



V. [xx]

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ANNEX 1

MODEL CONTRACT

**SUPPLY CONTRACT**

between

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

and

[•]

**F4E-[•]**

CONTRACT NUMBER – [complete]

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

of the one part,

and

[*official name in full*]

[*official legal form*]

[*statutory registration number*]

[*registered address in full*]

[*VAT registration number*]

(the "**Contractor**"), represented by [*name in full, function*]

of the other part,

hereinafter also individually referred to as "Party" and collectively as "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> (the "**Fusion for Energy Council Decision**"),

HAVING REGARD to the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>2</sup> (the "**ITER Agreement**"),

HAVE AGREED

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

<sup>2</sup> OJ L 358 of 16.12.2006, p. 62

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

#### Annexes

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

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

Annex C – Intellectual Property (IP) Provisions

Annex D – Declaration of the Contractor’s Background

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

Annex F – Terms of Reference on Mediation

Annex G - Contractor’s Tender

Annex H – Power of Attorney

Annex I – Rules for Submitting Claims

#### Applicable documents

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

AD	Document title	Reference	Version/Date
AD01	<i>Supplier Project Management and Quality Requirements (F4E-QA-115)</i>	F4E_D_22F8BJ	[xxx]
AD02	<i>Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project</i>	INFCIRC/703	2006-11-21
AD03	<i>Pre-Financing Guarantee Form</i>	F4E_D_25RYM2	[xxx]
AD04	<i>Declaration Regarding Nuclear Liability of the ITER IO</i>	[xxx]	[xxx]
AD05	<i>Insurance Certificates</i>	[xxx]	[xxx]
AD06	<i>Form for declaration of Foreground Intellectual Property</i>		
AD07	<i>Model Transportation Contract</i>	[xxx]	[xxx]
AD08	<i>Common Site Rules on Assembly and Installation/General Management Specifications for Executing Entities at the ITER Site</i>		
AD09	<i>Performance Guarantee Form</i>	F4E_D_29AKK7	[xxx]
AD10	<i>Supplier Nuclear Safety Management Requirements (F4E-QA-113)</i>	[xxx] or N/A	

## **I. SPECIAL CONDITIONS**

### **I.1. DEFINITIONS**

**I.1.1.** Capitalised terms throughout the Special Conditions and General Conditions have the meaning below.

<b>Acceptance</b>	Has the meaning set forth in Article II.12 ( <i>Acceptance</i> ).
<b>Acceptance Data Package (ADP)</b>	Is defined in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Amendment</b>	Has the meaning set forth in Article II.25 ( <i>Amendments and Deviations</i> ).
<b>[<i>Assembly &amp; Installation</i></b>	<i>Assembly is putting together manufactured parts to make a machine, product or component constituting an integrated and functional whole. Installation is putting in place a machine, product, component or sub-assembly, connecting its interfaces and making it ready for use.]</i>
<b>Background</b>	Has the meaning set forth in Section 1.4 of Annex C ( <i>Intellectual Property Provisions</i> ).
<b>Calendar Year</b>	Means the one-year period that begins on 01 January and ends on 31 December.
<b>Claim</b>	Means any request, other than a Deviation Request, made by the Contractor for an additional payment and/or an extension of time to which the Contractor considers to be entitled to under the Contract.
<b>Commencement Date</b>	Is the date of entry into force of the Contract as set out in Article I.4.1 ( <i>Entry into Force and Duration</i> ).
<b>Confidential Information</b>	Means, for the purpose of Article II.24 ( <i>Confidentiality</i> ), any information or documents which are linked to performance of the Contract.
<b>Conflict of Interest</b>	Means a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract.
<b>Contract</b>	Is this contract and its Annexes and Applicable Documents.
<b>Contract Price</b>	Has the meaning set forth in Article I.6.1 ( <i>Contract Price</i> ).
<b>Corrective Action</b>	Is defined in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Cost</b>	Means all expenditure reasonably incurred (or to be incurred) by the Contractor for the performance of the Contract, including overhead and similar charges, but not including profit.

<b>Data Controller</b>	Means the Fusion for Energy officer responsible for processing personal data with respect to the Contract in accordance with Article II.10 ( <i>Processing of Personal Data</i> ).
<b>Data Protection Officer</b>	Means the Fusion for Energy officer designated to perform the duties assigned to it by Regulation (EU)2018/1725 <sup>3</sup> .
<b>Day(s)</b>	Means calendar day(s), unless otherwise defined.
<b>Deliverable</b>	Is defined in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ). The list of deliverables is identified in Section [.] of Annex B ( <i>Technical Specification</i> ).
<b>[Designated Carrier]</b>	<i>Means "DAHER INTERNATIONAL", a company incorporated under the laws of France, registered in Marseille under no. 068 803 005, having its registered office at 10 place la Joliette 13667 Marseille Cedex 2 (France).]</i>
<b>[Delivery Location]</b>	<i>Has the meaning set out in Applicable Document AD07 (Model Transportation Contract).]</i>
<b>Deviation Amendment and Contract Modifications Portal (DACC)</b>	Means the 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, Indexation). Signature in DACC is legally binding.
<b>Deviation</b>	Means a permission to depart from the specified Contract requirement prior to its realization. A Deviation Request is issued by the Contactor. A Deviation Notice and a Deviation Order are issued by Fusion for Energy. A Deviation Notice must be followed by a Deviation Order in order to be enforceable.
<b>Dispute</b>	Means any disagreement, difference, or controversy of whatever nature, in connection with the Contract during or after its implementation.
<b>Dissemination</b>	Has the meaning set forth in Section 1.6 of Annex C ( <i>Intellectual Property Provisions</i> ).
<b>Domestic Agency</b>	Means a legal entity through which a member of the ITER IO provides its contribution to the ITER IO as referred to in Article 8(4) of the ITER Agreement.
<b>Dual-use Items</b>	Has the meaning set out by Council Regulation (EU/2021/821) of 20 May 2021 setting up the European Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items and is governed by Article II.26.1 ( <i>Export Control Requirements</i> ).

