

# Model Pre-Commercial Procurement Contract

[\*F4E-insert number] [\*Insert concise subject matter]

This is a contract (this or the ‘**Contract**’) between the following parties:

on the one part,

THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY (‘**Fusion for Energy**’) represented for the purposes of signature of this agreement by [insert forename, surname, Fusion for Energy function],

and on the other hand,

[\*official name in full]

[\*official legal form]

[\*statutory registration number]

[\*official address in full]

[\*VAT registration number]

(the ‘**Contractor**’), represented for the purposes of the signature of the Contract by [name in full, function],

hereinafter referred to individually as the ‘**Party**’ and collectively as the ‘**Parties**’.

**HAVING REGARD** to Council Decision 2007/198/EURATOM of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>1</sup>, and

**HAVING REGARD** to Fusion for Energy’s Industrial Policy and Technological Development Programme, and

**HAVING REGARD** to the General Conditions of Pre-Commercial Procurement Contract, which have been received, are known, and accepted by the Contractor, and are incorporated into the Contract by reference,

the Parties agree on the Specific Conditions, their Annexes, and those General Conditions, and their Schedules, which form together the Contract.

Signature of the Contract is performed electronically through DACC (as defined in the General Conditions).

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<sup>1</sup> OJ L 90 of 30.3.2007, p. 58.

# I. Specific Conditions of Pre-Commercial Procurement Contract

## Article I.1.

### Subject Matter and Stages

Subject Matter	[*a short description], as further detailed in section [*] of Annex A (Technical Specifications)
Stage 1: [*a short name as indicated in the Technical Specification]	As described in section [*] of [*Annex A (Technical Specifications)]. Stage 1 shall start on the Commencement Date and the duration for performance shall be consistent with the schedule described in section [*] of [*Annex A (Technical Specifications)].
Stage 2: [*a short name as indicated in the Technical Specification]	As described in section [*] of [*Annex A (Technical Specifications)]. Stage 2 shall be performed only if it is instructed by Fusion for Energy. The duration for performance shall be consistent with the schedule described in section [*] of [*Annex A (Technical Specifications)].
Stage 3: [*a short name as indicated in the Technical Specification]	As described in section [*] of [*Annex A (Technical Specifications)]. Stage 3 shall be performed only if it is instructed by Fusion for Energy. The duration for performance shall be consistent with the schedule described in section [*] of [*Annex A (Technical Specifications)].
Stage 4: [*a short name as indicated in the Technical Specification <b>or</b> if there are only 3 Stages: N/A]	As described in section [*] of [*Annex A (Technical Specifications)]. Stage 4 shall be performed only if it is instructed by Fusion for Energy. The duration for performance shall be consistent with the schedule described in section [*] of [*Annex A (Technical Specifications)].  [If there are only 3 Stages: N/A]

## Article I.2.

### Time limit to instruct the Stages

Stage 2	[*months/Days of *the Commencement Date/completion of performance of Stage 1]
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Stage 3	[*months/Days of *the Commencement Date/completion of performance of Stage 2]
Stage 4	[*months/Days of *the Commencement Date/completion of performance of Stage 3] [If there are only 3 Stages: N/A]

*Article I.3.***Prices**

Stage 1 Price:	EUR [*amount in figures and in words]
Stage 2 Indicative Price:	EUR [*amount in figures and in words]
Stage 2 Ceiling Price (Stage 2 Indicative Price plus 10% Contingency):	EUR [*amount in figures and in words]
Stage 3 Indicative Price:	EUR [*amount in figures and in words]
Stage 3 Ceiling Price (Stage 3 Indicative Price plus 10% Contingency):	EUR [*amount in figures and in words]
Stage 4 Indicative Price:	EUR [*amount in figures and in words] [*if there are only 3 Stages: N/A]
Stage 4 Ceiling Price (Stage 4 Indicative Price plus 10% Contingency):	EUR [*amount in figures and in words] [*if there are only 3 Stages: N/A]
Overall Maximum Price for all Stages	EUR [*amount in figures and in words]
Maximum amount of travel reimbursements for Stage 1	EUR [*amount in figures and in words]
Maximum amount of travel reimbursements for Stage 2	EUR [*amount in figures and in words]
Maximum amount of travel reimbursements for Stage 3	EUR [*amount in figures and in words]
Maximum amount of travel reimbursements for Stage 4	EUR [*amount in figures and in words] [*if there are only 3 Stages: N/A]

*Article I.4.***Payment arrangements**

Pre-financing for Stage 1 required?	YES: __ NO: __ If yes, Article III.6.1 applies and OPTION
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	A in Article III.6.2 applies. If no, OPTION B in Article III.6.2 applies.
Percentage of pre-financing payment for Stage 1	[*indication of the relevant percentage in numbers and in words]
Percentage of balance payment for Stage 1	[*indication of the relevant percentage in numbers and in words]
Milestone related to the payment of the balance for Stage 1:	[*indication of the relevant milestone]
Pre-financing for Stage 2 required?	YES: __ NO: __ If yes, Article III.6.3 applies and OPTION A in Article III.6.4 applies. If no, OPTION B in Article III.6.4 applies.
Percentage of pre-financing payment for Stage 2	[*indication of the relevant percentage in numbers and in words]
Percentage of balance payment for Stage 2	[*indication of the relevant percentage in numbers and in words]
Milestone related to the payment of the balance for Stage 2:	[*indication of the relevant milestone]
Pre-financing for Stage 3 required?	YES: __ NO: __ If yes, Article III.6.5 applies and OPTION A in Article III.6.6 applies. If no, OPTION B in Article III.6.6 applies.
Percentage of pre-financing payment for Stage 3	[*indication of the relevant percentage in numbers and in words]
Percentage of balance payment for Stage 3	[*indication of the relevant percentage in numbers and in words]
Milestone related to the payment of the balance for Stage 3:	[*indication of the relevant milestone]
Pre-financing for Stage 4 required?	YES: __ NO: __ If yes, Article III.6.7 applies and OPTION A in Article III.6.8 applies. If no, OPTION B in Article III.6.8 applies. [*if there are only 3 Stages: N/A]

Percentage of pre-financing payment for Stage 4	[*indication of the relevant percentage in numbers and in words] [*if there are only 3 Stages: N/A]
Percentage of balance payment for Stage 4	[*indication of the relevant percentage in numbers and in words] [*if there are only 3 Stages: N/A]
Milestone related to the payment of the balance for Stage 4:	[*indication of the relevant milestone] [*if there are only 3 Stages: N/A]

## Article I.5.

**Pre-financing guarantee**

*[\*Internal guidance comment: As per Financial Guarantees Policy (P-04.09), if the amount of the pre-financing payment equals or exceeds EUR 300,000 (three hundred thousand Euro), the Contractor must provide a pre-financing guarantee for the amount of EUR [amount in figures and in words] in accordance with the conditions laid down in Article III.7 (Guarantees).][By derogation of Article III.7 (Guarantees), the pre-financing guarantee may be replaced by a first demand guarantee by a third party, after prior acceptance by Fusion for Energy and subject to the conditions it determines].*

Pre-financing guarantee required?	YES: __ NO: __
If yes, please indicate to which Stage(s):	[*]

## Article I.6.

**Bank account**

Name of account holder:	[*]
Name of bank:	[*]
Account reference: IBAN/sort code and number:	[*]

The above is the bank account of the beneficiary to which all payments of the Fusion for Energy financial contribution shall be made.

## Article I.7.

**Communication details**

For **Fusion for Energy**:

Project Manager:	[*provide name, surname]
Address:	The European Joint Undertaking for the Development of ITER and Fusion Energy (“Fusion for Energy”)

	C/Josep Pla 2 Torres Diagonal Litoral - Building B3 08019 Barcelona, SPAIN.
In copy to Contract Manager:	[*provide name, surname]

For the **Contractor**:

Project Manager:	[*provide name, surname]
Address:	[*provide address]
In copy to:	[*provide name, surname]

*Article I.8.*

***Security-related obligations***

Definition of ‘Dual-Use Items’ and Article III.19 [Security-related obligations] [*Article to be used if the Services involve dual-use items]	If applicable: YES: __ NO: __
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*Article I.9.*

***Liquidated damages***

***[\*Internal guidance comment: The Call Procurement Strategy (CPS) section on liquidated damages must be checked, and the table completed accordingly. If the CPS specifies that liquidated damages do not apply to this contract, the table should be removed and replaced with the sentence “Not applicable” or “N/A”.]***

Article III.11 [Liquidated damages]	If applicable: YES: __ NO: __ If yes, then the below rows shall be filled in.
Deliverables or milestones subject to liquidated damages for Stage 1:	[*indication of the relevant milestones and/or deliverables]
Maximum amount of liquidated damages per Day of delay for Stage 1:	EUR [*amount in figures and in words]
Total maximum amount of liquidated damages for Stage 1:	EUR [*amount in figures and in words]
Deliverables or milestones subject to liquidated damages for Stage 2:	[*indication of the relevant milestones and/or deliverables]
Maximum amount of liquidated damages	EUR [*amount in figures and in words]

per Day of delay for Stage 2:	
Total maximum amount of liquidated damages for Stage 2:	EUR [*amount in figures and in words]
Deliverables or milestones subject to liquidated damages for Stage 3:	[*indication of the relevant milestones and/or deliverables]
Maximum amount of liquidated damages per Day of delay for Stage 3:	EUR [*amount in figures and in words]
Total maximum amount of liquidated damages for Stage 3:	EUR [*amount in figures and in words]
Deliverables or milestones subject to liquidated damages for Stage 4:	[*indication of the relevant milestones and/or deliverables] [*if there are only 3 Stages: N/A]
Maximum amount of liquidated damages per Day of delay for Stage 4:	EUR [*amount in figures and in words] [*if there are only 3 Stages: N/A]
Total maximum amount of liquidated damages for Stage 4:	EUR [*amount in figures and in words] [*if there are only 3 Stages: N/A]

*Article I.10.*

***Annexes to the Specific Conditions of Pre-Commercial Procurement Contract***

Annex A – Technical Specifications	IDM reference [*]
Annex B – Declaration of the Contractor's Background	Applicable
Annex C – Contractor's Tender	Tenderer reference [*]
Annex D – Power of Attorney	If applicable: YES: __ NO: __
Annex E – Pre-Financing Guarantee Form	If applicable: YES: __ NO: __
Annex F – Form for Declaration of Foreground Intellectual Property	Applicable

## **II. Annexes to the Specific Conditions of Pre-Commercial Procurement Contract**

**Annex A – Technical Specifications (IDM reference [\*])**

*[to be attached as a separate document]*



## Annex B – Declaration of the Contractor’s Background

*[the filled-in model declarations to be attached as separate documents]*

<b>Contract Ref.</b>	XXX-XX
<b>Title of the Contract</b>	
<b>Declaring company/entity</b>	<input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/> <b>Subcontractor</b>
<b>Contact person of the declaring company/entity</b>	<b>Name:</b> <b>E-mail address:</b>
<b>List of items included in this Background declaration</b>	1. Item #1 2. Item #2 3. Item #3
<b>List of Confidential items included in this Background declaration</b>	1. Item #1 2. Item #2
<b>In case there would be no Background Intellectual Property to be declared</b>	<input type="checkbox"/> I declare that I have no background intellectual property to declare for this Contract
<b>Signature of the present Background declaration by the declaring company/entity</b>	<b>Signature:</b> <b>Name and position of the Undersigned:</b> <b>Date and place of the signature:</b>

<b>Contract Ref.:</b>	<b>Item:</b> Item #1
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<b>1. ITEM #1</b>	
<b>Confidential</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>Technology Code (4 digits) (<a href="#">see list</a>)</b>	
<b>Description</b>	Description of the Item
<b>Owner</b>	<input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Third Party
<b>Type of protection</b>	<input type="checkbox"/> Patent Publication/Application no.: <input type="checkbox"/> Trade secrets, it is kept confidential. <input type="checkbox"/> Copyright (e.g. database, software, drawings, etc.) <input type="checkbox"/> Other:
<b>Publications (scientific papers, conferences, etc.)</b>	<input type="checkbox"/> YES, Publication References: <input type="checkbox"/> NO
<b>Does it depend on other declared items in this Background declaration?</b>	<input type="checkbox"/> YES, OWN IP: <input type="checkbox"/> YES, BELONGING TO A THIRD PARTY: <input type="checkbox"/> NO
<b>Does it come from former contracts/grants with F4E, EFDA, EURATOM, ITER?</b>	<input type="checkbox"/> YES, contract/grant reference : <input type="checkbox"/> NO
<b>Licenses granted</b>	<input type="checkbox"/> YES, with following details (licensor, licensee, exclusivity, scope, etc.): <input type="checkbox"/> NO

**Annex C – Contractor’s Tender**

*[to be attached as a separate document]*

**Annex D – Power of Attorney**

*[to be attached as a separate document, if applicable]*

## Annex E – Pre-Financing Guarantee Form

*[to be completed on paper bearing the letterhead of the bank or financial institution  
Guarantor]*

For the attention of

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

**Subject: Guarantee No** *[insert number of this guarantee]*

Financial guarantee on first demand to cover the pre-financing payment under the contract *[insert the Contract number and title]* concluded between *[insert the Contractor's name and address – as given in the Contract – and registration number/tax code]* (the "**Contractor**") and Fusion for Energy on *[insert date]* (the "**Contract**").

