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EXTERNAL REFERENCE

Quality Document DACC – Rules of Use

This document sets out the rules for the use of DACC by Users acting on behalf of the Suppliers. It includes the conditions of access, use and confidentiality of DACC. This document complements the rules defined in the Contract. In case of an inconsistency with the terms defined in the Contract and this document, the Contract shall prevail.

Approval Process			
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Change Log

DACC – Rules of Use (27KHCW)

<i>Version</i>	<i>Latest Status</i>	<i>Issue Date</i>	<i>Description of Change</i>
v0.0	In Work	20 December 2016	
v1.0	Approved	22 December 2016	first issue
v1.1	Signed	21 September 2018	<p>A few adaptations to the first version of the document, mainly :</p> <ul style="list-style-type: none"> - Wording adaptation to ensure complete consistency with wording of Contract and QA-115 - For clarity-s sake the document is now referred to as Rules of use and references to a 'guide' have been deleted - New functionalities included (e.g. commercial activations) - clarification of rules on Delegations and trusted person function - Clarification and additional emphasis on legal consequences of signature I DACC (main principles were already included) - Deletion of description of access to DACC (this is provide din other documents and presentation available to the Contractor) - Correction Typos
v1.2	Approved	08 October 2018	<p>A few adaptations to the first version of the document were introduced in version 1.1, mainly :</p> <ul style="list-style-type: none"> - Wording adaptation to ensure complete consistency with wording of Contract and QA-115 - For clarity-s sake the document is now referred to as Rules of use and references to a 'guide' have been deleted - New functionalities included (e.g. commercial activations) - clarification of rules on Delegations and trusted person function - Clarification and additional emphasis on legal consequences of signature I DACC (main principles were already included) - Deletion of description of access to DACC (this is provide din other documents and presentation available to the Contractor) - Correction Typos <p>Version 1.2 contains additional corrections and clarifications following comments from CPU.</p>
v1.3	Approved	08 April 2020	Introduction of the possibility to sign contract in DACC.

DACC – Rules of Use

1. SUBJECT MATTER AND SCOPE

1.1. Description of DACC

- [1] DACC (Deviation Amendment and Contract Modifications Portal) is the electronic platform developed by Fusion for Energy (F4E) for managing contract signature as well as deviations, amendments and contract changes with Contractors and to process commercial modifications in accordance with the Contract (e.g. release of options, indexation). F4E reserves the right to assign additional functions to the DACC.
- [2] DACC allows Fusion for Energy to send the Contract to a tenderer which has been awarded a Contract (the 'Successful tenderer') for signature by its legal representative. It also allows the Supplier¹ to submit and approve deviations and amendments to the Contract. Approval of documents in DACC is legally binding. Regarding commercial modifications, DACC allows F4E to send communications to the Supplier in a simple and efficient manner. Such communications are considered equivalent to registered letter with acknowledgment of receipt by the Supplier.

1.2. Purpose

- [3] This document (the 'Rules of Use') sets out the rules for the use of DACC by Users acting on behalf of the Suppliers. It includes the conditions of access, proper use and confidentiality of DACC.
- [4] The Rules of Use complement the rules set out in the Contract on DACC and, with respect to contract signature, in the procurement documents. In case of inconsistency between the terms defined in the Contract and this document, the Contract shall prevail.

1.3. Users

- [5] DACC Users are natural persons acting on behalf of a Successful Tenderer which is about to sign a Contract (for contract signature) or a Supplier which has concluded a Contract with F4E.
- [6] The Successful Tenderer (for contract signature) or the Supplier shall appoint the DACC User(s) and give due authorization to these person(s) ensuring that the appropriate Access and other User rights to perform the operations required for the proper use of DACC are granted to these persons according their profile (see point 2.3). They must inform F4E of those persons authorized as DACC Users and submit the appropriate Power of Attorney, as set out in section 2.3.
- [7] By using DACC, the Successful tenderer/Supplier declares and warrants that all the information provided for the registration of a DACC account is accurate and complete. F4E has, at any time, the right to verify the accuracy and validity of this information. In the event of any inaccuracy or invalidity, F4E has the right to close the account of the DACC User concerned and suspend or, temporarily or indefinitely, refuse access to DACC.

2. ACCESS TO DACC

2.1. Login

- [8] F4E provides the User(s), which have been duly authorized by the Supplier, with an access-account to DACC (username and password). As an integrity measure, the access information to DACC is provided to the User in strict confidentiality in two different e-mails; one with the User name and a second one with the password, which may be changed by the User at any time. As a security measure, F4E may require a change of the DACC User's password at any time.