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<sup>3</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<b>European Public Prosecutor's Office (EPPO)</b>	Has the meaning set out by Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO).
<b>Exporter</b>	Has the meaning set forth in Article 2.3 of the Council Regulation (EC/428/2009) of 05 May 2009 setting up a Community regime for the control of exports, transfer, brokering, and transit of Dual-use Items.
<b>Fair and Reasonable Conditions</b>	Has the meaning set forth in Section 1.3 of Annex C ( <i>Intellectual Property Provisions</i> ).
<b>Financial Regulation</b>	Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.07.2018, p. 1 to which article 89 of the Fusion for Energy Financial Regulation refer.
<b>Final Acceptance</b>	Means acceptance of Deliverable [ <i>Identification of relevant Deliverable</i> ] as per Section [•] of Annex B ( <i>Technical Specifications</i> ).
<b>Force Majeure</b>	Means 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.
<b>Foreground</b>	Has the meaning set forth in Section 1.5 of Annex C ( <i>IP Provisions</i> ).
<b>Fraud</b>	An act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the European Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests
<b>[Free-issue Items</b>	<i>Has the meaning set forth in Article I.16 (Free-issue Items Delivered to the Contractor).</i> ]
<b>Fusion for Energy Documentation</b>	Has the meaning set forth in Applicable Document

<b>Management System</b>	AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Information</b>	Has the meaning set forth in Section 1.2 of Annex C ( <i>Intellectual Property Provisions</i> ).
<b>Intellectual Property</b>	Has the meaning set forth in Section 1.1 of Annex C ( <i>Intellectual Property Provisions</i> ).
<i>[Inventory</i>	<i>Means the list of items, tooling or goods prepared by the Contractor for the purpose defined in the Contract.]</i>
<b>Irregularity</b>	Means any infringement of a provision of European Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the European Union's budget or a budget managed by the European Union.
<b>Items</b>	Means the goods and associated services to be provided under the Contract as referred to in Article 0.1 ( <i>Subject Matter</i> ).
<b>ITER Agreement</b>	Has the meaning set forth in the recitals.
<b>ITER Annex on Information and Intellectual Property</b>	Has the meaning set forth in Section 2.3 of Annex C ( <i>Intellectual Property Provisions</i> ).
<i>[ITER Immunities and Privileges Agreement</i>	<i>Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project<sup>4</sup> (AD02)]</i>
<b>ITER IO</b>	ITER International Fusion Energy Organization
<b>Kick-Off Meeting</b>	Is defined in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<i>[Model Transportation Contract</i>	<i>Means the Model Contract between the Contractor and the Designated Carrier (Applicable Document AD07).]</i>
<b>Nonconformity</b>	Is defined in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Notice of Referral</b>	Has the meaning set forth in Article II.27.2 ( <i>Settlement of Disputes</i> ).
<i>[Options</i>	<i>Has the meaning set forth in Article I.3 (Options).]</i>
<b>Party</b>	Means contracting party to the Contract.
<i>[Performance Guarantee</i>	<i>Has the meaning set forth in Article II.4.6 (Guarantees).]</i>
<i>[Point of Origin</i>	<i>Has the meaning set out in the Model Transportation Contract (AD07).]</i>
<i>[Pre-financing Payment</i>	<i>Has the meaning set forth in Article I.8.1 (Pre-financing Payment).]</i>
<b>Professional Conflicting Interest</b>	Means a situation in which the Contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.
<b>Project Manager</b>	Has the meaning set forth in Article I.11 ( <i>Representatives</i> ). There is one Project Manager appointed by Fusion for Energy and one Project Manager appointed by the Contractor.

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<sup>4</sup> OJ L 358, 16.12.2006, p. 62