1. The undersigned, *[insert name, VAT and address of bank or financial institution Guarantor]* (the "**Guarantor**"), hereby irrevocably declare that it guarantees as primary obligor, and not merely as surety on behalf of the Contractor, the amount owed to Fusion for Energy, corresponding to the pre-financing payment of *[indicate the amount of the pre-financing in euro]* as mentioned in Article III.6 [Payment arrangements] of the Contract.
2. Payment shall be made on first demand, without objection or legal proceedings of any kind, upon receipt of Fusion for Energy's first written notice sent by registered letter with confirmation of receipt to the following address of the Guarantor: *[insert name and full address of the Guarantor where the notice must be sent]*. The notice will be signed by Fusion for Energy's Authorized Representative and indicate that the amount requested has not yet been covered in accordance with the Contract by equivalent delivery of goods and/or execution of related services on the part of the Contractor, without need for any other supportive document. The Guarantor will promptly make the payment to a bank account designated by Fusion for Energy and in any case within 10 working days from receipt of the notice.
3. The Guarantor shall stand as a first-call joint and several Guarantor and shall not require recourse or exhaustion of remedies against the Contractor. In particular, the Guarantor hereby waives any right to challenge, any right to withhold performance, any right to offset and the right to assert any other claim which the Contractor may have against Fusion for Energy under the Contract or in connection with it on any other grounds. The Guarantor shall not exercise the right to perform any payment under this guarantee through deposit in court. The Guarantor shall inform Fusion for Energy in writing as soon as payment has been made.
4. If the amount claimed by Fusion for Energy is less than the amount of this guarantee at the moment of the receipt by the Guarantor of the registered letter referred to in paragraph 2, Fusion for Energy will indicate, in that letter or in any subsequent letter addressed to the Guarantor, which, if any, amount of the balance must remain

guaranteed. In the absence of any express written instructions from Fusion for Energy with respect to such balance, the full amount of the balance shall remain guaranteed. The Guarantor undertakes to guarantee the balance under the terms and conditions set out in this guarantee.

5. No amendment to the terms of the Contract will release the Guarantor from its obligations under this guarantee. The Guarantor waives the right to be informed of any change, addition, or amendment to the Contract.
6. This guarantee will enter into force and take effect on [the earlier of [insert date] or] receipt of the pre-financing payment under the Contract in the account designated by the Contractor to receive payments. This guarantee shall expire, whether returned or not [Option 1: on [insert date<sup>2</sup>]] [Option 2: at the latest 30 days after the pre-financing has been fully cleared]. The Guarantor may be released from this guarantee prior to its expiry only with Fusion for Energy's written consent.
7. This guarantee is governed by the IIC Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 758, 2010 Edition (implementation date of 1 July 2010), except so far as this guarantee modifies or excludes them, and shall be supplemented, where necessary, by the substantive laws of Spain with no regard to its international private laws. The courts of Barcelona (Spain) shall have sole jurisdiction in respect of any matters or dispute relating to this guarantee.

Done at [insert place of signature], on [insert date]

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*[insert name/function/signature of the legally authorised representative(s) of the Guarantor – document evidencing such authorisation (e.g. official company excerpt) to be attached]*

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<sup>2</sup> Instruction: Calculate the date considering the clearing of the pre-financing + 30 days.

## Annex F – Form for Declaration of Foreground Intellectual Property

*[to be completed when Foreground Intellectual Property is generated]*

<b>Contract Ref.</b>	XXX-XX
<b>Title of the Contract</b>	
<b>Declaring company/entity</b>	<input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/> <b>Subcontractor</b>
<b>Contact person of the declaring company/entity</b>	<b>Name:</b> <b>E-mail address:</b>
<b>List of items included in this Foreground declaration</b>	1. Item #1 2. Item #2 3. Item #3
<b>List of Confidential items included in this Foreground declaration</b>	3. Item #1 4. Item #2
<b>Signature of the present Foreground declaration by the declaring company/entity</b>	<b>Signature:</b> <b>Name and position of the Undersigned:</b> <b>Date and place of the signature:</b>

<b>Contract Ref.:</b>	<b>Item:</b> Item #1
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<b>1. ITEM #1</b>	
<b>Confidential</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>Technology Code (4 digits)</b> ( <a href="#">see list</a> )	
<b>Description</b>	Description of the Item
<b>Owner</b>	<input type="checkbox"/> F4E <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Joint ownership <input type="checkbox"/> Third party
<b>Type of protection</b> (check more than one box if necessary)	<input type="checkbox"/> Patent Publication/Application no.: <input type="checkbox"/> Patent is being considered. <input type="checkbox"/> It is not patentable (does not accomplish legal requirements for patentability). <input type="checkbox"/> Trade secrets, it is kept confidential. <input type="checkbox"/> Protection via copyright. <input type="checkbox"/> Other:
<b>Publications (scientific papers, conferences, etc.)</b>	<input type="checkbox"/> YES, Publication References: <input type="checkbox"/> NO
<b>Is it related to any deliverable of the Contract?</b>	<input type="checkbox"/> YES, references: <input type="checkbox"/> NO
<b>Does it depend on declared items in the Background declaration? (check more than one box if necessary)</b>	<input type="checkbox"/> YES, own prior IP: <input type="checkbox"/> YES, belonging to a third party, e.g. Licenses granted to Contractor /Subcontractor: <input type="checkbox"/> NO



<b>Contract Ref.:</b>	<b>Item:</b> Item #1
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<b>Intention of use or licensing of the Foreground by the Contractor/Subcontractor</b>	<input type="checkbox"/> YES, for internal use only <input type="checkbox"/> YES, for licensing <input type="checkbox"/> NO
<b>Possible applications beyond the subject matter of the Contract</b>	

## III. General Conditions of Pre-Commercial Procurement Contract

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*Article III.1.*  
**Definitions**

1. Capitalised terms throughout the Contract shall have the meaning below.
  - ‘**Acceptance**’ shall have the meaning defined in Article III.10 [Acceptance].
  - ‘**Acceptance Data Package**’ or ‘**ADP**’ shall have the meaning defined in Annex A (Technical Specifications).
  - ‘**Amendment**’ shall have the meaning defined in Article III.24 [Amendments].
  - ‘**Best Efforts**’ shall mean taking promptly all reasonable, diligent, and good faith actions to achieve the contractual objectives, in accordance with industry standards, best practices, and professional expertise. The Party obliged to use Best Efforts must allocate the necessary resources, skills, and attention that a reasonable and competent party in a similar position would employ under comparable circumstances. If unforeseen circumstances arise, the obliged Party must demonstrate that it has explored and implemented promptly reasonable alternatives or mitigations, as well as complied with the early warning obligation defined in Article III.9.4 [Early Warning].
  - ‘**Ceiling Price**’ shall mean the amount indicated in Article I.3 [Prices] in relation to each of the Conditional Stages, being the amount which the relevant Conditional Stage Price shall not exceed.
  - ‘**Commencement Date**’ shall have the meaning defined in Article III.4 [Duration].
  - ‘**Compensation Event**’ shall have the meaning defined in Article III.26 [Compensation event].
  - ‘**Conditional Stages**’ shall have the meaning defined in Article III.3 [Stages] paragraph 1.
  - ‘**Conditional Stage Price**’ shall mean each of the Stage 2 Price, Stage 3 Price and, if applicable, Stage 4 Price.
  - ‘**Confidential Information**’ shall have the meaning defined in Article III.34 [Confidentiality].
  - ‘**Conflict of Interest**’ shall mean a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract.
  - ‘**Contingency**’ shall mean a notional sum that may be allocated by Fusion for Energy, at its discretion, to increase the relevant Conditional Stage Price up to the Ceiling Price for that Stage.
  - ‘**Cost**’ shall mean all expenditure reasonably incurred (or to be incurred) by the Contractor, including overhead and similar charges, but does not include profit.
  - ‘**Day**’ shall mean calendar day unless otherwise specified.
  - ‘**Deviation Amendment and Contract Modifications Portal (DACC)**’ shall mean an electronic platform developed by Fusion for Energy for managing deviations,

amendments, and Contract changes with Contractors and to process commercial operations in accordance with the Contract (e.g. release of Options). Approval of documents in DACC is legally binding.

- **‘Deviation’** shall mean a permission to depart from the specified Contract requirement prior to its realization. A Deviation Request is issued by the Contractor. A Deviation Notice and a Deviation Order are issued by Fusion for Energy. A Deviation Request and a Deviation Notice must be followed by a Deviation Order to be enforceable.
- **‘Dispute’** shall mean any dispute, difference, or controversy of whatsoever nature arising under, out of, relating to or in connection with the Contract, a breach, termination, or validity thereof, during its implementation or after its completion (including without limitation during the warranty period) and whether before or after suspension or termination of the Contract.
- **Subject to Article I.8 [Security-related obligations]: ‘Dual-Use Items’** shall have the meaning set forth in the Council Regulation (EU/2021/821) of 20 May 2021 setting up the Union regime for the control of exports, brokering, technical assistance, transit, and transfer of dual-use items.
- **‘EU’** means the European Union.
- **‘Force Majeure’** shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents any of them from performing any of their obligations under the Contract and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, and (ii) could not have been avoided or overcome by the exercise of due diligence. Defects in, or delays in availability of, equipment or material, labour disputes, strikes or financial problems cannot be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure.
- **‘Guarantor’** shall have the meaning defined in Article III.7 [Guarantees].
- **‘Impact Assessment Report’** a report prepared by the Contractor pursuant to Article III.6 [Payment arrangements] or pursuant to Article III.24 [Amendments and Deviations] or pursuant to Article III.26 [Compensation event], as applicable, in a form provided by Fusion for Energy, explaining the calculation of the relevant Conditional Stage Price or the impacts of the Compensation Event, as appropriate.
- **‘Indicative Price’** shall mean an indicative price for the relevant Conditional Stage, calculated for that Conditional Stage on the basis of the prices or unit rates established in the Contractor’s Tender (Annex C), indicated by the Contractor in the Contractor’s Tender (Annex C) together with the relevant assumptions.
- **‘Margin’** shall have the meaning defined in Article III.6.10 [General provisions concerning payments].
- **‘Mission’** shall have the meaning set forth in Article III.6.9 [Reimbursement of expenses].
- **‘Mission Statement’** shall have the meaning set forth in Article III.5 [Prices].
- **‘Notice of Referral’** shall have the meaning defined in Article III.35 [Settlement of Disputes].