¹ Supplier as defined in F4E-QA-115 – Supplier Project Management and Quality Requirements

- [9] The username and password are only for the use authorized in DACC by this User. The Supplier will maintain the confidentiality of any password to access DACC.
- [10] The User and/or the Supplier are required to immediately notify F4E of any unauthorized use or any other breach of security related to the account or to DACC which they become aware of.
- [11] It is acknowledged that access rights to certain information and functions in DACC are restricted to Users with specific profiles as detailed in section 2.3 (which are in turn linked to their functions within their organisation or in relation to a particular Contract).

2.2. Duration, suspension and refusal of access.

- [12] Access to DACC is, in principle, granted to the User for the duration of the relevant Contract. At the end of the Contract, when no modification to the Contract can take place or any further commercial modification can be implemented, F4E may terminate the access rights to DACC.
- [13] Notwithstanding, F4E may suspend or terminate any User's access to DACC if it believes that the User has violated or acted inconsistently with the letter or spirit of this document including, but not limited to the following circumstances:
- (a) in case of suspected or actual breach of these Rules of Use;
 - (b) if the information provided for the registration of a DACC account is inaccurate or invalid;
 - (c) if F4E has any reason to suspect that the confidentiality or security of the means of access have been breached or that DACC is being misused;
 - (d) fraudulent practices of Users or their organisations;
 - (e) if the IT systems of F4E are being attacked and F4E has reasons to believe that relevant data for the use of DACC have been obtained by third parties;
 - (f) if required under applicable laws or regulations;
 - (g) to avoid any detrimental impact for F4E or a Supplier;
 - (h) for preventive, corrective or routine maintenance;
 - (i) if a User is not anymore a member of the Supplier's staff for the execution of the Contract (retirement, termination of Contract, death, etc.);
 - (j) if the Supplier requests suspension or termination of access for a User; and
 - (k) in any other situation where F4E considers that suspension or refusal of access is reasonably justified.
- [14] Suspension or termination of the User's access to DACC is without prejudice to the Contractor's right to obtain, upon written request, copies of the DACC documents it has issued or approved.
- [15] Suspension or termination of the User's access to DACC concerns the processing of the operations through DACC and does not affect, per se, the performance of the Contract.

2.3. Access rights and Profiles

- [16] For Contracts, DACC provides different User profiles according to the roles assigned to the User, as defined in this section 2.3
- [17] The rights of the User depend on their role, as follows:
- (a) Supplier Main Contact Person: User entitled to assess the impact that a deviation or an amendment may have on the ongoing Contract and to acknowledge receipt of communications from F4E in DACC. The Supplier Main Contact Person is not entitled to approve a deviation or an amendment (legally commit) on behalf of the Supplier unless the Supplier explicitly authorises this person to so by a Power of Attorney established in accordance with the applicable law and sent to F4E.

- (b) Supplier Sign Authority (or Legal Representative Profile): User entitled to submit the final and binding approval of a deviation or an amendment or to sign a Contract (i.e. legal commitment). The Supplier must establish a Power of Attorney to that effect and send it to F4E through the Contract Tracker System (CTS). For the contract signature, the Power of Attorney must be sent before the date of the signature.

2.4. Appointment

- [18] Save for contract signature in DAC where such appointment is requested, there is no need for appointment of Users when the Users are the same as those registered in F4E's CTS),. The Supplier must however ensure that the Users have the rights associated with their profile.
- [19] There is no more than 1 (one) User assigned to each profile defined in clause 17, without prejudice to the possibility to change the Users or to use the 'Trusted Person' feature. In the latter case, the Supplier must ensure that the 'Trusted Person' has the required rights and delegations (this can be done by obtaining a specific statement to that effect from the person empowered to sign provided that such person has the power to delegate its power to the 'Trusted person).
- [20] When necessary (e.g. a change), the Supplier shall appoint new Users indicating the Profile which must be granted and sending the new Power of Attorney in accordance with [17] which is required for that purpose.
- [21] It is the responsibility of the Successful tenderer (for contract signature) and the Supplier to ensure that the Users remain at all times duly authorised to represent it in relation to all the tasks performed in DACC.

3. USING DACC

3.1. General

- [22] The User is not permitted to modify DACC.
- [23] The User may not:
- (a) send or disseminate data containing viruses, worms, spyware, malware or any other malicious programs;
 - (b) carry out any calculation, operation or transaction that may interrupt, destroy or restrict the functionality of the operation of DACC; or
 - (c) submit any information or material that infringes third party rights, are libelous, obscene, threatening or unlawful.
- [24] Suppliers are responsible for the actions and omissions of their Users.

3.2. Required hardware, software and services or internet browser

- [25] DACC is compatible with any internet browser. Use of DACC does not require any specific hardware or software.
- [26] Notwithstanding that, the Supplier is responsible for the choice, purchase and operation of any hardware, software or telecommunication services that may be required to connect with and use DACC.