<b><i>[Protection Important Activity (PIA)</i></b>	<i>Has the meaning set forth in the Supplier Nuclear Safety Management Requirements (AD10)]</i>
<b><i>[Protection Important Component (PIC)</i></b>	<i>Has the meaning set forth in the Supplier Nuclear Safety Management Requirements (AD10)]</i>
<b><i>[Qualified Provider</i></b>	<i>Means any economic operator other than Subcontractor, who does not perform part of the Contract, but who enters into a legal commitment with the Contractor to provide resources that will be used for the performance of the Contract [as follows: insert criteria (volume, amount, type of material/ or list of Qualified Providers).]</i>
<b>Referral Notice</b>	Means the formal document notified by a Party to the other for resolution of a Dispute by the Senior Representatives of the Parties.
<b>Release Note</b>	Has the meaning set forth in section II.6 of Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Remedial Action</b>	Has the meaning set forth in Applicable Document AD01 ( <i>Supplier Project Management and Quality Requirements</i> ).
<b>Repair</b>	Means bringing the Items into conformity with the Contract.
<b>Representatives of Fusion for Energy</b>	Has the meaning set forth in Article II.7.2 ( <i>Checks and Access Rights</i> ).
<b>Review Period</b>	Means a period of <i>[1/2/3 months]</i> starting from the Commencement Date to review the Contract and its Annexes.
<b>Senior Representative</b>	Means a representative of either Party at a senior executive level, appointed by that Party to attempt to resolve any Dispute in accordance with Article II.27.2 ( <i>Settlement of Disputes</i> ).
<b>Significant Organisational Change</b>	Means any of the following events: (i) the sale of more than 50% (fifty percent) of the Contractor's authorized or issued capital stock or any equivalent thereof, (ii) the sale, lease, exchange, or other disposition of all or substantially all of the Contractor's assets, (iii) the merger, consolidation, or reorganization of the Contractor with or into another entity, (iv) the change of a Subcontractor <i>[or Qualified Provider]</i> ; (v) a change in the Contractor's legal, financial, technical or organisational situation which could adversely affect, alter, or impair the rights and/or interests of Fusion for Energy under or pursuant to the Contract and (vi) where the Contractor is a consortium, also any of the following: (i) a change in the lead firm representing the consortium, or (ii) a change in the composition of the consortium. Where the Contractor is a consortium, all events under (i) to (v) refer to any of its members.
<b><i>[Special Purpose Tooling</i></b>	<i>Has the meaning set forth in Article I.17.1 (Special Purpose Tooling Supplied by the Contractor and Paid by Fusion for Energy).]</i>
<b>Staff</b>	Means individuals involved in the performance of the Contract. It includes the individuals employed or hired by the Contractor from time to time.
<b>Subcontractor</b>	Means an economic operator, that is not a Party

	to the Contract and that enters into a legal commitment with the Contractor to perform part of the Contract.
<b>Substantial error</b>	Means any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union's budget.
<b>Total Contract Price</b>	Has the meaning set forth in Article I.6.3 ( <i>Prices</i> ).
<b>Warranty</b>	Means the Contractor's commitment, without extra charge, to bring the Items into conformity, by repair or replacement, if they do not meet the specifications set out in the Contract, or to reimburse the respective part of the Total Contract Price paid.
<b>Warranty Period</b>	Means 2 (two) years from the date of Final Acceptance of the Items or, in case of early termination of the Contract, for 2 (two) years from the effective date of termination (the "Warranty Period").

## I.2. SCOPE

- I.2.1.** The scope of the Contract is the supply of [•] (the "**Items**") as described in Annex B (*Technical Specifications*).
- I.2.2.** The Contractor shall supply the Items and related goods and services in accordance with the provisions of the Contract.

## I.3. [OPTIONS]

- I.3.1.** *Fusion for Energy may request the Contractor to supply the following optional items and/or to perform the following optional services (together the "**Options**"):*
- (a) *Option [.] – Storage of the Items / Optional Items [...] in accordance with Article I.3.8;*
  - (b) *Option [.] – Assembly and Installation of the Items [...] in accordance with Article [...]*
  - (c) *[...]*
- I.3.2.** *The release of each of the Options shall be subject to a written instruction through DACC by Fusion for Energy. Such written instruction shall:*
- (a) *explicitly inform the Contractor that Fusion for Energy has decided to exercise 1 (one) or several of the Option(s);*
  - (b) *indicate the date on which exercise of the Option(s) shall enter into force;*
  - (c) *indicate the date on which performance of the Option is to commence or to be agreed by the Parties;*
  - (d) *any other matter relevant for the release of the Option;*
- I.3.3.** *Performance of the Options may under no circumstances start before the date indicated in the instruction. The Contractor shall perform the exercised Options in accordance with the provisions of the Contract.*
- I.3.4.** *Fusion for Energy may exercise the Options within the time frame specified below [or as specified in Annex [★]]:*
- (a) *With respect to Option [★], within [★] months of [the Commencement Date or [★]];*

(b) *With respect to Option [★], within [★] months of [the Commencement Date or [★].]*

- I.3.5.** *The duration of the Options [★]-[★] shall be [as follows/or as specified in Annex [★] (•)]:*
- (a) *Option [★]: [★] months from the Commencement Date/from the date on which performance of the Option is to commence;*
  - (b) *Option [★]: [★] months from the Commencement Date/from the date on which performance of the Option is to commence.]*
- I.3.6.** *The release of any of the Options is subject to Fusion for Energy's sole discretion. The Contractor shall not be entitled to any compensation, should Fusion for Energy decide not to exercise one or several of the Options.*
- I.3.7.** *Should Fusion for Energy exercise any Option, requests for payments of such Option shall be admissible together with any of the payment periods referred to in Article I.8 (Payment Arrangements), after completion of the option and approval by Fusion for Energy of the ADP for that Option, unless otherwise indicated in Article I.8.5 (Payment Arrangements) of the Contract or otherwise indicated by Fusion for Energy in the written instruction.*
- I.3.8.** *Should Fusion for Energy release Option [.] and request postponement of delivery of the whole or part of the Items, the Contractor shall provide storage and appropriate maintenance of the Items concerned under its own responsibility for a period of maximum [number in figures and words] months dating from the initial date of delivery. During such storage period the Items shall be at the Contractor's risk.*
- I.3.9.** *Should Fusion for Energy release Option [.] , payment periods, payment modalities and Final Acceptance of the Items shall be modified and agreed in good faith by the Parties by means of an amendment to the Contract. It is understood that the modification of the payment periods shall reflect the proportion of the task achieved and accepted by Fusion for Energy in accordance with the requirements of the Contract) and the proportion of tasks still to be completed, such as transportation.]*