- ‘**Overall Maximum Price for all Stages**’ shall mean the aggregate amount consisting of the Stage 1 Price and the Ceiling Prices applicable to each subsequent Stage.
- ‘**Procurement Documentation**’ shall mean the documentation published by Fusion for Energy, specifying the rules based on which the Contract has been awarded to the Contractor.
- ‘**R&D services**’ means research and development services.
- ‘**Reference Rate**’ shall have the meaning defined in Article III.6.10 [General provisions concerning payments].
- ‘**Representatives of Fusion for Energy**’ shall have the meaning defined in Article III.21 [Checks and access rights].
- ‘**Senior Representative**’ shall mean a representative of either Party at a senior executive level appointed by that Party to attempt to resolve any Dispute in accordance with Article III.35 [Settlement of Disputes].
- ‘**Services**’ shall have the meaning defined in Article III.2 [Subject of the Contract].
- ‘**Staff**’ shall refer to individuals involved in the performance of the Contract.
- ‘**Stage 1 Price**’ shall have the meaning defined in Article III.5 [Prices].
- ‘**Stage 2 Price**’ shall have the meaning defined in Article III.5 [Prices].
- ‘**Stage 3 Price**’ shall have the meaning defined in Article III.5 [Prices].
- If applicable, ‘**Stage 4 Price**’ shall have the meaning defined in Article III.5 [Prices].
- ‘**Stages**’ shall have the meaning defined in Article III.2 [Subject of the Contract].
- ‘**Subcontractor**’ shall mean an economic operator, who is not a Party to the Contract, and who enters into a legal commitment with the Contractor in order to perform a part of the Contract.
- ‘**Success Criteria**’ shall mean the criteria defined in Annex A (Technical Specifications) for each of the Stages.
- ‘**Total Contract Price**’ shall have the meaning defined in Article III.5 [Prices].

*Article III.2.*

***Subject of the Contract***

1. The subject matter of the Contract is provision of R&D services (tasks, deliverables, and milestones), as set out in Article I.1 [Subject Matter and Stages] (the ‘**Services**’).
2. The Contractor shall provide the Services in accordance with the provisions of the Contract.
3. If the Contractor uses Best Efforts to provide the Services and submits Acceptance Data Packages in accordance with Annex A (Technical Specifications) and Article I.4 [Payment arrangements], the Contractor shall be paid in accordance with the Contract, regardless of whether the Services include the solutions sufficient to tackle the challenge set out in Annex A (Technical Specifications). For the purpose of this paragraph, Fusion for Energy shall be entitled to verify and determine if the Contractor made Best Efforts. The verification may include, amongst others, analysis and

inspection of the documents, records and premises referred to in Article III.20, Article III.21 and Article III.22.

4. Provision of the Services is divided into stages (the ‘**Stages**’) described in Article I.1 [Subject Matter and Stages], where Stage 2, Stage 3 and, if applicable, Stage 4 are optional, as detailed in Article III.3 [Stages].
5. Pursuant to the Contract, unless any of the Conditional Stages is instructed, the Contractor shall exclusively undertake the work concerning Stage 1, the only Stage coming into force on the Commencement Date.

*Article III.3.*

***Stages***

1. Fusion for Energy may instruct the Contractor to perform Stage 2, Stage 3 and, if applicable, Stage 4 (the “**Conditional Stages**”).
2. Each of the Conditional Stages may be instructed by Fusion for Energy only if performance of the previous Stage by the Contractor meets the Success Criteria defined in Annex A (Technical Specifications) for that Stage, and if the relevant Conditional Stage Price is within the Ceiling Price defined in Article I.3 [Prices] for that Conditional Stage, subject to Article III.5.5.
3. The Procurement Documentation describes a detailed methodology which Fusion for Energy intends to apply when deciding if to instruct the Conditional Stages. At the same time, the instruction of any of the Conditional Stages 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 instruct one or several of the Conditional Stages.
4. Fusion for Energy shall be entitled to instruct the Conditional Stages within the time frame specified in Article I.2 [Time limit to instruct the Stages].
5. The performance of each of the Conditional Stages shall be subject to a written instruction by Fusion for Energy. Such written instruction shall:
  - (a) explicitly inform the Contractor that Fusion for Energy has decided to instruct the relevant Conditional Stage;
  - (b) indicate the date on which instruction of the Conditional Stage shall enter into force;
  - (c) indicate the date on which performance of the Conditional Stage is to commence or to be agreed by the Parties;
  - (d) any other matter relevant for the instruction of the Conditional Stage; and
  - (e) be sent through DACC.
6. Performance of the Conditional Stages may under no circumstances start before the date indicated in the instruction. The Contractor shall perform the instructed Conditional Stages in accordance with the provisions of the Contract.

*Article III.4.*

***Duration***

1. The Contract shall enter into force on the date on which it is signed by the last Party (the ‘**Commencement Date**’).

2. Performance of the Contract may under no circumstances begin before the Commencement Date.
3. Performance of the Contract shall last until completion of the mutual obligations of the Parties under the Contract, without prejudice to Article III.38 [Survival of obligations].

*Article III.5.*

***Prices***

1. The amount payable by Fusion for Energy to the Contractor for the provision of the Services and execution of any related obligations in accordance with the conditions of the Contract, excluding Conditional Stages (the '**Stage 1 Price**') is defined in Article I.3 [Prices].
2. The amounts to be paid by Fusion for Energy for the Conditional Stages, if instructed (the '**Stage 2 Price**', the '**Stage 3 Price**' and, if applicable, the '**Stage 4 Price**'), shall be indicated by the Contractor at the moment defined in Article III.6 [Payment arrangements].
3. Subject to 4, each Conditional Stage Price shall be equal to or less than the Indicative Price for that Stage defined in the Contractor's Tender (Annex C). It shall be calculated on the basis of the prices or unit rates established in the Contractor's Tender (Annex C). To the extent that it appears after the Contract signature that the services required under the relevant Stage do not have a price or unit rate in the Contractor's Tender (Annex C), each new price or unit rate shall be derived from any build-up prices or unit rates in the Contractor's Tender (Annex C), with reasonable adjustments to take account of any relevant matters, as applicable. If no prices or unit rates are relevant for the derivation of a new price or unit rate, it shall be derived from the reasonable Cost of executing the services, together with the applicable percentage for profit, taking account of any other relevant matters.
4. If the assumptions made in the Contractor's Tender (Annex C) change, an Conditional Stage Price may exceed the Indicative Price for that Stage defined in the Contractor's Tender (Annex C), however it shall not exceed the Ceiling Price defined for that Stage in Article I.3 [Prices], subject to Article III.5.5. All the deviations from the Indicative Price for the relevant Stage shall be clearly explained in the Deviation Request and associated Impact Assessment Report issued by the Contractor. If Fusion for Energy assesses the increased Conditional Stage Price justified, it shall issue a Deviation Order. Fusion for Energy may instruct the relevant Conditional Stage at the increased Conditional Stage Price only if it assesses that increased Conditional Stage Price justified.
5. In exceptional situation Fusion for Energy may agree that an Conditional Stage Price exceeds the Ceiling Price for that Stage. If the Conditional Stage Price exceeds the Ceiling Price for the relevant Stage defined in Article I.3 [Prices], Fusion for Energy will analyse the justification presented by the Contractor, together with the relevant Impact Assessment Report and subject to its assessment and the budget availability may propose an Amendment to the Contract to increase the Ceiling Price in order to allow instruction of the relevant Stage. The Conditional Stage Price proposed pursuant to Article III.6 [Payment arrangements] under no circumstances shall exceed 150% of the Indicative Price for the relevant Stage.



6. Travel and subsistence expenses shall be reimbursed in accordance with Article III.6.9 [Reimbursement of expenses] only for travels necessary to perform the Contract set out in Annex A (Technical Specifications) up to a maximum amount indicated for each Stage in Article I.3 [Prices]. Any Mission shall be subject to Fusion for Energy's prior written authorization. Upon return, the Contractor shall also provide written evidence of performance of the Mission by preparing a written statement (the "**Mission Statement**") to be accepted by Fusion for Energy in writing.
7. The Total Contract Price shall be the sum of the Stage 1 Price, plus the price of any instructed Conditional Stages plus any sum paid to the Contractor in reimbursement of the expenses as set out in Article III.5.6, if applicable (the '**Total Contract Price**').
8. All prices shall be fixed and firm, not subject to revision during the lifetime of the Contract, regardless of any variations in the price of materials, equipment, or labour, except as otherwise stipulated in the Contract. Prices shall be deemed to include all costs and expenses related to the execution of the Contract.

*Article III.6.*

***Payment arrangements***

*Article III.6.1.*

*Pre-financing payment for Stage 1*

**Subject to Article I.4:**

1. Fusion for Energy shall pay the Contractor a pre-financing payment in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 1 Price within 45 (forty-five) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.
2. **Subject to Article I.5:** Fusion for Energy will only pay, if it has received a duly constituted financial guarantee in the form provided in the Annex E (Pre-financing Guarantee Form) equal to the amount of the pre-financing payment.

*Article III.6.2.*

*Payment [subject to Article I.4: of the balance] for Stage 1*

1. **Subject to Article I.4:** [**OPTION A:** After completion of the Services forming Stage 1, Fusion for Energy shall pay the Contractor the balance in the amount defined in Article I.4 [Payment arrangements], corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 1 Price. The pre-financing payment for Stage 1 will be cleared against the payment of the balance for Stage 1.] or [**OPTION B:** After completion of the Services forming Stage 1, Fusion for Energy shall pay the Contractor the amount referred to in Article I.3 [Prices] as Stage 1 Price.]
2. The Contractor must send a request for the payment accompanied by the relevant invoice indicating:
  - (a) the reference number of the Contract;
  - (b) the Acceptance Data Package (ADP) related to relevant milestone referred to in Article I.4 [Payment arrangements] in relation to Stage 1;
  - (c) the amount of travel and subsistence expense, if applicable;

- (d) Stage 2 Price, and if it is different from the Indicative Stage 2 Price: together with the Deviation Request and detailed explanation of its calculation in the form of the Impact Assessment Report.
- 3. Fusion for Energy has 60 (sixty) Days from receipt of the ADP and the request for payment: (a) to approve the submitted 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.

*Article III.6.3.*

*Pre-financing payment for Stage 2*

**Subject to Article I.4:**

- 1. If Stage 2 is instructed, Fusion for Energy shall pay the Contractor a pre-financing payment in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 2 Price within 45 (forty-five) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.
- 2. **Subject to Article I.5:** Fusion for Energy will only pay, if it has received a duly constituted financial guarantee in the form provided in the Annex E (Pre-financing Guarantee Form) equal to the amount of the pre-financing payment).

*Article III.6.4.*

*Payment [subject to Article I.4: of the balance] for Stage 2*

- 1. **Subject to Article I.4:** [**OPTION A:** If Stage 2 is instructed, after completion of the Services forming Stage 2, Fusion for Energy shall pay the Contractor the balance in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 2 Price. The pre-financing payment for Stage 2 will be cleared against the payment of the balance for Stage 2.] or [**OPTION B:** If Stage 2 is instructed, after completion of the Services forming Stage 2, Fusion for Energy shall pay the Contractor the Stage 2 Price.]
- 2. The Contractor must send a request for the payment accompanied by the relevant invoice indicating:
  - (a) the reference number of the Contract;
  - (b) the Acceptance Data Package (ADP) related to relevant milestone referred to in Article I.4 [Payment arrangements] in relation to Stage 2;
  - (c) the amount of travel and subsistence expense, if applicable;
  - (d) Stage 3 Price, and if it is different from the Indicative Stage 3 Price: together with Deviation Request and the detailed explanation of its calculation in the form of the Impact Assessment Report.
- 3. Fusion for Energy has 60 (sixty) Days from receipt of the ADP and the request for payment: (a) to approve the submitted 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.

*Article III.6.5.*

*Pre-financing payment for Stage 3*

**Subject to Article I.4:**

1. If Stage 3 is instructed, Fusion for Energy shall pay the Contractor a pre-financing payment in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 3 Price within 45 (forty-five) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.
2. **Subject to Article I.5:** Fusion for Energy will only pay, if it has received a duly constituted financial guarantee in the form provided in the Annex E (Pre-financing Guarantee Form) equal to the amount of the pre-financing payment).

*Article III.6.6.**Payment [subject to Article I.4: of the balance] for Stage 3*

1. **Subject to Article I.4:** [OPTION A: If Stage 3 is instructed, after completion of the Services forming Stage 3, Fusion for Energy shall pay the Contractor the balance in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 3 Price. The pre-financing payment for Stage 3 will be cleared against the payment of the balance for Stage 3.] or [OPTION B: If Stage 3 is instructed, after completion of the Services forming Stage 3, Fusion for Energy shall pay the Contractor the Stage 3 Price.]
2. The Contractor must send a request for the payment of the balance accompanied by the relevant invoice indicating:
  - (a) the reference number of the Contract;
  - (b) the Acceptance Data Package (ADP) related to relevant milestone referred to in Article I.4 [Payment arrangements] in relation to Stage 3;
  - (c) the amount of travel and subsistence expense, if applicable;
  - (d) Stage 4 Price, and if it is different from the Indicative Stage 4 Price: together with Deviation Request and the detailed explanation of its calculation in the form of the Impact Assessment Report, if applicable.
3. Fusion for Energy has 60 (sixty) Days from receipt of the ADP and the request for payment: (a) to approve the submitted 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.

