



idm@F4E UID / VERSION
25Q5WN / 2.5

VERSION CREATED ON / STATUS
11 December 2019 / Approved

EXTERNAL REFERENCE

Template Model Low Value Supply Contract

On 2 December 2015, the Governing Board adopted a new F4E Financial Regulation ("new FR") and Implementing Rules ("new IR").

The model contract has been updated to implement the modifications introduced by the new rules.

The modifications concern the following:

- 1.Modification of the Time-limits for payment: from 45 Days to 60 Days for the payment.
- 2.Modification of the general provision on payments and acceptance: new process for approval of ADP, single deadline for approval of ADP and payment ; clarification of F4E's means of action in case of inadmissibility of request for payment; additional rights of the contractor
- 3.Late payment interest: Contractor's automatic entitlement to late payment interests at ECB Rate (except if the amount does not exceed 200 EUR) and increase of the margin from 7 to 8 percentage points
- 4.Adaptation of the articles on Conflict of Interest to align with the new definitions of Conflict of Interest and the new notions of Professional Conflicting Interest
- 5.Modification of the list of ground for termination for cause essentially to reflect the new exclusions grounds set out in article 106 of the new FR.

Track Change versions are attached for the user's convenience.

Approval Process			
	Name	Action	Affiliation
Author	Gathem G.	11 December 2019:signed	ADM
Co-Authors			
Reviewers	Hanak R. Migallon Corella M. * van de Ven N. *	16 December 2019:recommended 17 January 2020:recommended 13 January 2020:recommended	ADM COMM COMM
Approver	Jahreiss H.	21 January 2020:approved	DIR
RO: Gathem Gregoire (F4E)			
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Change Log

Model Low Value Supply Contract (25Q5WN)

<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
v2.0	Signed	29 May 2017	<p>List of Main changes :</p> <p>(I) Risk Sharing between F4E and the Contractor 1. Termination for cause (II.17): New ground and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done. 2. Conformity (II.9): explicit reference to schedule and requirement of timely delivery.</p> <p>(II) Adaptation to New F4E policies, legal frameworks and tools 1. Mediation (II.22): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 2. Amendments (II.21): alignment with use of DACC</p> <p>(III) Transportation: Introduction of new provisions due to the forthcoming Commencement date of Daher's exclusivity as Designated Carrier (to be selected in case of application). 1. Transportation, Delivery terms (I.6) : 2. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.6.4)) 3. New Annex E :Terms of reference for the Use of the Designated Carrier 4. New applicable document : Model Transportation Contract)</p> <p>(IV) General Improvement and Clarity 1. Clarifications: Annexes and Applicable Documents (I.1); Notions of Prices (I.4) 2. Structure. For example: article on applicable law, list of Annexes and Applicable documents, etc.</p>
v2.1	Approved	01 June 2017	<p>List of Main changes :</p> <p>(I) Risk Sharing between F4E and the Contractor 1. Termination for cause (II.17): New ground and modifications; Redrafting of the procedure; Consequences of Termination: new regime for payment of work done. Clarifications regarding material reimbursable if any. 2. Conformity (II.9): explicit reference to schedule and requirement of timely delivery.</p> <p>(II) Adaptation to New F4E policies, legal frameworks and tools 1. Mediation (II.22): definition of the principles and simplification. Reference to new Annex F (Terms of Reference for Mediation) 2. Amendments (II.21): alignment with use of DACC</p> <p>(III) Transportation: Introduction of new provisions due to the forthcoming Commencement date of Daher's exclusivity as Designated Carrier (to be selected in case of application). 1. Transportation, Delivery terms (I.6) : 2. Liquidated damage: introduction of specific provision for delays caused by DAHER (I.6.4)) 3. New Annex E :Terms of reference for the Use of the Designated Carrier 4. New applicable document : Model Transportation Contract)</p> <p>(IV) General Improvement and Clarity 1. Clarifications: Annexes and Applicable Documents (I.1); Notions of Prices (I.4) 2. Structure. For example: article on applicable law, list of Annexes and Applicable documents, etc.</p>
v2.2	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. Definitions and new article on safety of activities)</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 (e.g Insurance), clarification, corrections of typo</p>
v2.3	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 new article on safety of activities)</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 (e.g Insurance), clarification (e.g. termination for cause grounds), corrections of typo (eg.settlement of disputes)</p>
v2.4	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 new article on safety of activities)</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 (e.g Insurance), clarification (e.g. termination for cause grounds), corrections of typo (eg.settlement of disputes) , reference in data protection clause</p>
v2.5	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</p>

