where the Contractor is in breach of the data protection obligations resulting from Article II.10.2;
- (m) where the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.20.2.Procedure

- (a) Fusion for Energy must formally notify (Formal Notification) the Contractor of its intention to terminate the Contract and the grounds for termination. The Contractor will have the opportunity to submit its observations, including the measures it has taken to continue fulfilling its contractual obligations if any, no

(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, 30.07.2018, p. 1) to which article 89 of F4E Financial Regulation refer. (

later than 10 (ten) Days upon receipt of the letter of termination. Failing that, the decision to terminate is in force the day after the time limit for submitting observations has elapsed, unless otherwise indicated in the Formal Notification.

- (b) If the Contractor submits observations, Fusion for Energy must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate. Termination shall take effect on the date of receipt of this Formal Notification or any other date indicated in the Formal Notification.

II.20.3. Consequences of termination

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

- (a) The Contractor must take immediate steps to bring to an end its activities under this Contract. It must take all appropriate measures to minimise costs, prevent and minimise damage, and cancel or reduce its commitments.
- (b) Upon Fusion for Energy's request, it shall draw up the documents required by the Contract for the Items accepted, in accordance with the provisions of the Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days from that date. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents, data, Foreground, Information and/or goods produced pursuant to the Contract.
- (c) The Contractor is not entitled to any compensation from Fusion for Energy for loss and damages resulting from the termination of the Contract, including loss of anticipated profits.
- (d) Subject to the limitations foreseen in Article I.14.1 (Liability), Fusion for Energy may claim from the Contractor compensation for any loss or damage sustained as a result of the termination and recover any sums paid under the Contract, unless the termination was caused by Force Majeure in accordance with Article 16 (*Force Majeure*).
- (e) Fusion for Energy may engage one or several other contractor(s) of its choice to replace the Contractor. Subject to the limitations foreseen in Article I.14.1 (Liability), Fusion for Energy is entitled to claim from the Contractor all additional costs incurred for completing the performance of the Contract, except in the case of termination due to Force Majeure in accordance with Article 16 (*Force Majeure*).
- (f) The Contractor is entitled to be paid for the Items delivered and accepted by Fusion for Energy in accordance with article II.12 (*Acceptance*) on the date of receipt of the Formal Notification. Payment will be made by off-setting the amount due or already paid to the Contractor against the amount of loss and damage due by the Contractor to Fusion for Energy pursuant to this Article. Any balance to the Contractor will be paid only after recovery of Fusion for Energy's loss and damage pursuant to this Article.
- (g) The Contractor is entitled to be compensated for the Costs of other Deliverables, materials, unfinished work or goods manufactured before receipt of the Formal Notification mentioned in Article II.20.2(a), of which Fusion for Energy requests the transfer of ownership. Costs must be necessarily incurred by the Contractor and in accordance with the Contractor's Tender (*Annex G*). Costs shall be fixed on the basis of evidence produced by the Contractor and accepted by Fusion for Energy. Payment will be made by off-setting the amount due or already paid to the Contractor against the amount of loss and damage due by the Contractor to Fusion for Energy pursuant to this Article. Any balance to the Contractor will be paid only after recovery of Fusion for Energy's loss and damage pursuant to this Article

- (h) In the case of joint tenders, Fusion for Energy may terminate the contract with each member of the group separately on the basis of points (a), (b) or (d) of Article II.20.1.

II.20.4.Covenants

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

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

The Parties agree that the breach of the covenants and/or the obligation of the Contractor made under Articles II.20.4 (b) and (c) (*Covenants*), and the obligation in relation to their due notification, as stated above, shall qualify as material breach of this Contract.

II.21. TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

- II.21.1.** Fusion for Energy may, at any time, at its discretion terminate the Contract or any part thereof in accordance with this Article.
- II.21.2.** Any such termination shall be effected by delivery to the Contractor of a Formal Notification which will specify the extent to which performance under the Contract is terminated and the effective date of termination.
- II.21.3.** Upon receipt of a Formal Notification under this Article, the Contractor shall discontinue performance of the Contract in accordance with the Notification and shall take any reasonable measures which are necessary or desirable to terminate performance in a safe and timely manner and minimize the costs associated with the termination, prevent and minimise damage, and cancel or reduce its commitments.