*Article III.6.7.**Pre-financing payment for Stage 4***Subject to Article I.4:**

1. If Stage 4 is instructed, Fusion for Energy shall pay the Contractor a pre-financing payment in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 4 Price within 45 (forty-five) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.
2. **Subject to Article I.5:** Fusion for Energy will only pay, if it has received a duly constituted financial guarantee in the form provided in the Annex E (Pre-financing Guarantee Form) equal to the amount of the pre-financing payment).

*Article III.6.8.*

*Payment [subject to Article I.4: of the balance] for Stage 4*

1. **Subject to Article I.4:** [**OPTION A:** If Stage 4 is instructed, after completion of the Services forming Stage 4, Fusion for Energy shall pay the Contractor the balance in the amount corresponding to the percentage defined in Article I.4 [Payment arrangements] of the Stage 4 Price. The pre-financing payment for Stage 4 will be cleared against the payment of the balance for Stage 4.] or [**OPTION B:** If Stage 4 is instructed, after completion of the Services forming Stage 4, Fusion for Energy shall pay the Contractor the Stage 4 Price.]
2. The Contractor must send a request for the payment of the balance accompanied by the relevant invoice indicating:
  - (a) the reference number of the Contract;
  - (b) the Acceptance Data Package (ADP) related to relevant milestone referred to in Article I.4 [Payment arrangements] in relation to Stage 4;
  - (c) the amount of travel and subsistence expense, if applicable.
4. Fusion for Energy has 60 (sixty) Days from receipt of the ADP and the request for payment: (a) to approve the submitted 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.

*Article III.6.9.*

*Reimbursement of expenses*

1. Fusion for Energy shall reimburse the travel and subsistence expenses that are directly connected with the performance of the Contract (the “**Missions**”) up to the maximum amounts defined in Article I.3 [Prices].
2. Travel and subsistence expenses shall be calculated on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.
3. Travel expenses shall be calculated on the basis of the following assumptions:
  - (a) travel by air are made on economy class;
  - (b) travel by boat or rail are made on first class;
  - (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey.
4. For journeys of 200 (two hundred) km and more (return trip), subsistence expenses shall be reimbursed on the basis of a daily allowance which covers all subsistence expenses, including accommodation, meals, local transport and transport to airport, insurance and sundries. The daily subsistence allowance published on the following page shall apply: [Daily Subsistence Allowance.pdf \(europa.eu\)](#)
5. Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the Official Journal of the European Union or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by Fusion for Energy.

6. Fusion for Energy's written authorization is required before a Mission may be undertaken. The request for written authorization must indicate the purpose of the Mission, the origin, the destination, the travel cost, the start date, the duration in Days and the names of the persons travelling.
7. Reimbursement of expenses shall be made together with the balance payment. Requests for reimbursement of expenses shall indicate the reference number of the Contract and consist of: (a) a request for reimbursement of travel and subsistence expenses as part of the invoice for balance payment and (b) a Mission statement submitted by the Contractor and approved by Fusion for Energy, detailing, for each Mission completed, the purpose of the Mission, the origin, the destination, the travel cost, the start date, the duration in Days and the names of the persons travelling.

*Article III.6.10.*

*General provisions concerning payments*

1. Payments shall be made only if the Contractor has properly fulfilled all its contractual obligations by the date on which the request for payment is submitted.
2. Should the Contractor fail to perform their obligations under the Contract, Fusion for Energy may – without prejudice to its right to terminate the Contract or any other remedies it may have at law – suspend, reduce, or recover payments in proportion to the scale of the non-performance.
3. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.
4. Fusion for Energy may suspend the payment periods referred to in Article III.6 [Payment arrangements] at any time if it informs the Contractor that its payment request is not admissible. A payment request is not admissible for one of the following reasons:
  - (a) the payment is not due in accordance with the Contract;
  - (b) the Contractor has not produced the appropriate supporting documents or deliverables; or
  - (c) Fusion for Energy has observations on the documents or deliverables submitted with the invoice.
5. In case 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, to ascertain, prior to payment, that the request is admissible.
6. Fusion for Energy shall notify the Contractor as soon as possible of the suspension and set out the reasons for it. Suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary verification, including on-the-spot checks, is carried out. Where the suspension of payment exceeds 2 (two) months, the Contractor may request Fusion for Energy's decision on whether the suspension must be continued.
7. In the event of late payment, the Contractor shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the '**Reference Rate**') plus 8 (eight) percentage points (the '**Margin**'). The Reference Rate applicable 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.

*Article III.6.11.*

*Recovery*

1. If total payments made exceed the amount 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.
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.
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 III.6.10 [General provisions concerning payments].
4. 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.
5. If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article III.14 [Liability]. Fusion for Energy first claims the full amount to the leader of the group. If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article III.6.11 [Recovery] paragraph 2 letter (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.

*Article III.6.12.*

*Taxation*

1. The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
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.
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.

*Article III.7.*

***Guarantees***

**Subject to Article I.5:**

1. The Contractor must provide the pre-financing guarantees in the amounts referred to in Article I.5 [Pre-financing guarantee] respectively in accordance with the conditions laid down below.
2. The guarantee(s) shall be issued in favour of Fusion for Energy by an authorised bank or any other financial institution (the ‘**Guarantor**’) established in one of Fusion for Energy Member States having a public credit rating of no less than “BBB” by Standard and Poors or equivalent credit rating from a reputable ratings agency accepted by Fusion for Energy credit. It shall be denominated in EUR.
3. Notwithstanding any indication to the contrary, the Guarantor shall stand as first-call guarantor and shall not require Fusion for Energy to have recourse against the principal debtor, being the Contractor.
4. The Contractor shall bear the costs of providing the Guarantee and any extension thereof.
5. The pre-financing guarantee must remain in force until the payment of the balance.

*Article III.8.****Bank account***

1. Payments shall be made to the Contractor’s bank account denominated in EUR, identified in Article I.6 [Bank account].
2. The same bank account and VAT registration number shall be indicated on each invoice.
3. Any request for modification of the Contractor’s bank account shall be made by letter duly accompanied by all the supporting documents. Unless otherwise indicated by Fusion for Energy, any modification of the Contractor’s bank account shall be approved through DACC.

*Article III.9.****Performance****Article III.9.1.***General performance requirements**

1. The Contractor shall perform the Contract with due skill, care, and diligence, in accordance with the high professional standards which can be expected of an experienced contractor in the field of the Contract.
2. The Contractor shall follow the instructions of Fusion for Energy given in writing by Fusion for Energy’s Project Manager. If the Contractor receives instructions that jeopardize the economical, expeditious, and safe performance of the Contract, it shall immediately call the attention of Fusion for Energy in writing thereto. However, if Fusion for Energy’s Project Manager repeats the instructions in writing, the Contractor shall execute them at the risk and expense of Fusion for Energy.
3. 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.

*Article III.9.2.*

*General Provisions Regarding the Contractor's Staff*

1. 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.
2. Upon request of Fusion for Energy, the Contractor shall justify the deployment of the human resources, regarding the number and the professional qualification of the personnel involved for the execution of the Contract.
3. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him with respect to its Staff, notably those resulting from employment, tax, social security, and health and safety legislation. The Contractor shall indemnify and hold harmless Fusion for Energy from any claim in that respect including those claims related to salary, remuneration, tax, social security, and health and safety obligations of the Contractor. If requested by Fusion for Energy, the Contractor shall submit copies of forms evidencing compliance with these obligations.
4. The Contractor shall be responsible for the submission of any information required by the labour or tax authorities, or other authority, having jurisdiction over the work in respect of the employees working or from time to time employed or hired by the Contractor and its subcontractors to carry out any work under the Contract. The Contractor shall also be responsible to submit copies of that documentation to Fusion for Energy. The Contractor shall always keep in the site the legally required books and records containing information on its employees and those of its subcontractors working on the site. Fusion for Energy shall have access to the information contained in such registry book.
5. The Contractor shall have sole responsibility for the Staff executing the tasks under the Contract. The Contractor has the duty to manage the team in charge of the execution of the Contract.
6. 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.
7. Fusion for Energy shall have the right to request the replacement of any such member of Staff, stating its reasons for so doing. Replacement Staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall ensure the continuity of the service and the transfer of knowledge from the replaced Staff to the replacement Staff. The Contractor shall be responsible for any delay in the execution of the Contract resulting from the replacement of Staff.

*Article III.9.3.*

*Compliance*

1. The Contractor shall comply during the performance of the Contract with the quality and management requirements laid down in the Annexes of the Contract.



2. The Contractor must comply with the minimum requirements provided for in Annex A (Technical Specifications). This includes compliance with applicable obligations under environmental, social, and labour law established by EU law, national law, and collective agreements or by the international environmental, social, and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>3</sup>, and compliance with data protection obligations resulting from Regulation (EU) 2016/679 and regulation (EU) 2018/1725.
3. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required to perform the Contract under the laws and regulations in force at the place where the Contract is to be executed.
4. The Contractor must ensure compliance with the health and safety regulations, standards, and procedures applicable in the places where the Contract is executed.

*Article III.9.4.*

*Early Warning*

1. The Contractor shall notify Fusion for Energy of any event or circumstance that affects or should reasonably be expected to affect the performance of its contractual obligations promptly and in the absence of shorter period mentioned in the Contract, in any case not later than within 10 (ten) Days since the Contractor became aware of such event or circumstance or should have reasonably become aware of it (unless another shorter period is foreseen in the Contract).
2. The Contractor shall use its Best Efforts to mitigate the consequences of such an event or circumstance for the performance of the Contract.

*Article III.10.*

***Acceptance***

1. Acceptance is the acknowledgement by Fusion for Energy that the Service and the deliverables are in compliance with the Contract (the ‘**Acceptance**’).
2. Acceptance of the Services and the deliverables shall be evidenced by a written communication to this effect or, in the case of a deliverable linked to a payment, by the payment.
3. Conformity shall be declared only where the conditions laid down in the Contract are satisfied and the Services provided conform to Annex A (Technical Specifications).
4. Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Services and the deliverables, it shall notify the Contractor.
5. Approval of any deliverable or document by any means other than those set out in this Article III.10 [Acceptance] shall not constitute an Acceptance within the meaning of this Article III.10 [Acceptance]. No obligation and/or responsibility of the Contractor under the Contract shall be released until final Acceptance.

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<sup>3</sup> OJ L 94 of 28.03.2014, p. 65.

6. Acceptance is without prejudice to the rules on Liability in Article III.14 [Liability].
7. Where the Contractor must submit an Acceptance Data Package (ADP) linked to a payment, Fusion for Energy has 60 (sixty) Days from receipt of the relevant request for payment:
  - (a) to approve it and make the payment;
  - (b) to reject it and 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.
8. 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.
9. 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.
10. 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.

*Article III.11.*

***Liquidated damages***

**Subject to Article I.9:**

1. Where the due dates are not met for deliverables or milestones defined in Article I.9 [Liquidated damages] and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages defined in Article I.9 [Liquidated damages] per Day of delay, up to a maximum amount defined Article I.9 [Liquidated damages]. Fusion for Energy may at its sole discretion apply a lower amount.
2. Without prejudice to Fusion for Energy's right to terminate the Contract in accordance with Article III.30 [Termination by Fusion for Energy for cause], the liquidated damages payable under this Article constitute the sole remedy available to Fusion for Energy in respect of delay up to the maximum amount indicated in Article I.9 [Liquidated damages]. From the day the maximum amount of payable liquidated damages under any Stage of the Contract is reached, Fusion for Energy shall be entitled to additional compensation for any loss or damage resulting from any additional delay attributable to the Contractor, under the conditions set out by Article III.14 [Liability].
3. 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, considering 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.
4. The Parties expressly agree and acknowledge that any amounts payable as liquidated damages under this Article 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.