CONTRACT¹**I. SPECIAL CONDITIONS**

THE PARTIES		
 <p>The European Joint Undertaking for ITER and the Development of Fusion for Energy ('FUSION FOR ENERGY')</p> <p>Representative: Address:</p>	<p><i>[Contractor's Logo]</i></p> <p>CONTRACTOR: <i>[Name, legal form, statutory registration number, address, VAT registration number]</i></p> <p>Representative Address:</p>	
REFERENCES: F4E-[.]	CURRENCY OF PAYMENT: EURO	REFERENCE OF THE OFFER: [.]
RESPONSIBLE OFFICER: Tel. E-mail:	PROJECT MANAGER: Tel.: E-mail:	

I.1. ACCEPTANCE OF THE CONDITIONS OF THE CONTRACT BY THE PARTIES

- I.1.1.** The Contract consists of these Special Conditions including its Annexes and the General Conditions published on Fusion for Energy's website [<http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>] with the following reference number [xxx]². Applicable Documents, not attached hereto but known to the Parties, apply to the Contract to the extent specified therein.
- I.1.2.** In the event of conflicting interpretations, the Special conditions shall take precedence over the General Conditions. The General Conditions shall take precedence over the Annexes except those of Annex C (*Intellectual Property Provisions*) which shall take precedence over the General Conditions. The Annexes shall take precedence over the Applicable Documents. The terms set out in the Applicable Document AD-01 (*Supplier Project Management and Quality Requirements*) shall take precedence over those in the other Applicable Documents. The above instruments shall be taken as mutually explanatory.
- I.1.3.** By signing these Special conditions, the Contractor agrees to the terms of the Contract including its Annexes and the General Conditions.

I.2. DESCRIPTION OF THE GOODS TO SUPPLY (THE 'ITEMS')	UNIT	QUANTITY	PRICE IN EUR (€)	
			UNIT PRICE	TOTAL

¹ This template shall be used for Supply Contracts with value below 50.000 EUR.

² **Instruction:** Make sure the Reference is correct and the link refers to the correct version published on F4E website.

<p>I.2.1. Supply of [<i>description</i>] (the ‘Items’) and related services [<i>as described in Annex B (Technical Specifications)</i>].</p> <p>I.2.2. [<i>Storage of the Items for a duration of [.] in accordance with [.]</i>]</p> <p>I.2.3. [<i>Transport</i>]</p> <p>I.2.4. [<i>Options</i>]</p> <p>I.2.5. [<i>Spares</i>]</p> <p>I.2.6. [<i>.</i>]</p>				
<p>I.3. OPTIONS</p> <p>I.3.1. <i>The exercise of each of the Options shall be subject to a written instruction by Fusion for Energy. Such written instruction shall:</i></p> <p>(a) <i>explicitly inform the Contractor that Fusion for Energy has decided to exercise 1 (one) or several of the Option(s);</i></p> <p>(b) <i>indicate the date on which exercise of the Option(s) shall enter into force;</i></p> <p>(c) <i>indicate the date on which performance of the Option is to commence or to be agreed by the Parties; and</i></p> <p>(d) <i>be sent by DACC or by registered letter. be sent through DACC or by a registered letter.</i></p> <p>I.3.2. <i>Performance of the Options may under no circumstances start before the date indicated in the instruction.</i></p> <p>I.3.3. <i>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></p>				
<p>I.4. PRICES:</p> <p>I.4.1. The Contract Price is EUR [amount in figures and words] and covers all the obligations under the Contract and associated expenses, excluding Options.</p> <p>I.4.2. The Total Price is the sum of the Contract Price plus the price of any exercised Option.</p> <p>I.4.3. Prices are not subject to any revision regardless of any variations in the price of materials, equipment, or labour.</p>				
<p>I.5. COMMENCEMENT DATE: [<i>not before signature of the last party of the contract</i>].</p> <p>Performance of the Contract may under no circumstances begin before the Commencement Date.</p>				