- II.21.4.** Subject to fulfilment of the Contractor's obligations under the Contract, Fusion for Energy shall reimburse the Contractor for its Costs actually incurred and which would not have been incurred but for the termination. The Cost must be a direct result of termination of the Contract or of any portion thereof. Fusion for Energy shall also pay a termination fee corresponding to 3% (three percent) of the remaining payments of any released Stages. However, no termination fee shall be paid, if termination is made pursuant to a change in legislation pursuant to Article II.16 (*Compensation event*) or Article II.21.8.
- II.21.5.** As promptly as possible and in no event later than 30 (thirty) days after the effective date of termination, the Contractor shall submit to Fusion for Energy its claim for reimbursement in writing with acknowledgement of receipt. Such claim for reimbursement shall include a Cost breakdown of unavoidable Costs actually incurred as a result of termination which it is seeking to recover from Fusion for Energy with supporting evidence.
- II.21.6.** The amount of reimbursement payable under Article II.21.4 (*Termination by Fusion for Energy for Convenience*) shall be fixed on the basis of the evidence produced by the Contractor and accepted by the Fusion for Energy. It shall take account of the proportion of the Contract completed and accepted by Fusion for Energy in accordance with the provisions of the Contract, and shall be consistent with Article II.21.7 (*Termination by Fusion for Energy for Convenience*). The Contractor is not entitled to claim any loss of profit in respect of the uncompleted or outstanding works which were to be performed after the termination date.
- II.21.7.** Fusion for Energy shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the Total Contract Price.
- II.21.8.** Articles II.21.4 to II.21.6 shall not apply in case Fusion for Energy terminates the Contract due to the Contractor's inability to perform in compliance with EU laws as a consequence of United Kingdom withdrawal of the European Union. In that case, II.20.3 (b) (c) (d) and (e) shall apply *mutatis mutandis*.

II.22. SUBSTANTIAL ERRORS, IRREGULARITIES, AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

- II.22.1.** Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, Fusion for Energy may refuse to make payments, may recover amounts already paid and/or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud. In that case, the consequences described in Article II.20 (*Termination by Fusion for Energy for Cause*) shall apply.

II.23. CHECKS AND AUDITS

- II.23.1.** In accordance with Article 5(a) of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over natural or legal persons receiving payments from the budget of Fusion for Energy from Commencement Date of the Contract up to 5 (five) years after payment of the balance.
- II.23.2.** Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits on performance of the Contract from Commencement Date of the Contract up to 5 (five) years after payment of the balance.

II.23.3.In accordance with Article 5(a) of Fusion for Energy Council Decision, the European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections in accordance with Parliament and Council Regulation (EURATOM, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996 from Commencement Date of the Contract up to 5 (five) years after payment of the balance.

II.23.4.The European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as Fusion for Energy, particularly right of access, for the purpose of checks, audits and investigations.

II.24. CONFIDENTIALITY

II.24.1.The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract (the "**Confidential Information**").

II.24.2.This Article II.24 does not apply where:

- (a) the Confidential Information becomes publicly available by means other than a breach of confidentiality obligations; or
- (b) the disclosing Party subsequently informs the recipient that the Confidential Information is no longer confidential; or
- (c) the Confidential Information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality; or
- (d) the disclosure or communication of the Confidential Information is required by law or permitted under other provision of this Agreement, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.

II.24.3.The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of 10 (ten) years.

II.24.4.The Contractor shall obtain from each member of its staff, board and directors which will need to know the Confidential Information, an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly even after execution of the Contract for a period of 10 (ten) years.

II.24.5.According to Article 17 of Title II 'Rights and Obligations of Officials' of the 'Staff Regulations of Officials read in conjunction with Articles 11 and 81 of the 'Conditions of Employment of Other Servants of the European Union' any Fusion for Energy staff member shall refrain from any unauthorized disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. In addition, any Fusion for Energy staff member shall continue to be bound by this obligation after leaving the service.

II.25. AMENDMENTS

II.25.1.Any amendment to the Contract shall be the subject of a written agreement duly dated and signed by the legal representatives of the Parties (the "**Amendment**"). An oral agreement shall not be binding on the Parties.

II.25.2.Unless otherwise instructed by Fusion for Energy, amendments are processed in DACC. An electronic signature provided in DACC, in accordance with the rules defined in the Contract is valid and binding for the purpose of this Article.

- II.25.3.** A Deviation Request or a Deviation Order must be accepted by the Parties in order to constitute an amendment. Implementation of an amendment may under no circumstances begin before the date the entry into force of the amendment. Unless otherwise indicated in the amendment, the amendment will enter into force on date of signature by the last Party.
- II.25.4.** Upon receipt of a Deviation Notice from Fusion for Energy, the Contractor shall submit an impact assessment including a detailed breakdown of the costs to be incurred in order to perform the additional work, if any. Unitary prices and productivity rates indicated in the Financial Forms of the Contractor's Tender (*Annex G*) shall be applicable whenever possible. If not, unitary prices and productivity rates shall be deducted (extrapolation, interpolation, or proportionality) from the financial forms of the Contractor. Fusion for Energy reserves the right to request the Contractor to submit duly documented evidence with respect to any of the proposed Cost items. The Contractor shall submit the impact assessment within a reasonable time and in no event later than 15 (fifteen) working days after receipt of the Deviation Notice, unless agreed otherwise.
- II.25.5.** Any Deviation Request issued by the Contractor shall include the impact assessment mentioned in II.25.4.
- II.25.6.** After reviewing the cost breakdown contained in the impact assessment, Fusion for Energy may agree with the Contractor the final extent of the additional work to be performed, as well as any additional amount to be paid, schedule, payment schedule and modalities, relevant deliverables and issue a Deviation Order or approve the Deviation Request as the case may be.