#### **I.4. ENTRY INTO FORCE AND DURATION**

- I.4.1.** The Contract shall enter into force on the date on which it is signed by the last Party (the "**Commencement Date**").
- I.4.2.** Performance of the Contract may under no circumstances begin before the Commencement Date.
- I.4.3.** Performance of the Contract shall last until completion of the obligations of the Parties under the Contract without prejudice to Article I.22 (*Survival of Obligations*). Performance of the Contract shall be consistent with the milestones set out in Section [★] of Annex B (*Technical Specifications*).

#### **I.5. DELIVERY**

- I.5.1.** The Items shall be delivered in accordance with the schedule and milestones referred to in Section [★] of Annex B (*Technical Specifications*).
- I.5.2.** The Contractor shall notify Fusion for Energy of the exact date of delivery at least [number in figures and words] days in advance, before shipment of the Items. The Contractor shall not dispatch any Items until it has reached a prior agreement with Fusion for Energy on the scheduled date for shipment. The Contractor shall bear the financial consequences of any delivery made without Fusion for Energy's prior approval.

**I.5.3.** The Items shall be delivered [*D D P (INCOTERMS 2020)*<sup>5</sup>] at [*named place of destination*]. Delivery shall be on working days between [*\**] a.m. and [*\**] p.m. Fusion for Energy reserves the right to change the delivery address [*to another location in the EU*] no later than 6 (six) months before the scheduled delivery of the Items. The Contractor is entitled to the payment of duly documented Costs that are directly caused by the change of delivery address communicated less than 6 (six) months before the scheduled delivery of the Items. [*In the event Option [.] is released, Optional Items shall be delivered [appropriate INCOTERMS reference] at [named place of destination][Include any other specific rules regarding the place and time of delivery]. .]*]

**I.5.4.** The delivery of Items shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier. One copy of the consignment note shall be received by Fusion for Energy before delivery of the Items.

One copy of the consignment note shall be countersigned by Fusion for Energy and returned to the Contractor or to its carrier. The consignment note shall mention at least the following:

- (a) the Contract reference number;
- (b) the Contractor's name;
- (c) the detailed list of Items indicating the number of packages, their gross and net weight and, if applicable, the TARIC or HSIS Code;
- (d) the reference numbers of the parts and corresponding drawings;
- (e) identification of hazardous products and materials;
- (f) identification of Dual-use Items.
- (g) the destination of each deliverable ;
- (h) the date of dispatch;

## **I.6. PRICES**

**I.6.1.** The amount payable by Fusion for Energy for supply of all Items, performance of all associated tasks and all related obligations in accordance with the Contract [*, excluding Options,*] is: EUR [*amount in figures and in words*] (the "**Contract Price**").

**I.6.2.** [*The amount[s] payable by Fusion for Energy for the Options are:*

- (a) *Option 1: EUR [amount in figures and words] [broken down in EUR [amount in figures and words] per month/week/Day/XX];*
- (b) *Option 2: EUR [amount in figures and words] [broken down in EUR [amount in figures and words] per month/week/Day/XX].*
- (c) [*...*]

**I.6.3.** The Total Contract Price is the sum of the Contract Price and the price of any released Option ("**Total Contract Price**").

**I.6.4.** All prices are expressed in EURO.]

## **I.7. [INDEXATION**

**I.7.1.** [*N/A*] or [*From the second anniversary of the Commencement Date, indexation may be applied, once a year, at the request of one of the Parties. The request must be made*

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<sup>5</sup> Instructions on I.5.3: Insert the correct Incoterm taking into account the requirements of the relevant PA.

*in writing and must be received by the other Party at the latest on 30 September of the year prior to the Calendar Year from which the application of indexation is requested.*

- I.7.2.** *The indexation applies to the invoices associated with ADP(s) that are submitted to Fusion for Energy from the second anniversary of the Commencement Date. Any subsequent indexation applies to the invoice associated with ADP(s) that are submitted during the Calendar Year following the request.*
- I.7.3.** *The indexation coefficient is determined by application of the following formula using [indicate appropriate index as defined in Indexation Policy] published by [see Indexation Policy: e.g. the Office for Official Publications of the European Union in the EUROSTAT monthly bulletin at <http://www.ec.europa.eu/eurostat>].*

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

*where:*

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

*A = [the portion of the Contract that is not indexed].*

*B, C, D = [the portion(s) of the Contract that is/are indexed]*

*n1(r), n2(r), n3(r) = the current indexes. Each of them is an average calculated on the basis of the last 3 indexes published by 30 September prior to the Calendar Year in which the indexation coefficient applies.*

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

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

## **I.8. PAYMENT ARRANGEMENTS**

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

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

*[Fusion for Energy shall pay the Contractor a pre-financing payment of EUR [amount in figures and words] [corresponding to 10/20/30 % (ten/twenty/thirty percent)] of the amount referred to in Article [I.6.1 (Contract Price)/ I.6.2(a)] (the "Pre-financing Payment"), in accordance with Article II.2, upon receipt of a [within 30 (thirty) days of receiving the] corresponding valid invoice.*

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

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

*[Interim payment is not applicable to this Contract.]*

*[Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [□] % ([□] percent) of the amount referred to in Article [I.6.1/I.6.2(a)] [minus the Pre-financing Payment [if applicable]/minus [a percentage] of the Pre-financing Payment], in accordance with II.2, upon receipt of:*

- 1) an invoice;
- 2) the ADP related to milestone [ ] referred to in Section [ ] of Annex B (Technical Specifications).