3.3. Signatures and Acceptance: Legal Effects

- [27] By using DACC the Successful tenderer and the Supplier acknowledge and accept that pursuant to the Rules of application of the Financial Regulation:
- (a) data sent or received through DACC enjoys legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving (as indicated by DACC);
 - (b) a document sent or notified through DACC is considered as equivalent to a paper document, is admissible as evidence in legal proceedings, is deemed original and enjoys legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it;

- (c) electronic signatures made by users through DACC have the equivalent legal effect of handwritten signatures.
- (d) They acknowledge and accept that:
 - i. any communication or document sent or notified using any type of electronic signature through DACC shall be considered as equivalent to a paper document with a handwritten signature and shall be admissible as evidence in legal proceedings and constitute sufficient evidence in legal proceedings;
 - ii. any contract signed using any type of electronic signature through DACC shall be considered as equivalent to a paper contract with a handwritten signature and shall be admissible as evidence in legal proceedings and constitute sufficient evidence in legal proceedings;
- (e) they cannot dispute:
 - i. the existence or validity of any communication, document or contract signed using any type of electronic signature through DACC; or
 - ii. the admissibility of any communication, document or contract submitted or signed through DACC as evidence in legal proceedings, solely on the basis that such communication, document or contract was submitted electronically through DACC or signed with an electronic signature.

[28] The access and use log in DACC provides evidence that access has been gained to and use has been made of DACC, unless the Users or the Supplier can prove the contrary. Electronic messages, connections, operations on the network and transactions between F4E and the User or the Suppliers shall be proven using the logs and transaction files kept electronically by F4E.

[29] The Successful and the Supplier accept this data as evidence, however, this does not prevent the parties from providing other proof, using permitted legal methods (such as proof on paper).

3.4. Notices from DACC

[30] In case of need to complete any action in DACC, the User will be informed via e-mail with the request to perform any specific action.

[31] Notwithstanding, on the basis of regular communication practices, F4E Officers may also inform the User in writing of any request to perform a specific action.

3.5. Storage and Access to Documents

[32] After completion of the Contract and termination of the User's access rights to DACC, the Contractor may obtain, upon written request to F4E's Responsible Officer, copies of the DACC documents it has issued or approved up to 5 (five) years after payment of the balance under the Contract.

3.6. Confidentiality

[33] The User shall keep confidential all information provided through DACC. In particular, the User shall process all the information in strict confidence and shall adopt all necessary security measures in order to maintain and treat Confidential Information strictly secret, avoiding loss, theft or misappropriation.

[34] The User shall prevent the copy or disclosure of the information provided by DACC and shall oblige other employees to strictly and duly comply with the obligations foreseen in this Rules of Use.

4. MISCELLANEOUS

4.1. Intellectual Property Rights

- [35] The User acknowledges that the contents of DACC, its structure and design, selection and delivery of content included therein, and computer programs necessary for its operation, access and use are protected by Intellectual Property Rights owned by F4E.
- [36] For the purposes specified herein, Contents shall mean texts, slogans, photographs, graphics, icons, logos, trademarks or any other element or distinctive sign, color schemes, images, technology, software, links and other audiovisual or audio content, as well as graphic design (interface) and source code.
- [37] In any case, the access to DACC or to its Contents shall not be considered as a waiver or a total or partial transfer of these rights. In particular, it is forbidden to alter, use, reproduce, distribute and in general any other form of exploitation of all or part of the Contents of DACC, as well as its graphic design and the selection and presentation of such contents included therein, without the prior express permission of F4E.
- [38] The User declares its respect for the rights of intellectual property of others. Therefore, if the Supplier suspects that the DACC could be violating any rights of intellectual or industrial property, please send a notification to the following email address: (diogo.rodrigues@f4e.europa.eu) identifying the holder of the Intellectual Property Rights allegedly infringed and providing suitable accreditation of the representation of these rights.

4.2. Personal Data Protection

- [39] In compliance with Regulation (EU) 2018/1725 of 23 October 2018 ², F4E informs the User that personal data provided by filling in any electronic form on DACC or any transaction or operation performed through DACC will be collected in a file managed by F4E.
- [40] The personal data provided will be used to respond to requests for information from the Supplier and or User, and inform about new activities and services. The consent for the communication of personal data is revocable at any time.
- [41] The Data Subject shall have the right of access, blocking and deletion of the personal data provided and the right to rectify any such data that is inaccurate or incomplete. Should the Data Subject have any queries concerning the processing of its personal data, it shall address them to the Personal Data Controller. The User shall have the right of recourse at any time to the European Data Protection Supervisor.

4.3. Troubleshooting

- [42] F4E appointed Technical Officer under the Contract will be the contact point when the User finds errors or technical problems when using DACC. For this purpose, the User will report any error or technical problem via e-mail to the appointed F4E Technical Officer.
- [43] Alternatively, ICT-ServiceDesk@f4e.europa.eu will be the secondary technical Help Desk.

² 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>