II.26. EXPORT CONTROL REQUIREMENTS

- II.26.1.** The Contractor shall be responsible, including for its Subcontractors, for ensuring compliance with relevant requirements imposed by applicable legislations regarding exportation, re-exportation and transfers (including intra-Community) of the dual-use products, components and technology or any parts thereof subject to the Contract (the "**Dual-use Items**") to the country of delivery or the ITER site in Cadarache, France.
- II.26.2.** Unless otherwise indicated by Fusion for Energy the Contractor shall act as an **Exporter** of the Dual-use Items and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation. Should Fusion for Energy decide to act as an Exporter, the Contractor shall assist Fusion for Energy in obtaining any required export, re-export or transfer authorization (including customs) and to provide any necessary information or documentation.
- II.26.3.** Where the Contractor is unable to obtain any required export, re-export or transfer authorization (including customs) and to provide the requested information or documentation, Fusion for Energy shall be entitled to terminate the contract in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*) unless the Contractor proves that the failure is due to a Force Majeure.
- II.26.4.** At the latest at the Kick-off meeting unless otherwise indicated by Fusion for Energy the Contractor shall produce a list of Dual-use Items with indication of their category based on applicable international export control lists. It shall also clearly identify any Dual-use Items to be subcontracted.

II.27. SETTLEMENT OF DISPUTES

- II.27.1.** The Parties agree that all Disputes shall be resolved in good faith in accordance with the following provisions.

II.27.2. Any Dispute shall in the first instance be referred for resolution by the Senior Representatives of the Parties by service of a notice of referral (the "**Notice of Referral**").

The Notice of Referral shall be duly accompanied by:

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

Following service of a Notice of Referral, the Senior Representatives shall meet in person and endeavour in good faith to reach an agreement to resolve the Dispute.

Notwithstanding the reference of any Dispute to the Parties' Senior Representatives, the Parties shall continue to perform their duties and obligations hereunder.

II.27.3. If the Senior Representatives fail to reach an agreement to resolve the Dispute within 30 (thirty) Days of the date of the Notice of Referral (or such other period as may be agreed in writing by the Senior Representatives), the Dispute shall be resolved in accordance with Article **Error! Reference source not found.**

II.27.4. Any Dispute which cannot be settled by way of an agreement of the Senior Representatives shall be exclusively decided by the European Court of Justice (ECJ) in accordance with its own rules of procedure. The language of the proceedings shall be English. Neither Party shall be entitled to refer any Dispute for resolution before the ECJ pursuant to this Article II.27.4 unless the Dispute has been first referred to the Senior Representatives pursuant to Article II.27.2. Notwithstanding the reference of any Dispute to the ECJ, the Parties shall continue to perform their duties, obligations, and liabilities hereunder.

II.27.5. At any time, the Parties may submit the Dispute to Mediation in accordance with the rules set out in the Terms of Reference for Mediation (*Annex F*). The Mediation will take place at the location agreed by the Parties or, by default, at the location of the Mediation Centre. It shall be conducted in English. The commencement of Mediation does not prevent the Parties from commencing a court proceeding in accordance with Article II.27.4.

II.28. MISCELLANEOUS

II.28.1. The Contract contains the whole agreement between the Parties relating to the subject matter of the Contract as at the date of the Contract to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in the Contract.

II.28.2. The terms set out in the Special Conditions shall take precedence over those in the other parts of this Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes except those of Annex C (*Intellectual Property Provisions*) which shall take precedence over the terms set out in the General Conditions. The terms set out in the Annexes shall take precedence over those in Applicable Documents except those in the Contractor's Tender (Annex G) over which the Applicable Documents take precedence. The terms set out in the Supplier Project Management and Quality Requirements (*Applicable Document AD-01*) shall take precedence over those in the other Applicable Documents.

II.28.3. The documents forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or

rectified by a written instruction issued by Fusion for Energy, subject to the rights of the Contractor under Article II.27 (*Settlement of Disputes*) in case of a Dispute.

II.28.4. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under Community, European Union, and Spanish substantive law, but if any provision of the Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Contract, except to the extent that any greater burden is imposed upon any Party in consequence thereof. The Parties agree that they will negotiate in good faith to replace any provision hereof held invalid, illegal, or unenforceable with a valid, legal, and enforceable provision which is as similar as possible in substance to the invalid, illegal, or unenforceable provision.

II.28.5. For the purposes of the Contract, except as otherwise expressly provided or unless the context otherwise requires:

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

II.28.6. Unless otherwise provided for herein, the Parties will bear their own expenses (including fees and disbursements of their respective counsel) in connection with the Contract and any services provided under the Contract.

II.28.7. The Contract may be executed in 1 (one) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute 1 (one) and the same instrument.

SIGNATURES

For the Contractor,

[*company*
name/forename/surname/function]

signature[s]:

Done at [*place*], [*date*]

In [•] (•) originals in English.

For Fusion for Energy,

[*forename/surname/function*]

signature[s]:

Done at Barcelona, [*date*]