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

Fusion for Energy shall pay the Contractor the balance payment of EUR [amount in figures and words] [corresponding to [ \*] % ([ \*] percent) of the amount referred to in Article [I.6.1/I.6.2Error! Reference source not found.]], in accordance with article II.2, upon receipt of:

- 1) an invoice
- 2) the ADP related to milestone [ ] referred to in Section [ ] of Annex B (Technical Specifications).

#### **I.8.5. [Payment of the Options**

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

### **I.9. GUARANTEES**

[Guarantees are not applicable]

- I.9.1.** *[If the amount of the Pre-financing payment equals or exceeds EUR 300,000 (three hundred thousand Euro), the Contractor must provide a Pre-Financing guarantee for the amount of EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.4.][By derogation to Article II.4.2, the Pre-financing Guarantee may be replaced by a first demand guarantee by a third party, after prior acceptance by Fusion for Energy and subject to the conditions it determines].*
- I.9.2.** *[A Performance Guarantee constituted in accordance with the conditions laid down in Article II.4 (Entry into Force and Duration) is requested for the amount of EUR [amount in figures and in words<sup>6</sup>]. By derogation to Article II.4.2 (Entry into Force and Duration), the Performance Guarantee may be replaced by a first demand guarantee by a third party, after prior acceptance by Fusion for Energy and subject to the conditions it determines].*
- I.9.3.** *[A Retention money guarantee is requested for an amount of EUR [amount in figures and in words]<sup>7</sup> and constituted by a corresponding deduction from the final payment. At the request of the Contractor and subject to approval by Fusion for Energy, the deduction on payment may be replaced by a first demand bank guarantee in accordance with the conditions laid down in Article II.4 (Entry into Force and Duration).]*

### **I.10. BANK ACCOUNT**

**I.10.1.** Payments shall be made to the following Contractor's bank account denominated in Euro:

Name of bank: [complete]

Address of branch: [complete]

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<sup>6</sup> Instructions: The performance guarantee shall be at least 5% but may not exceed 10 % of the Total Price of the Contract.

<sup>7</sup> Instructions: The retention money guarantee shall be at least 5% but may not exceed 10 % of the Total Price of the Contract.

Account holder: *[complete]*

IBAN code: *[complete]*

Any request for modification of the Contractor’s bank account shall be made by letter duly accompanied by all the supporting documents. Unless otherwise indicated by Fusion for Energy, any modification of the Contractor’s bank account shall be approved through DACC.

**I.11. REPRESENTATIVES**

**I.11.1. Fusion for Energy’s Project Manager**

Fusion for Energy appoints the following Project Manager for the Contract.

*[insert name of Project Manager<sup>8</sup>]*

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.

**I.11.2. Contractor’s Project Manager**

The Contractor nominates *[name]* its Project Manager responsible for coordinating the performance of the Contractor’s obligations under the Contract. The Contractor’s Project Manager shall have the authority to perform such tasks and represent the Contractor under the Contract.

*[The Contractor nominates the following additional key persons:*

*Technical person responsible for [★]: [name];*

*[Commercial person responsible for [★]: [name]].*

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

**I.11.3.** The Parties shall give prior written notice of any modification of their Representatives listed in this Article at least 15 (fifteen) days prior to any modification.

**I.11.4.** Any modification of the Contractor’s Project Manager and/or additional key persons shall be subject to prior written approval by Fusion for Energy.

**I.11.5.** All communications between the Contractor and Fusion for Energy shall be in accordance with the following arrangements:

Fusion for Energy	Contractor
<p><i>[name of the Project Manager]</i></p> <p>Contract number: [★]</p> <p>The European Joint Undertaking for the Development of ITER and Fusion Energy (‘Fusion for Energy’)</p> <p>C/ Josep Pla 2</p> <p>Torres Diagonal Litoral</p>	<p><i>[include address]</i></p>

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<sup>8</sup> Important instruction: F4E’s Project Manager must have a proper financial delegation according to F4E delegation scheme

Building B3 08019 Barcelona Spain	
For technical matters	
<i>[Insert Title.]: [name]</i>  In copy to: <i>[name]</i>  <i>[and add the Commercial Manager M in case the technical matters have a commercial impact]</i>	Project Manager or its office: <i>[name]</i>  <i>[In copy to: additional key persons [name(s)]]</i>
For commercial matters	
<i>[Insert Title.]: [name]</i>  In copy to: <i>[Insert Title] [name]</i>	Project Manager or its office: <i>[name]</i>  <i>[In copy to: additional key persons [name(s)]]</i>