I.6. DELIVERY:

- I.6.1. Place of Delivery:** [*place of destination*] [in accordance with Annex B (*Technical Specifications*)..]
- I.6.2. Date of Delivery:** [*Date/Hours*]
- I.6.3. Delivery Terms:** [*DDP (Incoterms 2010)*]
- I.6.4. Transportation:**
- I.6.4.1.** [*N/A*] or [*The Contractor shall enter into the Applicable Document AD-07 Model (Transportation Contract) with the Designated Carrier, under its own responsibility, for the shipment of the Items from the Point of Origin to the Delivery Location. The Contractor shall comply with the terms set out in Annex E (Terms of Reference for the Use of the Designated Carrier.*]
- I.6.4.2.** [*N/A*] or [*By derogation to article II.13.1, 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 II.13.1 (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.7. PAYMENTS

- I.7.1.** Fusion for Energy shall pay the Contractor EUR [*amount in figures and words*] [*corresponding to [.] % ([.] percent) of the Price [excluding Options]*]. The Contractor must send a request for payment accompanied by an invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) [*related to milestone [□] referred to in section [□] of Annex B (Technical Specifications)*]. Fusion for Energy 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.7.2.** [*Specific payment formalities for Options, if any.*]

I.8. MAINTENANCE AND REPAIR

- I.8.1.** *The Contractor shall provide maintenance of the Items for a period of [1 (one)] year from the [Delivery/Final Acceptance] Date.*
- I.8.2.** *The Contractor shall ensure that the spare parts listed in [...] are available upon request within a reasonable deadline for a period of [5(five)] years from the [Delivery/Final Acceptance] Date. Upon request from Fusion for Energy, it shall*

substitute the spare parts where the Warranty is applicable. Where the warranty is not applicable, the spare parts shall be delivered at the price set out in Article 2.

I.9. CONTRACTOR'S BANK ACCOUNT³: *[please insert]*

The same bank account and the value added tax (VAT) registration number must be indicated on each invoice. 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.10. SAFETY

[The design and manufacture of the Items constituting Protection Important Components (PIC) 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. [If the Contract involves PIC or PIA, the Contractor must comply with the requirements set out in the Applicable Document AD-10 (Supplier Nuclear Safety Management Requirements)]

I.11. FREE-ISSUE ITEMS

- I.11.1.** *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 of Fusion for Energy.*
- I.11.2.** *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 [•].*
- I.11.3.** *Free-Issue Items shall 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 Free-Issue shall be exempt from all duties and taxes. 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 article I.11.2 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 Free-Issue Items. The Contractor shall be responsible for providing surveillance and guarding for these Free-Issue Items,*

³ Including IBAN Code and/or BIC, Full Name of the Bank and Address of Branch.

including for contracting any suitable insurance, at its expense until Final Acceptance.

- I.11.4.** *Technical acceptance of the Free-Issue Items shall be governed by the 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.11.5.** *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 by Fusion for Energy 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 such the Free-Issue Items, as necessary.*
- I.11.6.** *[If Fusion for Energy fails to deliver the Free-Issue Items within the time limits set out in Article I.11.2 , 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, nor a cause of termination of the Contract on the part of the Contractor.*

I.12. INTELLECTUAL PROPERTY

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

I.13. PROCESSING OF PERSONAL DATA

I.13.1. Processing of personal data by Fusion for Energy

For the purpose of Article II.8:

- (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.13.2. Processing of personal data by the Contractor

For the purpose of Article II.8:

- (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 following⁴:
- 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;
 - 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)2018/1725⁵.