*Article III.12.*

***Representatives***

1. Fusion for Energy appoints the Project Manager for the Contract indicated in Article I.7 [Communication details].
2. The acts and decisions of the Project Manager of Fusion for Energy shall only bind Fusion for Energy within the limits set out in the Contract, if made in writing and duly signed by the Project Manager.
3. The Contractor nominates as its Project Manager responsible for coordinating the performance of the Contractor's obligations under the Contract the person indicated in Article I.7 [Communication details]. The Contractor's Project Manager is deemed to be vested with sufficient power and authority to perform such tasks and represent the Contractor under the Contract.
4. The Contractor's Project Manager shall be the main contact point regarding any issue raised in connection with the performance of the Contractor's obligations under the Contract.
5. The Parties shall give prior written notice of any modification of their representatives listed in in Article I.7 [Communication details]. The minimum term for written notice of any modification shall be 15 (fifteen) Days.

*Article III.13.*

***Communications***

1. Communications relating to the Contract shall be made in writing, in English and shall bear the Contract number. All communications shall be made by mail, DACC or electronic mail, save as otherwise provided in the Contract. An ordinary mail is deemed to have been received on the date on which it is registered by Fusion for Energy in accordance with this article.
2. Any communication or document sent, notified, or approved through DACC is considered as equivalent to a paper document in writing with a handwritten signature and shall be admissible as evidence in legal proceedings.
3. All communications between the Contractor and Fusion for Energy shall be in accordance with the arrangement defined in Article I.7 [Communication details] throughout the duration of the Contract.

*Article III.14.*

***Liability***

*Article III.14.1.*

*Contractor's liability*

1. The Contractor is liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor's total liability under the Contract shall not exceed 30% of the Total Contract Price, subject to the sole exceptions set out in this Article III.14 [Liability].

2. Notwithstanding any other provision of the Contract, the Contractor shall remain liable without any limitation as to the amount, for the following:
  - (a) damage or loss caused by the gross negligence or wilful misconduct of the Contractor, its Staff, or of any Subcontractor or its Staff;
  - (b) personal injuries or death caused by the Contractor, its Staff, or of any Subcontractor or its Staff;
  - (c) damage or loss directly resulting from non-compliance with any applicable mandatory law or from an infringement of intellectual property rights of a third party.
3. Notwithstanding any other provision of the Contract, the Contractor shall not be liable to Fusion for Energy if the Services do not include solutions sufficient to tackle the challenge set out in Annex A (Technical Specifications), neither for delays or defects, provided that the Contractor proves that it used Best Efforts to provide the Services including solutions sufficient to tackle the challenge set out in Annex A (Technical Specifications), and provide the Services in accordance with the agreed timeline and free of defects. For the purpose of this paragraph, Fusion for Energy shall be entitled to verify and determine if the Contractor made Best Efforts. The verification may include, amongst others, analysis and inspection of the documents, records and premises referred to in Article III.20, Article III.21 and Article III.22.

*Article III.14.2.*

*Third-party actions*

1. If a third party brings any action or claim against Fusion for Energy in connection with the performance of the Contract, the Contractor must assist Fusion for Energy in the legal proceedings, including by intervening in support of Fusion for Energy, upon request.
2. If Fusion for Energy's liability towards the third party is established and such liability is caused by the Contractor during or as a consequence of the performance of the Contract, the Contractor shall be liable, without any limitation, as to the amount.
3. The indemnification shall not exceed the amount of damage and costs sustained by Fusion for Energy as a result of the third-party action within the meaning of this Article.

*Article III.14.3.*

*Consortium*

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

*Article III.14.4.*

*Fusion for Energy's liability*

1. Notwithstanding anything to the contrary in the 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.

2. 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.

*Article III.15.*

***Insurance***

1. The Contractor must take out a suitable insurance policy against risks and damage or loss relating to the performance of the Contract as required by the relevant applicable legislation as well as any additional insurance policy reasonably required by the best practices in the industry considering the specificities of the Contract.
2. The insurance policies listed above shall cover the duration of the obligations of the Contractor and allow direct payment of the compensation for the insured damage suffered. The Contractor shall provide the necessary support for the execution of the policy, including payment of self-insured retentions or deductibles, in case such payments are necessary.
3. Upon request, the Contractor shall provide evidence of effective insurance coverage to Fusion for Energy and in any case, shall timely inform Fusion for Energy in case of modification to the mentioned policies.
4. For avoidance of doubt, demonstration by the Contractor of the fulfilment of this Article III.15 [Insurance] and disclosure of effective insurance coverage to Fusion for Energy does not in any way relieve the Contractor from its other obligations and from its liability under the Contract.

*Article III.16.*

***Publication rights of Fusion for Energy***

1. Subject to the confidentiality obligations under Article III.34 [Confidentiality] and Schedule I [Intellectual Property Provisions], Fusion for Energy may use, for the purposes of communication and publicity, all information relating to the Services, documents (notably summaries) and deliverables, and any other material (such as pictures or audio-visual material) from the Contractor (including in electronic form). Before publishing this information, Fusion for Energy shall consult the Contractor, to avoid harm to legitimate business interests or distortion of competition.

*Article III.17.*

***Conflicts of interest***

1. The Contractor shall take all necessary measures to prevent any situation of Conflict of Interest. Any Conflict of 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.
2. Fusion for Energy reserves the right to verify that such measures are adequate and may require that additional measures are 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 III.9.2 [General Provisions Regarding the Contractor's Staff], the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its Staff exposed to such a situation.
3. The Contractor shall abstain from any contact likely to compromise its independence.

4. The Contractor declares:
  - (a) that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract; and
  - (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.

*Article III.18.*

***Ethics and research integrity***

1. The Contractor shall carry out the tasks assigned to it in the Contract in compliance with:
  - (a) ethical principles (including the highest standards of research integrity); and
  - (b) applicable international, EU and national law.
2. The Contractor must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities).

*Article III.19.*

***Security-related obligations***

**Subject to Article I.8:**

1. The Contractor shall be responsible, including for its Subcontractors, for ensuring compliance with relevant requirements imposed by applicable legislation 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.
2. Unless otherwise indicated by Fusion for Energy the Contractor shall act as an exporter of the Dual-Use Goods and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation. Should Fusion for Energy decide to act as an exporter, the Contractor shall assist Fusion for Energy in obtaining any required export, re-export, or transfer authorization (including customs) and to provide any necessary information or documentation.
3. Where the Contractor is unable to obtain any required export, re-export, or transfer authorization (including customs) and to provide the requested information or documentation, Fusion for Energy shall be entitled to terminate the Contract in accordance with Article III.30 [Termination by Fusion for Energy for cause] unless the Contractor proves that the failure is due to a Force Majeure.
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.

*Article III.20.****Obligation to provide information and keep records***

1. The Contractor must, at any time during the implementation of the Contract or afterwards, provide any information requested by Fusion for Energy in relation to the Contract.
2. The Contractor must keep, for a period of up to 5 (five) years after the end of the Contract, records and other supporting documentation relating to its implementation.
3. This obligation includes records and other supporting documentation on scientific and technical implementation (in line with the accepted standards in the field) and on the price charged and the costs incurred by the Contractor.
4. The Contractor must keep the original documents. Digital and digitalised documents are considered originals if they are authorised under national law.
5. Should there be ongoing checks, reviews, audits, investigations, litigation, or other pursuits of claims (including claims by a third party against Fusion for Energy's), the Contractor must keep all records and other supporting documentation until the end of these procedures.

*Article III.21.****Checks and access rights***

1. For the purposes of checking the performance of the Contract and subject to prior notification (which in any case shall be less than 5 (five) Days), Fusion for Energy or any entity it designates shall have the right to carry out onsite checks in the premises of, and access to the facilities (including documentation) of the Contractor and its Subcontractors.
2. Fusion for Energy shall notify in writing to the Contractor the names of the persons entitled or designated to execute the checks (the '**Representatives of Fusion for Energy**'). The Contractor shall grant access to its facilities for the above purposes and shall ensure that any contracts entered into with Subcontractors also provide such unlimited and unrestricted access.
3. In carrying out the checks, the Representatives of Fusion for Energy shall comply with the internal rules of procedure, safety, and security of the Contractor and Subcontractors as well as with any restriction imposed by any applicable safety and security law.
4. Fusion for Energy shall be entitled to a reasonable number of copies (and unless otherwise indicated by Fusion for Energy, not less than 3 (three)) in paper and electronic form of the documents requested by Fusion for Energy for the purpose of this Article III.21 [Checks and access rights] at any time at no cost for Fusion for Energy.
5. The Contractor shall provide at no cost for Fusion for Energy (also in the case of permanent Representatives of Fusion for Energy), suitable office accommodation and facilities as may be required for the use of the Representative(s) of Fusion for Energy for the purpose mentioned in this Article and also all appliances, materials, and labour required for inspection or test purposes for the purpose mentioned in this Article III.21 [Checks and access rights].
6. Nothing under this Article III.21 [Checks and access rights] shall relieve the Contractor of any of its obligations and responsibilities under the Contract.

*Article III.22.****Reporting and testing***

1. The Contractor shall provide to Fusion for Energy reports including details about the progress of the performance of the Contract, Acceptance Data Packages, and final report, all of which shall be in accordance with the requirements set out in Annex A (Technical Specifications).
2. Should any unforeseen event, action or omission directly or indirectly negatively impact the execution of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem, an indication of the date on which it started and of the remedial and corrective action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
3. The Contractor shall give Fusion for Energy at least 2 (two) weeks' notice in writing of any tests that are to be carried out in accordance with the Contract in the presence of Representatives of Fusion for Energy, unless otherwise indicated in Annex A (Technical Specifications).
4. The expense of visits of Representatives of Fusion for Energy connected with such tests will be borne by Fusion for Energy. If 1 (one) or more of the tests must be repeated for reasons attributable to the Contractor, the Contractor shall pay the additional costs attributable to extended participation or for any extra visit(s).
5. If during a test the Representatives of Fusion for Energy present at the test wish to make minor modifications to the test procedures or programmes which has no impact on the schedule, i.e. modifications involving little extra work or expense, the Contractor shall not unreasonably withhold its consent. Substantial modifications to test procedures or programmes shall be agreed in good faith by the Parties in advance.
6. Each test procedure must be approved by Fusion for Energy prior to the test. Each test report must be approved by Fusion for Energy. One copy of the test report shall be delivered to Fusion for Energy within 10 (ten) Days from the end date of each test.
7. If the Parties disagree on the results of the tests, a final series of tests shall be carried out by or under the supervision of a third party especially designated for this purpose by Fusion for Energy. The resulting expenses and delays shall be borne by the Party shown to be wrong by the results of this new series of tests.

*Article III.23.****Use of DACC***

1. The following documents shall be signed through DACC, all collectively referred to as the '**DACC Documents**':
  - (a) any Deviation Notice, Deviation Request and Deviation Order;
  - (b) any Amendment to the Contract;
  - (c) instruction of an Conditional Stage; and
  - (d) any other document which has the effect of increasing or decreasing the Total Contract Price.



2. Approval of a document through DACC has the equivalent effect of a handwritten signature. Approval means that the Parties accept all the terms and conditions of the DACC document and agree to be bound by them.
3. Where documents are signed using DACC, documents shall be deemed received on the day when the document was issued, the automatically generated e-mail was sent by DACC or the receipt is otherwise acknowledged by the Party whichever is the sooner. Both Parties shall send automatically generated e-mails to the other Party when a document is uploaded, approved, approved with comments, or rejected.

*Article III.24.*

***Amendments and Deviations***

1. Any amendment to the Contract shall be the subject of a written agreement duly dated and signed by legal representatives of the Parties (the ‘**Amendment**’). An oral agreement shall not be binding on the Parties.
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.
3. A Deviation Request or a Deviation Order must be accepted and signed by both Parties to constitute an Amendment. Unless otherwise indicated in the amendment, the amendment will enter into force on date of signature by the last Party. Implementation of an amendment may under no circumstances begin before the date of the entry into force of the amendment.
4. Upon receipt of a Deviation Notice from Fusion for Energy, the Contractor shall submit an Impact Assessment Report including a detailed breakdown of the costs to be incurred for the implementation of the Deviation Notice. Prices and unit rates indicated in the financial forms of the Contractor’s Tender (Annex C) are applicable to the Impact Assessment Report. If this is not possible, each new price or unit rate shall be derived from any build-up prices or unit rates from the financial forms of the Contractor. If no prices or unit rates are relevant for the derivation of a new price or unit rate, it shall be derived from the reasonable Cost of executing the services, together with the applicable percentage for profit, taking account of any other relevant matters. Fusion for Energy reserves the right to request the Contractor to submit duly documented evidence regarding any of the proposed cost elements. The Contractor shall submit the Impact Assessment Report within a reasonable time and in no event later than 15 (fifteen) working days after receipt of the Deviation Notice, unless agreed otherwise.
5. Any Deviation Request issued by the Contractor shall include the Impact Assessment Report mentioned in Article III.24.4.
6. After reviewing the Impact Assessment Report, Fusion for Energy may agree with the Contractor the final extent of the deviation including additional amounts to be paid, an updated schedule, an updated payment schedule and modalities, or revised deliverables.