## I.12. TRANSPORTATION, PACKING AND IMPORTATION FOR THE ITEMS TO BE DELIVERED BY THE CONTRACTOR<sup>9</sup>

- I.12.1.** [N/A] or *[The Contractor shall enter into the Model Transportation Contract (Applicable Document AD07) with the Designated Carrier, under its own responsibility, for the shipment of the Items from the Point of Origin to the Delivery Location. The Contractor shall comply with the terms set out in Annex E (Terms of Reference for the Use of the Designated Carrier).<sup>10</sup>]*
- I.12.2.** Unless otherwise explicitly specified in the Contract, all packing materials, including pallets, delivered by the Contractor shall be considered as non-returnable and their cost as having been included in the Total Contract Price.
- I.12.3.** The Items shall be packaged in an appropriate way avoiding damage to or deterioration of its content *[and in accordance with the requirements set out in Section [★] of Annex B (Technical Specifications)] [and other specifications if applicable]*. Procedure for packaging and transportation shall be subject to prior written approval of Fusion for Energy. This approval shall not release the Contractor of its obligations under the Contract.

Each box shall be clearly labelled with the following information:

- Fusion for Energy and address for delivery;
- name of the Contractor;
- reference number of the Contract

<sup>9</sup> Instruction on I.13: Specific provisions are necessary where transportation concerns Highly Exceptional Loads (HEL). Please consult the Legal Officer.

<sup>10</sup> Instruction on I.13.1: Select [N/A] in case the transportation agreement with DAHER does not apply. Please see [Link to relevant MANUAL section for scope of application].



- description of contents;
- date of delivery;
- EC code number of article, if applicable.

- I.12.4.** *[The Contractor is responsible for the completion of all formalities for the transport, including the transit of the Items through any country, in compliance with Articles 5 and 6 of the ITER Immunities and Privileges Agreement. The Contractor shall provide any requested documentation to Fusion for Energy]. [The Deliverables shall be clearly labelled and accompanied by any required documentation stating that export is on behalf of the ITER International Fusion Energy Organization (the "ITER IO"). If delivery is delayed due to missing required documents, the resulting additional expenses, such as demurrage and storage, shall be borne by the Contractor.]*
- I.12.5.** *[N/A] or [Without prejudice to the right of recourse of the Contractor against the Designated Carrier pursuant to the Model Transportation Contract, the Contractor shall remain fully responsible for the transportation of the Items in accordance with the Contract].*
- I.12.6.** *[N/A] or [The Contractor shall take out the appropriate insurance for the Items during transportation. Upon request, the Contractor shall provide Fusion for Energy with copies of the corresponding insurance certificate and evidence that the premium was paid and that the policy is in force].*

### **I.13. LIABILITY**

#### **I.13.1. Contractor's Liability**

The Contractor is liable to Fusion for Energy for any loss or damage arising caused directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor's liability under the Contract shall not exceed *[1 (one) time]* the Total Contract Price, subject to the sole exceptions set out below.

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

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

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

#### **I.13.2. Third Party Actions**

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

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

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

The ITER IO is not considered a third party for the purposes of this Article, unless the damage or loss suffered by the ITER IO was caused by the Contractor's wilful misconduct or gross negligence. In such a case, the Contractor's liability is limited to the amount indicated in Article I.13.1 (*Contractor's Liability*), subject to the exceptions mentioned therein.

### **I.13.3. Group of Economic Operators**

If the Contractor is a group of economic operators, with or without legal personality, each of the economic operators forming such group is jointly and severally liable to Fusion for Energy for any loss or damage arising as a result of the performance or breach of the Contractor's obligations by any of them, under the conditions established in Article I.13.1 (*Contractor's Liability*).

### **I.13.4. Fusion for Energy's Liability**

Notwithstanding anything to the contrary contained in this Contract, Fusion for Energy shall not be liable for any loss or damage sustained by the Contractor during or as a consequence of performance of the Contract, unless the loss or damage was caused by wilful misconduct or gross negligence of Fusion for Energy.

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

### **I.13.5. [Nuclear Liability]**

*The Parties hereby acknowledge that nuclear fusion installations are currently not covered by international nuclear liability conventions and that ITER IO assumes, by virtue of the declaration in the Applicable Documents (AD04 - Declaration regarding Nuclear Liability of ITER IO), the responsibility of a nuclear operator for indemnifying the Contractor in the event of claims, damage and losses caused by radiological damage arising from a nuclear incident as defined by the Paris Convention 'Third Party Liability in the Field of Nuclear Energy' of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982.]*

## **I.14. INSURANCE**

**I.14.1.** The Contractor shall take out suitable insurance against risk and damage or loss relating to the performance of the Contract as required by the relevant applicable legislation as well as any additional insurance policy reasonably required by the best practices in the industry, taking into account the specificities of the Contract.

**I.14.2.** *[In any case, without limiting the obligation defined in Article **Error! Reference source not found.** (Liquidated Damages), the Contractor shall effect and maintain the following insurance in accordance with the standards defined above:*

- (a) Third party and public liability insurance to cover the liability the Contractor may incur relating to performance of the Contract, with a limit of indemnity of at least EUR [x] for any single occurrence and at least EUR [x] in the yearly aggregate, notwithstanding any termination of the present Contract.*
- (b) Professional indemnity insurance without unusual or onerous conditions or excesses to cover the liability the Contractor may incur relating to performance of the Contract, including, if applicable, joint and several liability of the members of the group and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty*

*execution, with a limit of indemnity of not less than EUR [x] for any single occurrence and of not less than EUR [x] in the yearly aggregate, notwithstanding any termination of the present Contract ]*

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

**I.14.3.** The insurance policies listed above shall cover the duration of the obligations of the Contractor and allow direct payment of the compensation for the insured damage suffered. The Contractor shall provide the necessary support for the execution of the policy, including payment of self-insured retentions or deductibles, in case such payments are necessary.