I.14. EXPORT CONTROL REQUIREMENTS

I.14.1. *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.*

I.14.2. *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*

⁴ This clause may be further adapted with a view to the basis for a risk assessment related to the processing of personal data for the relevant contract. *the Contractor shall provide any necessary information or documentation.*

I.14.3. *Where the Contractor is unable to obtain any required export, re-export, or transfer authorization (including, customs) and to provide the requested information and reporting Regulation (EU) 2018/1725 and shall be available on OJ L 295/39, 2018-10-24 in accordance with Article II.17 (Termination by Fusion for Energy for Cause) unless the Contractor proves that the failure is due to a Force Majeure.*
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002D1247&from=EN>

I.14.4. *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.*

I.15. OTHER SPECIFIC CONDITIONS:

- A) *[Reporting]*
- B) *[Testing]*
- C) *[Partial Acceptance: In case of minor non-conformities, Fusion for Energy may decide the Acceptance of the items subject to reservations. In that case, the Contractor shall be given [30 (thirty Days)] to correct the non-conformities or offer a proportionate reduction of price].*
- D) *[...]*

LIST OF ANNEXES AND APPLICABLE DOCUMENTS

Annexes:

- [Annex A – Management Specifications]*
- Annex B – Technical Specifications
- Annex C – Intellectual Property Provisions
- Annex D – Declaration of the Contractor’s Background
- [Annex E – Terms of Reference for the Use of the Designated Carrier]*
- Annex F – Terms of Reference on Mediation
- Annex G – Contractor’s Tender
- Annex H – Power of Attorney

Applicable 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	<i>Supplier Project Management and Quality Requirements</i>	<i>[xxx]</i>	<i>[xxx]</i>
AD02	<i>Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project</i>	INFCIRC/703	2006-11-21
AD03	<i>Pre-Financing Guarantee Form</i>	<i>[check version vs. contractor]</i>	<i>[xxx]</i>

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>	[xxx]	[xxx]
AD09	[xxx]	[xxx]	[xxx]
AD10	<i>Supplier Nuclear Safety Management Requirements (F4E-QA-113)</i>		
FUSION FOR ENERGY'S SIGNATURE Name Position Date of signature		CONTRACTOR'S SIGNATURE Name Position Date of signature	

II. GENERAL CONDITIONS

II.1. PERFORMANCE OF THE CONTRACT

II.1.1. General provisions on performance of the Contract

- (a) The Contractor shall perform the Contract with due skills, 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 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/EU⁶ 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 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.
- (e) 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.
- (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 must ensure compliance with the health and safety regulations and standards applicable in the places where the Contract is executed and the items delivered.

II.1.2. Packaging and transport

- (a) All packing materials are non-returnable and their cost is included in the Total Price.
- (b) Packaging shall be appropriate and ensure that the content remains intact and prevents damage or deterioration and shall be in accordance with specifications set out in Annex B (*Technical Specifications*). 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.
- (c) The Contractor shall notify Fusion for Energy of the exact date of delivery together with the Release Note to be approved by Fusion for Energy before

⁶ OJ L 94 of 28.03.2014, p. 65.

shipment of the Items. The Contractor shall bear the financial consequences of any delivery executed without Fusion for Energy's prior approval.

- (d) 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 countersigned by Fusion for Energy and returned to the Contractor or to its carrier.
- (e) The consignment note and each box delivered shall be clearly labelled with the following information: Fusion for Energy and address for delivery; name of Contractor; Contract reference; description of contents; date of dispatch and delivery; EC code number of article, if applicable; indications about hazardous products and materials.

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

II.2.1. The Acceptance Date Package (ADP) shall mean a package of documents linked to each deliverable set out in the Technical Specification (Deliverables) which is submitted by the Supplier to provide evidence that the activities are correctly completed. In case of deliverables related to payment (Contract Deliverable), the ADP must contain the Release Note.

II.2.2. Where the Contractor must submit an Acceptance Data Package 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.

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 Acceptance Data Package, the Contractor shall submit a new Acceptance Data Package which shall likewise be subject to the above provisions.

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

II.3. GENERAL PROVISIONS CONCERNING PAYMENTS

II.3.1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Should the Contractor fail to perform his obligations under the Contract, 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.3.2. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.

II.3.3. Fusion for Energy may suspend the payment period 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.3.4.** 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.3.5.** 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 2 (two) months, the Contractor may request F4E's decision on whether the suspension must be continued.
- II.3.6.** 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 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 (two-hundred euros) it must be paid only if the Contractor requests it within 2 (two) months of receiving late payment.