*Article III.25.*

***Subcontracting***

1. The Contractor shall not subcontract any part of the work to any Subcontractor without prior written authorisation from Fusion for Energy, nor cause or allow the Contract to

be performed in fact by third parties. Fusion for Energy may waive its right for prior authorization by registered letter for specific part of the Contract and subject to the conditions it defines.

2. The request for such authorization mentioned in this Article in paragraph 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 and the total amount estimated to be paid for such service/supply and whether the Subcontractor qualifies as small and medium-sized enterprise. Fusion for Energy may request the Contractor to provide additional documents and comply with the procedures defined by Fusion for Energy for the purpose of granting such authorisation. 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.
3. Even where Fusion for Energy authorises the Contractor to subcontract to third parties, the Contractor 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 always 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 regarding the personal data is obligatory. The initial processor remains fully liable to the controller for the performance of those other processor obligations.
4. If required by Fusion for Energy, the Contractor shall list all the legal commitments it enters into for the purpose of executing the Contract and the amounts paid to Subcontractors. The Contractor and/or the Subcontractor shall promptly (and in no event later than 30 (thirty) Days from the receipt of Fusion for Energy's request) submit copies of forms evidencing payment of salaries and social security contributions, as well as the labour benefits of its employees and the Subcontractor's employees, as the case may be, and provide evidence that the Contractor and the Subcontractor comply with all their legal obligations (of any nature) in respect to their employees.
5. The Contractor shall make sure that the legal commitment with the Subcontractor does not affect any rights to which Fusion for Energy is entitled to by virtue of the Contract.
6. All contracts between the Contractor and Subcontractors shall be made in writing, shall be consistent with the terms and conditions of the Contract (including imposing any relevant obligations under the Contract to the Subcontractor) and shall include any provisions which are necessary to guarantee the rights of Fusion for Energy under the Contract.

#### *Article III.26.*

#### ***Compensation event***

1. The following events are the '**Compensation Events**':
  - (a) Change in the legislation: If, as a result of a change in the applicable law with binding effect on the Contractor or in the judicial or governmental interpretation of such applicable law (but not related to employment, tax, or social legislation) occurring after the Commencement Date and directly affecting the performance of

the Contract, the Contractor will be forced to delay and/or incur additional costs in performing its obligations hereunder, the Contractor will be entitled to an extension of time and/or payment of any such Cost, provided that:

- (i) The impact of the change in legislation is not already covered by the application of another provision of the Contract;
  - (ii) The Contractor could not have expected such delay or additional Cost;
  - (iii) The Contractor is a national of or is legally established in one of Fusion for Energy Member States at the time of the filing of the written notice mentioned in this Article; and
  - (iv) The Contractor has notified Fusion for Energy including a substantiation of any the delay and/or additional costs in a form of an Impact Assessment Report within thirty (30) Days from the date the change entered into force. Fusion for Energy may accept a later notification for duly justified reasons.
- (b) Suspension of the Contract: if the Contract is suspended, in accordance with Article III.29 [Suspension of the Contract] for more than three (3) months continuously for the same cause, the Contractor will be entitled to a compensation corresponding to additional Cost it incurred as a result of the suspension from the beginning of the fourth (4th) month of suspension of the Contract providing that the Contractor submitted to Fusion for Energy a notice of such additional Cost by registered letter with acknowledgment of receipt or equivalent means within thirty (30) Days after the end of the Contract's suspension. The notice shall be substantiated with the relevant proof of the precise nature and extent of the additional Cost, including their detailed breakdown in a form of an Impact Assessment Report. For the sake of clarity, the Contractor is not entitled to payment of any cost incurred during the first three (3) months of suspension of the Contract. The Contractor shall take all necessary measures to prevent and minimize damage.
2. Additional Costs that may be claimed under this Article shall be limited to duly documented, through submission of relevant proof, direct Costs. The agreement on the additional Costs and/or extension of time shall be included into the Contract pursuant to Article III.24 [Amendments]. If no agreement is reached within 3 months from the date of submission of a notification under this Article, or other period agreed by the Parties, Fusion for Energy may terminate the Contract with immediate effect. Article III.30 [Termination by Fusion for Energy for cause] shall apply mutatis mutandis to the effects of such termination.
3. The application of Article III.26 [Compensation event] is subject to compliance with the Contractor's obligations defined under Article III.9.4 [Early Warning].

*Article III.27.*

***Force Majeure***

1. If a Party is faced with a Force Majeure, it shall immediately notify the other Party, but in any case, within 14 (fourteen) Days after the Party becomes aware or should have become aware of the applicable Force Majeure. The notification shall state the nature, likely duration, and foreseeable effects of the Force Majeure, including the obligations whose performance is or will be prevented by the Force Majeure.

2. No Party shall be liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of a Force Majeure pursuant to this Article III.27 [Force Majeure] and for so long as the Force Majeure prevents this Party from performing its obligations. Where the Contractor is unable to perform its contractual obligations owing to Force Majeure, it shall have the right to remuneration only for tasks executed.
3. The Parties shall promptly take all necessary measures to minimize any delay and to reduce damage due to a Force Majeure.
4. The Party invoking Force Majeure shall give notice to the other Party when it ceases to be affected by the Force Majeure.
5. In case of Force Majeure exceeding 6 (six) months, notified in accordance with this Article Fusion for Energy may terminate the Contract with immediate effect, where performance thereof cannot be resumed before a period of minimum 6 (six) months. Article III.30 [Termination by Fusion for Energy for cause] shall apply mutatis mutandis to the effects of such termination.

*Article III.28.*

***Assignment***

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.
2. In the absence of such written authorisation, 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.
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 European Commission or any other entity the European Commission and Fusion for Energy jointly designate.

*Article III.29.*

***Suspension of the Contract***

1. Fusion for Energy may at any time and for duly justified reasons suspend performance of the Contract or any part thereof by sending a formal notification to the Contractor. The suspension shall take effect on the date of receipt of the formal notification, or later indicated therein. Fusion for Energy shall provide the Contractor with available details of the expected duration of the suspension and may at any time following suspension give notice to the Contractor to resume performance of the Contract.
2. Should Fusion for Energy decide to suspend the Contract for a period of over 12 (twelve) months, the Contractor shall be entitled to ask for the Contract to be terminated, by sending a formal notification within 1 (one) month of the receipt of the notification of the suspension. The same shall apply in the event of a series of suspensions totalling a period of over 18 (eighteen) months. The one-month deadline mentioned above for the request to terminate shall commence on the date of the reception of the decision resulting in the suspension of the Contract for over 12 (twelve) months or for 18 (eighteen) months respectively. If the Contract is suspended for more than 12 months (twelve) without prior indication of the period of suspension in the formal notification, the 1 (one) month deadline mentioned above for the request

to terminate shall commence on the day following the expiration of the 12 (twelve) months period.

3. In case of termination following the Contractor's request in the conditions mentioned in this Article III.29 [Suspension of the Contract], the provisions regarding termination for convenience established in Article III.31 [Termination by Fusion for Energy for convenience] shall apply.
4. It is agreed that within 15 (fifteen) Days from the date on which performance of the Contract is resumed by Fusion for Energy the Parties shall convene to re-negotiate in good faith an adequate updated schedule of performance of the Contract. Article III.24 [Amendments] shall apply.

*Article III.30.*

***Termination by Fusion for Energy for cause***

*Article III.31.1.*

*Circumstances*

1. 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;
  - (b) where the Contractor or any related person within the meaning of article 136(4) of the Financial Regulation is in one of the situations provided for under points (c) to (h) of Article 136(1) or under 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 as referred to in Article III.17 [Conflicts of interest];
  - (f) where for reasons due to the Contractor, the performance of the Contract has not actually commenced 15 (fifteen) Days after the date of entry into force of the Contract or any agreed date for the start of the execution of the Contract;
  - (g) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
  - (h) 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;
  - (i) where a change to the contractor's legal, financial, technical, organisational, or ownership situation is likely to substantially affect the performance of the Contract or substantially modify the conditions under which the contract was initially awarded;

- (j) where the Contractor is in breach of his obligations under Article III.19 [Security-related obligations];
- (k) where the Contractor is in breach of the data protection obligations;
- (l) where the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

*Article III.31.2.*

*Procedure*

1. Fusion for Energy must formally notify 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 formal notification 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 of termination.
2. 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.

*Article III.31.3.*

*Consequences of Termination*

1. 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 end its activities under the Contract. It must take all appropriate measures to minimise costs, prevent and minimise damage, and cancel or reduce its commitments;
  - (b) On Fusion for Energy's request, it shall draw up the documents required by the Contract for the items accepted, in accordance with the provisions of the Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days from that date. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents, data, Foreground, Information, and/or goods produced pursuant to the Contract;
  - (c) The Contractor is not entitled to any compensation from Fusion for Energy for loss and damages resulting from the termination of the Contract, including loss of anticipated profits;
  - (d) Subject to the limitations foreseen in Article III.14 [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 III.27 [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 III.14 [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 III.27 [Force Majeure];
- (f) The Contractor is entitled to be paid for the items delivered and accepted by Fusion for Energy in accordance with Article III.10 [Acceptance] on the date of receipt of the formal notification of termination. Payment will be made by offsetting 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 only entitled to be compensated for the Costs of materials, of unfinished work or of goods manufactured before receipt of the formal notification of termination, if Fusion for Energy requests the transfer of their ownership. Costs must be necessarily incurred by the Contractor and in accordance with the Contractor's Tender (Annex C). Costs shall be fixed based on evidence produced by the Contractor and accepted by Fusion for Energy. Payment will be made by offsetting 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 III.31.1 [Circumstances].

*Article III.31.*

***Termination by Fusion for Energy for convenience***

1. Fusion for Energy may, at any time, at its discretion terminate the Contract or any portion thereof in accordance with this Article III.31 [Termination by Fusion for Energy for convenience].
2. Any such termination shall be affected by delivery to the Contractor of a formal notification which will specify the extent to which performance under the Contract is terminated and the effective date of termination.
3. Upon receipt of a formal notification under this Article III.31 [Termination by Fusion for Energy for convenience], the Contractor shall discontinue performance of the Contract in accordance with the notification and shall take any reasonable measures which are necessary or desirable to terminate performance in a safe and timely manner, minimize the costs associated with the termination, prevent and minimise damage, and cancel or reduce its commitments.
4. Subject to fulfilment of the Contractor's obligations under the Contract, Fusion for Energy shall reimburse the Contractor for its costs actually incurred and which would not have been incurred but for the termination. The cost must be a direct result of termination of the contract or any portion thereof. Fusion for Energy shall also pay a termination fee corresponding to 3% (three percent) of the remaining payments under

the part of the Contract which is terminated. However, no termination fee shall be paid, if termination is made following a change in legislation pursuant to Article III.26 [Compensation event].

5. As promptly as possible and in no event later than 30 (thirty) Days after the effective date of termination, the Contractor shall submit to Fusion for Energy its claim for reimbursement in writing with acknowledgement of receipt. Such claim for reimbursement shall include a cost breakdown of unavoidable Costs actually incurred as a result of termination which he is seeking to recover from Fusion for Energy with supporting evidence.
6. The amount of reimbursement payable under this Article III.31 [Termination by Fusion for Energy for convenience] shall be fixed on the basis of the evidence produced by the Contractor and accepted by Fusion for Energy. It shall take account of the proportion of the Contract completed and accepted by Fusion for Energy and shall be consistent with this Article III.31 [Termination by Fusion for Energy for convenience]. The Contractor is not entitled to claim any loss of profit in respect of the uncompleted or outstanding services which were to be performed after the termination date.
7. Fusion for Energy shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the Total Contract Price.
8. The ownership of all materials, parts, and unfinished work paid for by Fusion for Energy under the provisions of the Contract shall be vested in or transferred to Fusion for Energy as soon as they have been paid for.