**I.14.4.** Upon request, the Contractor shall provide evidence of effective insurance coverage [*including the policies listed in article I.14.2 (Insurance)*] to Fusion for Energy and, in any case, shall timely inform Fusion for Energy in case of modification to the mentioned policies.

**I.14.5.** For avoidance of doubt, demonstration by the Contractor of the fulfilment of this Article I.14 and disclosure of effective insurance coverage to Fusion for Energy does not in any way relieve the Contractor from its other obligations and from its liability under the Contract.

**I.14.6. [Contract Implementation on the ITER site in Cadarache**

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

*[The ITER Organization has contracted a construction insurance policy to cover the risk of physical loss or damage to the building and equipment for the duration and according to the terms set out in the insurance certificate annexed to the Contract as AD05 [Insurance Certificates]. Fusion for Energy has no obligation to cause such insurance policy be maintained until the Items are accepted in accordance with the Contract.*

*Insurance indemnification is jointly handled by Fusion for Energy and the ITER Organization in accordance with the insurance claims procedure and managed through the insurance claims officer, with payment to be made to the insured which suffered the loss. The deductible is borne by the insured party, without any determination of the liability for the damage.*

*The insured party bearing the deductible shall be responsible for recovering such deductible from any other liable person, without any impact on the implementation of the Contract. In case of several contractors suffering the loss, the deductible is shared pro rata between the contractors.*

*Fusion for Energy has the right to modify unilaterally the terms contained in AD05 [Insurance Certificates] by means of a written notice sent 30 (thirty) days prior to the entry into force of such modification. If required by Fusion for Energy, the Contractor shall take out any supplementary insurance. If the Contractor incurs additional Cost as a result of such modification, it shall be entitled to payment of these Costs to the extent they are reasonable upon submission of the relevant evidence in a Deviation Request.]*

**I.15. LIQUIDATED DAMAGES**

**I.15.1.** Where the due date is not met for [*Deliverables/milestones [ \* ] defined in Section [ \* ] of Annex B (Technical Specifications)*] [*or the implementation of the Corrective Actions related to an ADP linked to a payment as per due date notified in writing by Fusion for Energy*] and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to [*\**]% ([*\**])

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

- I.15.2.** Without prejudice to Fusion for Energy's right to terminate the Contract in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*), the liquidated damages payable under this Article constitute the sole remedy available to Fusion for Energy in respect of delay up to the maximum amount indicated in Article I.15.1 (*Liquidated Damages*). From the Day the maximum amount of payable liquidated damages is reached, Fusion for Energy shall be entitled to compensation for any loss or damage resulting from any additional delay attributable to the Contractor, under the conditions set out by Article I.13 (*Liability*).
- I.15.3.** [N/A] [By derogation to article I.15.1, where the [completion date/any other milestone] is not met due to a delay in transportation caused by the Designated Carrier and not attributable in whole or in part to an act or omission of the Contractor, the amount of liquidated damages payable by the Contractor pursuant to Article I.15.1 (*Liquidated Damages*) is reduced to the amount set out in Article 9 (*Terms of Delivery and Delay Damages*) of the Model Transportation Contract (Applicable Document AD-07).]
- I.15.4.** Fusion for Energy shall formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) Days following the date of receipt of the Notification to submit observations or any longer period communicated by Fusion for Energy. Failing that, the decision becomes enforceable the Day after the time limit for submitting observations has elapsed. If the Contractor submits observations, Fusion for Energy, taking into account the relevant observations, shall notify the Contractor of: (a) the withdrawal of its intention to apply liquidated damages; or (b) its final decision to apply liquidated damages and the corresponding amount.
- I.15.5.** The Parties expressly agree and acknowledge that any amounts payable under this Article I.15 (*Liquidated Damages*) represent a reasonable estimate of fair compensation for the damages and losses that may be reasonably anticipated by Fusion for Energy from the above-mentioned delays of the Contractor.

#### **I.16. [FREE-ISSUE ITEMS DELIVERED TO THE CONTRACTOR]**

- I.16.1.** All supplies delivered to the Contractor by Fusion for Energy or third parties designated by Fusion for Energy in connection with the Contract (Section [•] of Annex B (*Technical Specifications*)) (the "**Free-issue Items**"), shall never become the property of the Contractor and shall be used only for the performance of the Contract and for no other purpose whatsoever, without prior approval in writing by Fusion for Energy.