II.4. RECOVERY

- II.4.1.** 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.4.2.** 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 actions.
- II.4.3.** 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 II.3.6 (*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.4.4.** If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.11 (*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 II.4.2(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.5. TAXATION

- II.5.1.** The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union⁷.
- II.5.2.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Items and services required for performance of the Contract are exempt from taxes and duties, including VAT. The Contractor shall remain responsible for the proper application of the rules on VAT at the place where is taxable. Fusion for Energy reserves the right to communicate information on the Contract to the Member State in which the contractor is liable to VAT.
- II.5.3.** Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

II.6. COMMUNICATION

- II.6.1.** Any communication related to the Contract shall be in writing, in English, and shall bear the Contract reference. 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 of its registration by Fusion for Energy.
- II.6.2.** Deviation Amendment and Contract Modifications Portal (DACC) is the 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.

II.7. CONFLICT OF INTERESTS

- II.7.1.** The Contractor shall take all necessary measures in order to prevent any situation of Conflict of Interest or Professional Conflicting Interest. A Conflict of Interest means 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. Professional Conflicting Interest means a situation in which the Contractor's previous or on-going professional activities affect its capacity to perform the contract to an appropriate quality standard. 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.7.2.** 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.1.1 (*General Provisions on Performance of the Contract*) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its staff exposed to such a situation.
- II.7.3.** The Contractor shall abstain from any contact likely to compromise its independence.
- II.7.4.** The Contractor declares:

⁷ OJ C 321 E of 29.12.2006 p. 0318-0324.

- (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.8. PROCESSING OF PERSONAL DATA

II.8.1. 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.

II.8.2. 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.

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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.20.

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 Contractors 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

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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 Contractor's 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) 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.19. 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 the Special Conditions and II.8.1 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.9. ACCEPTANCE

II.9.1. 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 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.9.2 of the Contract are satisfied.

Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Items, the Contractor shall be notified in writing.

Approval of any deliverable or document by any means other than those set out in this Article II.9 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.9.2. 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 II.1.2 (*Packing and Transport*);
- (c) The Items must be delivered in accordance with the schedule and milestones defined in the Contract.

II.9.3. 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 II.13 (*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) 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.9.4. Transfer of ownership

All Items, goods, or material to be delivered by the Contractor shall become the property of Fusion for Energy upon Acceptance in accordance with the Contract.

II.10. WARRANTY

II.10.1. 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 (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.

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.

II.10.2. 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.

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.10.3. 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 itself or have them Repaired or replaced by another person at the Contractor's expense.

In the case of Repair, the Warranty Period shall be extended by the time commencing from notification of the defect during which Fusion for Energy could not use the Items properly because of the defect. 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.10.4. 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.17 (*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.

Fusion for Energy is not entitled to have the Contract terminated, if the defect is minor.

II.10.5. 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.

II.11. LIABILITY

II.11.1. The Contractor shall be liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor's total liability under the Contract shall not exceed one time the Total Price, subject to the sole exceptions set out below: 1) damage or loss caused by the gross negligence or wilful misconduct of the Contractor, its employees or agents, or of any Subcontractor or its employees or agents; 2) personal injuries or death, unless attributable to gross negligence, wilful misconduct or breach of this Contract by Fusion for Energy or its personnel; 3) damage or loss resulting from non-compliance with any applicable law or from an infringement of intellectual property rights of a third party.

II.11.2. 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.

II.11.3. If the Contractor is a group of economic operators or a consortium, the economic operators forming such group or consortium shall be jointly and severally liable to Fusion for Energy for any loss, damage arising as a result of the performance or breach of Contractor's obligations by any of them, under the conditions established in Article II.11.1.

II.12. INSURANCE

II.12.1. 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 at the place of manufacture as well as any insurance policy reasonably required by standard practice in the industry taking into account the specificities of the Contract.

II.13. LIQUIDATED DAMAGES

II.13.1. Where Delivery Date is not met, as extended if at all, and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to 0,3% of the Total Price per Day of delay, up to a maximum of 10% of the Total Price.

II.13.2. 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.