*Article III.32.*

***Errors***

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 or may terminate all the contracts concluded with the Contractor (in accordance with Article III.30 [Termination by Fusion for Energy for cause]), in proportion to the seriousness of the errors, irregularities, or fraud.
2. The consequences described in Article III.30 [Termination by Fusion for Energy for cause] shall apply.

*Article III.33.*

***Checks and audits***

1. In accordance with Article 5a of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents 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.
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.



3. In accordance with Article 5a 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.
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.

*Article III.34.*

***Confidentiality***

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**').
2. Article III.34 [Confidentiality] paragraph 1 does not apply where:
  - (a) the Confidential Information becomes publicly available by means other than a breach of confidentiality obligations;
  - (b) the disclosing Party subsequently informs the recipient that the Confidential Information is no longer confidential;
  - (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 the Contract, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.
3. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of 10 (ten) years.
4. The Contractor shall obtain from each member of its Staff, board, and directors which will need to know the Confidential Information, an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly even after execution of the Contract for a period of 10 (ten) years.
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.

*Article III.35.*

***Settlement of Disputes***

1. The Parties agree that all Disputes shall be resolved in good faith in accordance with the following provisions.
2. Any Dispute shall in the first instance be referred for resolution by the Senior Representatives of the Parties by service of a notice of referral (the '**Notice of Referral**'). The Notice of Referral shall be duly accompanied by:
  - (a) Full written particulars of the matters that are the subject of the Dispute;
  - (b) Full details of the factual and legal basis of the referring Party's claim;
  - (c) Full details of the remedy sought by the referring Party together with full particulars in support of that remedy; and
  - (d) Copies of all documents relied upon by the referring Party in support of his claim.

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

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

3. If the Senior Representatives fail to reach an agreement to resolve the Dispute within 30 (thirty) Days of the date of the Notice of Referral (or such other period as may be agreed in writing by the Senior Representatives), the Dispute shall be resolved in accordance with this Article III.35 [Settlement of Disputes] paragraph 4.
4. Any Dispute which cannot be settled by way of an agreement of the Senior Representatives shall be exclusively decided by the Court of Justice of the European Union (CJEU) in accordance with its own rules of procedure. The language of the proceedings shall be English. Neither Party shall be entitled to refer any Dispute for resolution before the CJEU pursuant to this Article III.35 [Settlement of Disputes] paragraph 4, unless the Dispute has been first referred to the Senior Representatives pursuant to Article III.35 [Settlement of Disputes] paragraph 2. Notwithstanding the reference of any Dispute to the CJEU, the Parties shall continue to perform their duties, obligations, and liabilities hereunder.
5. At any time, the Parties may submit the Dispute to 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 III.35 [Settlement of Disputes] paragraph 4.

#### *Article III.36.*

#### **Miscellaneous**

1. The Contract contains the whole agreement between the Parties relating to the subject matter of the Contract as at the date of the Contract to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in the Contract.
2. The terms set out in the Specific Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions, including Schedules to the General Conditions, shall take precedence over those in the Annexes.

3. Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Fusion for Energy, subject to the rights of the Contractor under Article III.35 [Settlement of Disputes] in case of a Dispute.
4. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of the Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Contract, except to the extent that any greater burden is imposed upon any Party in consequence thereof. The Parties agree that they will negotiate in good faith to replace any provision hereof held invalid, illegal, or unenforceable with a valid, legal, and enforceable provision which is as similar as possible in substance to the invalid, illegal, or unenforceable provision.
5. For the purposes of the Contract, except as otherwise expressly provided or unless the context otherwise requires:
  - (a) The terms defined in the Contract have the meanings assigned to them in the Contract and/or its Schedules and Annexes and include the plural as well as the singular, and the use of any gender herein shall include the other gender;
  - (b) The captions used in the Contract are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope or content of the Contract or any provision hereof;
  - (c) The words “herein”, “hereof”, “hereunder” and other words of similar import refer to the Contract as a whole and not to any particular provision;
  - (d) The terms “include” or “including” shall mean, without limitation, by reason of enumeration and shall not be interpreted restrictively;
  - (e) Each reference to an “Annex” or “Schedule” of the Contract shall include all sections of such Annex or Schedule, as appropriate, and each reference to an “Article” or paragraph of the Contract or Schedule or to a “section” of its Annex shall include all subsections/points of such Article, paragraph or section;
  - (f) Any terms used in the Contract, including its Schedules, and not otherwise defined herein shall have the meaning ascribed thereto pursuant to any of its Annexes or in the Fusion for Energy Council Decision;
  - (g) References to any element of the legislation, statute, act, law, regulation, or Fusion for Energy’s procedures/rules, or any provision thereof shall, where applicable, be deemed to be references to that element of the legislation, statute, act, law, regulation, or Fusion for Energy’s procedures/rules, as amended or re-enacted.
6. Unless otherwise provided for herein, the Parties will bear their own expenses (including fees and disbursements of their respective counsel) in connection with the Contract and the Service provided under the Contract. The Contract may be executed in 1 (one) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute 1 (one) and the same instrument.

*Article III.37.****Applicable law***

1. The Contract shall be governed by the Community and European Union Law, complemented by national substantive law of Spain other than its rules of private international law (conflict of law/renvoi rules). National substantive law of Spain shall prevail over the law of an autonomous Region.

*Article III.38.****Survival of obligations***

1. Obligations which by their nature continue beyond the termination or expiration of the Contract, including, by way of illustration only and not limitation, those in Article III.14 [Liability], Article III.33 [Checks and audits], Article III.34 [Confidentiality] and in Schedule I [Intellectual Property Provisions], shall survive the termination or expiration of the Contract.

*Article III.39.****Intellectual property provisions and processing of personal data***

1. Intellectual property provisions applicable to the Contract are defined in Schedule I [Intellectual Property Provisions].
2. Processing of personal data under the Contract shall be in accordance with Schedule II [Processing of Personal Data].

## IV. Schedules to the General Conditions of Pre-Commercial Procurement Contract

### *Schedule I. Intellectual Property Provisions*

#### 1. Definitions

1.1 Capitalised terms throughout the Contract, including this Schedule, shall have the meaning below:

- **‘Intellectual Property’** shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets if they are unpublished, and in written or otherwise documented form, and:
  - (i) have been held in confidence by their owner,
  - (ii) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,
  - (iii) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
  - (iv) are not available to the receiving party without an obligation concerning confidentiality.
- **‘Information’** shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in the paragraph above.
- **‘Fair and reasonable conditions’** shall mean appropriate conditions including possible financial terms considering the specific circumstances of the request for access, for example the actual or potential value of the Foreground or Background to which access is requested and/or the scope, duration or other characteristics of the use envisaged.
- **‘Background’** shall mean Intellectual Property or Information which is held by the Contractor prior to its signature of the Contract or outside its scope and which is needed for carrying out the Contract, for using the Foreground or for using the goods or services supplied under the Contract.
- **‘Foreground’** shall mean Information and Intellectual Property generated during the execution of the present Contract including through subcontracting.
- **‘Dissemination’** shall mean the disclosure of the Foreground by any appropriate means other than that resulting from the formalities for protecting it, including the publication of these results in any medium.

- ‘**Market Conditions**’ shall mean conditions a seller is willing to sell on and a purchaser is willing to accept without restrictions or influence by Fusion for Energy.
- ‘**ITER Agreement**’ shall mean the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project.
- ‘**Broader Approach Agreement**’ shall mean the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research.
- ‘**Fusion for Energy’s fusion research and development programmes, projects and agreements**’ shall mean Fusion for Energy’s tasks established in Article 1.2 of Council Decision 2007/198/Euratom i.e. it shall mean publicly funded research and development programmes, projects or agreements where EURATOM or Fusion for Energy are members or contributors to such public fusion programmes, public fusion projects or international agreements, such as for example the ITER Agreement, the Broader Approach Agreement, the IFMIF-DONES project, the Demonstration Power Plant DEMO project, or the Fusion for Energy Technology Development Programme, including any public procurement activities carried out by Fusion for Energy.

## **2. General obligations**

- 2.1. The Contractor is responsible for ensuring that all third parties that it collaborates with during and after the Contract implementation respect all Intellectual Property related obligations towards Fusion for Energy and must pass on its obligations to those entities.
- 2.2. The Contractor must ensure that the rights of Fusion for Energy under the Contract are upheld under all circumstances, including in case of merger, split, takeover or other corporate restructuring.

## **3. Background**

- 3.1. The Contractor shall declare its Background prior to the signature of the Contract. The declaration shall provide detailed information on the origin and ownership of the Background as well as any legal restrictions relating to its use of which Contractor is aware. The Contractor cannot invoke the ownership of any Background which is not clearly identified in the declaration of Background. The declaration of Background, included in Annex B (Declaration of the Contractor’s Background), shall form part of the Contract.
- 3.2. If the Background is identified after the signature of the Contract, it can be added to the declaration of the Background upon the agreement of Fusion for Energy. Contractor shall justify why the existence of such Background could not be invoked prior to the signature of the Contract.
- 3.3. In case the Background belongs to a third party and its use was granted to the Contractor under a license agreement, the Contractor shall obtain from that third party all the rights allowing use of the Background in conformity with the Contract.

- 3.4. Where a Contractor transfers ownership of the Background, it shall pass on its obligations regarding that Background, as defined in the Contract, to the assignee including the obligation to pass those obligations on to any subsequent assignee.
- 3.5. If all or part of the Background is confidential, it must be clearly identified so in the declaration and special additional measures may be agreed between the Contractor and Fusion for Energy to preserve its confidentiality.
- 3.6. The Contractor shall remain the exclusive owner of its own Background.

#### **4. Access rights to the Background**

- 4.1. The Contractor shall provide a worldwide, non-exclusive, irrevocable, royalty-free licence to Fusion for Energy to the Background for the use of the Foreground or for the use of the goods or services supplied under the Contract.
- 4.2. Except for the case for which Fusion for Energy has already access to Background, the Contractor shall grant on Fair and reasonable conditions to any third party nominated by Fusion for Energy, a licence to use the Background if such Background is needed for using the Foreground or for using the goods or services supplied under the Contract for the execution of Fusion for Energy's fusion research and development programmes, projects and agreements.
- 4.3. Except for the case for which Fusion for Energy has already access to Background, in the case that Article 5.3 or Article 6.4 of this Schedule applies, the Contractor shall grant on Market Conditions to any third party nominated by Fusion for Energy a licence to use the Background, if such Background is needed for commercially exploiting the Foreground or for commercially using the goods or services supplied under the Contract.

#### **5. Ownership of the Foreground**

- 5.1. Any Foreground generated during the execution of the Contract shall be communicated without delay to Fusion for Energy as laid down in Article 7.1 of this Schedule and shall become the property of the Contractor.
- 5.2. The Contractor shall ensure that all work to be performed under the Contract is carried out by persons and companies who have a written agreement with the Contractor and that, when lawful, the agreement includes provisions that ensure that all Intellectual Property Rights on the Foreground shall be owned by the Contractor.
- 5.3. Fusion for Energy may exceptionally require transfer of the ownership of the Foreground generated under the Contract to Fusion for Energy, if the Contractor:
  - (a) decides not to protect the Foreground that it generated (Article 7 of this Schedule);
  - (b) makes no type of commercial exploitation of the Foreground during four consecutive years and the Foreground might be deemed commercially exploitable by third parties;
  - (c) is subject to a merger, acquisition, takeover or other corporate restructuring and the merger, acquisition, takeover or other corporate restructuring negatively impacts the access to or the commercial exploitation of the Foreground in the EU;
  - (d) uses the Foreground to the detriment of the public interest, including EU strategic autonomy or security interests.

In cases (a), (b), (c) and (d) Fusion for Energy may notify the Contractor of its intention to require the transfer of ownership of Foreground.

In cases (a) and (b), before exercising its rights, Fusion for Energy shall first contact the Contractor to evaluate the reasons for not protecting the Foreground and any measures that the Contractor might have taken to achieve successful commercial exploitation of the Foreground.

Following the transfer of the ownership of the Foreground to Fusion for Energy, Fusion for Energy may grant licences to third parties to ensure further protection and commercial exploitation of the Foreground.

- 5.4. All information, documents and results given by or on behalf of Fusion for Energy to the Contractor shall remain the property of Fusion for Energy. The Contractor shall not dispose thereof without prior approval of Fusion for Energy. The use of information obtained by the Contractor during the Contract for purposes other than its performance shall be forbidden unless Fusion for Energy has specifically given prior written authorisation to the contrary.

## **6. Access rights to the Foreground**

- 6.1. The Contractor shall communicate any Foreground generated during the execution of the Contract to Fusion for Energy as laid down in Article 7 of this Schedule.
- 6.2. Fusion for Energy shall have access to the Foreground in the form of a worldwide, non-exclusive, irrevocable, royalty-free license to the Foreground with the right to further sub-license and use it to carry out Fusion for Energy's fusion research and development programmes, projects, and agreements.
- 6.3. Fusion for Energy shall have access to the Foreground in the form of a worldwide, non-exclusive, irrevocable, royalty-free licence to the Foreground with the right to further sub-license it to a third party for commercial exploitation if the Foreground might be exploitable in the EU by a third party and the Contractor does not exploit it (directly or indirectly through another entity, through transfer or licensing of the Foreground) within a consecutive four-year period.
- 6.4. If Fusion for Energy finds a suitable third party interested in exploiting the Foreground in the EU, Fusion for Energy shall inform the Contractor and the Contractor may decide to license the Foreground to the third party at Fair and reasonable conditions.

## **7. Notification and protection of the Foreground**

- 7.1. The Contractor shall systematically and in due time report to Fusion for Energy any creation of Foreground using the Form for Declaration of Foreground Intellectual Property (Annex F) or through any other means agreed by Fusion for Energy.
- 7.2. In case the Foreground consists of business confidential information, the Contractor shall properly describe and document such business confidential information and shall make available to Fusion for Energy any additional document or information that allows Fusion for Energy to assess its relevance. Unless otherwise agreed between the Contractor and Fusion for Energy, the Contractor shall keep secret such business confidential information in conformity with the Contract.
- 7.3. Where patentable Foreground is created in the execution of the Contract, Contractor shall file patent applications and obtain patents on its name and duly inform Fusion for



Energy. Where the Contractor is not willing to protect the Foreground (or only in a limited number of countries) it shall immediately inform Fusion for Energy which may assume the ownership of such Foreground in any country not covered by the Contractor's patent application. The Contractor shall fully cooperate with Fusion for Energy in view of the adoption of the adequate protection measures.

- 7.4. Patent applications relating to Foreground shall include the following statement to indicate that said Foreground was generated with the assistance of financial support from Fusion for Energy:

*“The work leading to this invention has received funding from the European Joint Undertaking for ITER and the Development of Fusion Energy under its Technology Development Programme Contract n° [xxxxxx].”*

- 7.5. Where the Contractor decides to abandon protected Foreground whether completely or only in certain countries, it shall immediately inform Fusion for Energy which may assume the ownership of that Foreground and shall then take on the obligations regarding the granting of access rights to the Foreground.
- 7.6. In case the Contractor files patent applications related to the subject matter of the Contract within a period of twenty-four months after its completion, the content of the application shall be considered as Foreground unless the Contractor demonstrates that it has been created independently and outside the scope of the Contract. Any such filing arising after the completion of the Contract shall be notified to Fusion for Energy including sufficient references to enable Fusion for Energy to trace the origin of the patent application.
- 7.7. If employees or other personnel working for the Contractor are entitled to claim rights on the Foreground, the Contractor shall ensure that it is possible to exercise those rights in a manner compatible with the Contractor's obligations under the Contract and it does not hamper the rights of Fusion for Energy.
- 7.8. The Contractor shall be responsible for the management of all the rights on the Foreground that it holds and shall bear the associated costs, including for the protection, examination, grant, maintenance, defence, and litigation of the rights on the results.
- 7.9. If the Contractor becomes aware of any product or activity of any third party that involves or may involve infringement or other violation of the rights on the Foreground, the Contractor shall promptly notify Fusion for Energy of the infringement or violation.

## **8. Exploitation of the Foreground**

- 8.1. The Contractor that owns the Foreground shall use its reasonable endeavours to exploit the Foreground (directly or indirectly through another entity, through transfer or licensing of the Foreground), subject to the relevant provisions of the Contract. The EU market should have preference over other markets and the commercial exploitation of the Foreground in the EU market should be done at Fair and reasonable conditions.
- 8.2. In the case of nuclear applications, the Contractor may only grant non-exclusive licenses of the Foreground or sub-license:
- (a) to third parties established in the territory of the members of Fusion for Energy provided that it informs Fusion for Energy prior to such intended use;

- (b) to third parties established outside the territories of the members of Fusion for Energy, if Fusion for Energy, following a consultation with the Commission, does not object in writing within 45 calendar days from the receipt of a written request.
- 8.3. In the case of non-nuclear applications, the Contractor shall inform Fusion for Energy prior to the grant of licenses inside or outside the territories of the members of Fusion for Energy.
- 8.4. Fusion for Energy may object to the granting of a license regarding the Foreground to third parties if it considers that this is not in accordance with defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.
- 8.5. The Contractor shall provide Fusion for Energy with annual written reports on the commercial exploitation of the Foreground starting up from the second year after the notification of the creation of Foreground. After the fifth annual written report, the Contractor shall submit a written report every four years.
- 8.6. If the Contractor does not intend to commercially exploit or does not effectively commercially exploit the Foreground it shall not take any action which jeopardises or affects the ability to exploit such rights by Fusion for Energy or a third party.

## **9. Transfer of the Foreground**

- 9.1. The Contractor may transfer the ownership of such Foreground to any legal entity, subject to prior written consent of Fusion for Energy. Fusion for Energy shall enjoy a right of pre-emption which can be realised within 3 (three) months from the notification of the proposed transfer.
- 9.2. Fusion for Energy may object to the transfer of the Foreground under the same conditions as the ones stipulated in Article 6.4 of this Schedule.
- 9.3. Where the Contractor transfers ownership of Foreground, it shall pass on its obligations regarding that Foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with the Contract.

## **10. Management of Intellectual Property**

- 10.1. Fusion for Energy and the Contractor shall communicate to each other any information concerning intellectual property rights which may impede performance of the Contract or the exploitation of its results. Whenever performance of the Contract or the use of its results involves the use of intellectual property belonging to a third party the Contractor shall indemnify Fusion for Energy against any action for infringement, which may be brought against Fusion for Energy. This obligation does not apply to the Contractor when Fusion for Energy requests the use of a particular Intellectual Property assets belonging to a third party.
- 10.2. At the first indication of any action and at the lodging of a claim by a third party, even after performance of the Contract, the Party implicated shall notify the other Party thereof without delay, whereupon both Parties shall act jointly and shall exchange all information and evidence which they may possess or obtain.
- 10.3. Items supplied by the Contractor, or any part thereof, covered by an Intellectual Property owned by the Contractor, or in respect to which he possesses a licence, shall not prevent Fusion for Energy from repairing or causing repairs to be made to such a supply by whomsoever it may think fit, if the Contractor, after being asked by Fusion

for Energy, cannot make the repairs himself within a reasonable time limit and at a reasonable price.

## **11. Permits and licences**

- 11.1 The Contractor shall be responsible for obtaining all permits and licences required for the implementation of the Contract and for the use and commercial exploitation of the Foreground under the laws and regulations in force at the place(s) at which the tasks, works, use, and commercial exploitation are to be carried out, including copyrights and Intellectual Property licences needed from third parties.
- 11.2 If the Contractor is unable to obtain any of the permits and licences referred to above, it shall forthwith inform Fusion for Energy, which after consultation with the Contractor, shall decide whether all or any of the tasks or works are to be discontinued and/or the commercial exploitation of the Foreground should be discarded.

## **12. Dissemination**

- 12.1 Contractor shall inform Fusion for Energy prior to carrying out any Dissemination activities.
- 12.2 Contractor shall notably guarantee that any Dissemination activity is compatible with the protection of Intellectual Property and confidentiality obligations and with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.
- 12.3 Any Dissemination of information relating to the Contract by the Contractor shall include the following statement: "*This [work, document, publication, etc...] has been carried out in the context of Fusion for Energy's Technology Development Programme. The opinions expressed are those of Contractor only and do not represent Fusion for Energy's official position.*".

## **13. Survival of rights and obligations**

- 13.1 The rights and obligations of the Contractor and Fusion for Energy arising out of the application of the provisions included in this Schedule shall subsist after the completion or termination of the Contract until such time as the information acquired through it falls into the public domain or as the relevant Intellectual Property rights expires, irrespective of whether the protection of Foreground was actually granted at the moment of expiry of the contract, or whether it is still pending application.

## ***Schedule II. Processing of Personal Data***

### **1. Processing of personal data by Fusion for Energy**

- 1.1 Any personal data included in or relating to the 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 the Contract by the data controller.
- 1.2 The Contractor or any other person whose personal data is processed by the data controller in relation to the 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.
- 1.3 Should the Contractor or any other person whose personal data is processed in relation to the 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).
- 1.4 Details concerning the processing of personal data are available in the Fusion for Energy Record of Processing of Personal Data During Contract implementation (excluding processing during claims assessment)<sup>4</sup>, the Fusion for Energy Record of Processing Personal Data During Procurement and Grant Procedures<sup>5</sup>, and Fusion for Energy Record of Processing of Personal Data in Claims Procedure – All OPE contracts (except FIDIC contracts)<sup>6</sup>.

### **2. Processing of personal data by the Contractor**

- 2.1 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.
- 2.2 The Contractor may act only on documented written instructions and under the supervision of the controller, regarding the purposes of the processing, the categories of data that may be processed, the recipients of the data and how 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.

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<sup>4</sup> [https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record\\_Contract%20and%20Grant%20Implementation%20excluding%20claims\(2GBTAX\).pdf](https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record_Contract%20and%20Grant%20Implementation%20excluding%20claims(2GBTAX).pdf)

<sup>5</sup> [https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record\\_Procurement%20and%20Grant%20Procedures\(24GD29\).pdf](https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record_Procurement%20and%20Grant%20Procedures(24GD29).pdf)

<sup>6</sup> [https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record\\_Claim%20Assessment%20Operation%20non-FIDIC%20contracts\(29RKA4\).pdf](https://fusionforenergy.europa.eu/careers/documents/privacy/Public%20Record_Claim%20Assessment%20Operation%20non-FIDIC%20contracts(29RKA4).pdf)

- 2.3 The Contractor may be asked by Fusion for Energy to use some ITER Organization IT applications that store information in data centres or similar premises, located on the territory of the European Union Member States (including back-up storage).
- 2.4 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 the 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.
- 2.5 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 III.34 [Confidentiality] of the Contract.
- 2.6 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, to ensure 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.
- 2.7 The Contractor shall, on Fusion for Energy's written request, inform Fusion for Energy in writing about the implementation of those measures within 30 (thirty) Days following receipt of the request.
- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 The Contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 39 under Regulation (EU) 2018/1725 to:
- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users; In case the Contractor is asked by Fusion for Energy to use systems and IT applications provided by the ITER Organisation this applies to the extent falling under the Contractors responsibility;
  - (b) notify a personal data breach to the European Data Protection Supervisor;
  - (c) communicate a personal data breach without undue delay to the data subject, where applicable;
  - (d) carry out data protection impact assessments and prior consultations as necessary.
- 2.12 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.
- 2.13 The Contractor acknowledges that the potential costs with the implementation of its obligations are under its entire responsibility with no right to be reimbursed.
- 2.14 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.
- 2.15 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.
- 2.16 The duration of processing of personal data by the Contractor will not exceed the period referred to in Article III.33 [Checks and audits] of the Contract. 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.
- 2.17 For this Schedule, if part or all the processing of personal data is subcontracted to a third party, the Contractor shall pass on the obligations referred to in this Schedule 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.

2.18 The localisation of and access to the personal data processed by the Contractor shall comply with the following:

- (a) the personal data shall only be processed within the territory of the European Union and will not leave that territory;
- (b) the data shall only be stored (including back-up storage) in data centres 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;
- (c) the Contractor may not change the location of data processing without the prior written authorisation of Fusion for Energy;
- (d) any transfer of personal data under the Contract to third countries or International Organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.