II.13.3. The Parties expressly acknowledge and agree that any amounts payable under this article II.13 (*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.

II.14. SUBCONTRACTING

II.14.1. The Contractor shall neither subcontract any part of the work to any Subcontractor, nor change a 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 in writing 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. 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.15. FORCE MAJEURE

II.15.1. Force Majeure is 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.

II.15.2. 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.15.3.** No Party shall be held in breach of its obligations under the Contract, if it has been prevented from performing them by Force Majeure, provided that notice has been given pursuant to this Article **Error! Reference source not found.** and for so long as the notified case of Force Majeure prevents the Party from performing its obligations. 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.15.2 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.15.4.** 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.15.5.** Where the Contractor is unable to perform its obligations under the Contract owing to Force Majeure, it shall have the right to remuneration only for the Items actually delivered.
- II.15.6.** 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.17 (*Termination by Fusion for Energy for Cause*) shall apply mutatis mutandis to the effects of such termination, unless otherwise indicated.

II.16. ASSIGNMENT

- II.16.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.
- II.16.2.** In the absence of the written authorisation referred to in Article II.16.1, 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.16.3.** Fusion for Energy may assign the rights and obligations arising from the Contract, in whole or in part, without prior authorisation from the Contractor, to the ITER IO, any other entity which may have taken over all or a substantial part of the ITER IO's/Fusion of Energy's role in respect of the ITER project, another Domestic Agency or the European Commission.

II.17. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

II.17.1. 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 Regulation 8;

⁸ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.07.2018, p. 1).

- (b) where the Contractor or any related person is subject to any of the situations provided for in points (c) to (5) 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.7 (*Conflict of Interest*);
- (f) where 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 amount of liquidated damages due to Fusion for Energy equals or exceeds the maximum amount established in Article II.13 (*Liquidated Damages*); or
- (i) 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;
- (j) where the Contractor is in breach of the data protection obligations resulting from article II.8 or does not comply with the obligations resulting from Regulation (EU) 201/679.

II.17.2. Procedure for Termination

- (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 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.17.3. 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,

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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 II.11 (*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 II.15 (*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 II.11.1 (*Liability*), Fusion for Energy is entitled to claim from the Contractor all additional costs incurred in making good and completing the performance of all or part of the Contract, except in the case of termination due to Force Majeure in accordance with Article II.15 (*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.9 (*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.19.2(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.17.1.
- (i) Articles II.17.3 (b), (c), (d), (e) shall 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 from the European Union.

II.17.4.Covenants

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) 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

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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);

- (c) immediately inform Fusion for Energy of any event or circumstance described in Articles II.17.4 (b) and (c) (*Covenants*).

The Parties agree that the breach of the covenants and/or the obligation of the Contractor made under Articles II.17.4 (a), (b) and (c) (*Covenants*) shall qualify as material breach of this Contract.

II.18. SUBSTANTIAL ERRORS, IRREGULARITIES, AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

II.18.1. 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 of fraud. In that case, the consequences described in Article II.17 (*Termination by Fusion for Energy for Cause*) shall apply.

II.19. CHECKS AND AUDITS

II.19.1. 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.19.2. 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.19.3. 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.19.4. 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.20. CONFIDENTIALITY

II.20.1. 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.20.2. This Article II.20 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.20.3. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of 5 (five) years.

II.20.4. 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 5 (five) years.

II.20.5. 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.21. AMENDMENTS

II.21.1. 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.21.2. 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.21.3. A permission to depart from the originally specified requirement of a product prior to realization. A Deviation Request is issued by the Contractor. 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.

II.21.4. 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.21.5. 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

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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.21.6. Any Deviation Request issued by the Contractor shall include the impact assessment mentioned in II.21.5.

II.21.7. 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.22. APPLICABLE LAW AND DISPUTE SETTLEMENT

II.22.1. 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 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.

II.22.2. Any Dispute which cannot be settled amicably shall be exclusively decided by the European Court of Justice (ECJ).

II.22.3. At any time, the Parties may submit the Dispute to Mediation in accordance with the rules set out in *Annex F (Terms of Reference on Mediation)*. 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.22.2.