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

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

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

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

*Free-issue Items will be clearly labelled and delivered with the official documentation mentioning that export is on behalf of ITER IO. The Articles 5 and 6 of the ITER Immunities and Privileges Agreement shall apply and then Free-issue Items will be exempt from all duties and taxes.*

- I.16.2.** *For these Free-issue Items belonging to Fusion for Energy, or to ITER IO, or a Domestic Agency, the Contractor shall be responsible for the custom clearance and formalities, the unloading and, as may arise, free-storage on site. The transfer of risks to the Contractor shall happen at the moment the goods are made available to him at the place of destination, in accordance with the INCOTERMS referred to in this Article I.16.1 (Free-issue Items Delivered to the Contractor).*

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

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

- I.16.3.** *In relation with the technical acceptance of the Free-issue Items delivered to the Contractor on behalf of Fusion for Energy by a third party designated by Fusion for Energy, provisions in Annex B (Section [•] of Annex B (Technical Specifications)) are applicable.*

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

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

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

- I.16.4.** *The Contractor must prove the existence of a Nonconformity and that the Nonconformity is not attributable to it. Normal wear and tear shall not be considered as Nonconformity.*

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

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

- I.16.5.** *Fusion for Energy commits itself to deliver the Free-issue Items at the latest by the dates indicated in Article I.16.1 (Free-issue Items Delivered to the Contractor).*

*[If Fusion for Energy fails to deliver the Free-Issue Items within said time limits, the Parties shall negotiate in good faith a compensation to be paid by Fusion for Energy for any reasonable and evidenced direct damage incurred by the Contractor, for which the Contractor shall provide duly documented evidence. The negotiations related to the determination of the extra costs shall not constitute a cause of delay on the part of the Contractor for the performance of the Contract. In addition, should the parties fail to reach an agreement on the determination of the costs, this shall not be deemed a cause of termination of the Contract on the part of the Contractor. In the absence of an agreement Article II.27 (Settlement of Disputes) shall apply.]*

OR

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

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

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

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

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

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

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

#### **I.16.6. Return of the Free-Issue-Items]**

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

### **I.17. [SPECIAL PURPOSE TOOLING SUPPLIED BY THE CONTRACTOR AND PAID BY FUSION FOR ENERGY**

#### **I.17.1. Definition and Ownership**

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

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

*At any stage before Fusion for Energy informs the Contractor if the Special Purpose Tooling shall be disposed of Fusion for Energy may propose to sell the Special Purpose Tooling or any part thereof to the Contractor. Should the Contractor be interested, the Parties shall determine in good faith the resale value of the Special Purpose Tooling to be transferred to the Contractor. Such value shall be set off against the amount of the next invoice issued by the Contractor.*

*In case Fusion for Energy wishes to take possession of the Specific Purpose Tooling or part of it, the Contractor shall deliver the Specific Purpose Tooling EXW (INCOTERMS 2020) at its premises.*

#### **I.17.2. Inventory and Identification**

*The Special Purpose Tooling shall be identified in an inventory list (the "Inventory"). The Contractor shall maintain the Inventory and an up-to-date utilisation account of the Special Purpose Tooling placed under its control until Fusion for Energy has provided the communication on disposal referred to in Article I.17.1.*

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

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

#### **I.17.3. Liabilities with Regards to the Special Purpose Tooling**

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

*The Contractor shall be responsible for providing maintenance in good work conditions, surveillance, and guarding for them at its expense until Fusion for Energy has provided the communication on disposal referred to in Article I.17.1.*

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

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

#### **I.17.4. Use of the Special Purpose Tooling**

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

### **I.18. TRANSFER OF OWNERSHIP AND TRANSFER OF RISKS**

#### **I.18.1. Transfer of Ownership**

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

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

#### **I.18.2. Transfer of risks**

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

It shall affect insurance to the extent necessary to cover the risk of such loss or damage in accordance with the specific conditions of Article I.14 (*Insurance*).

### **I.19. INTELLECTUAL PROPERTY**

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

### **I.20. PROCESSING OF PERSONAL DATA**

#### **I.20.1. Processing of personal data by Fusion for Energy**

For the purpose of Article II.10:

- (a) the Data Controller is [*insert Fusion for Energy responsible “organizational entity”, i.e. unit/function (.....@f4e.europa.eu).*]
- (b) the data protection Privacy Notice (PN) is available at: [*insert the respective PN(s) on procurement / contract implementation / claims etc.*]

#### **I.20.2. Processing of personal data by the Contractor**

For the purpose of Article II.10:

- (a) the subject matter and purpose of the processing of personal data by the Contractor are [*provide a short and concise description of the subject matter and purpose*];
- (b) The localisation of and access to the personal data processed by the Contractor shall comply with the following<sup>11</sup>:
  - i. the personal data shall only be processed within the [territory of the European Union] and will not leave that territory;
  - ii. the data shall only be stored (incl. 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 Fusion for Energy envisaged during the period of implementation of the Contract must be communicated in advance to Fusion for Energy;
  - iii. the Contractor may not change the location of data processing without the prior written authorisation of Fusion for Energy;
  - iv. any transfer of personal data under this Contract to third countries or International Organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.

### **I.21. APPLICABLE LAW**

The Contract shall be governed by the Community and European Union law, complemented by national substantive law of Spain, other than its rules of private international law (conflict of law/renvoi rules). National substantive law of Spain shall prevail over the law of an autonomous Region. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) adopted in Vienna on 11 April 1980 does not apply to the Contract.

### **I.22. SURVIVAL OF OBLIGATIONS**

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<sup>11</sup> This clause may be further adapted on the basis of a risk assessment related to the processing of personal data for the relevant contract.



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 I.13 (*Liability*), Annex C (*Intellectual Property Provisions*), Article II.13 (*Warranty*), Article II.23 (*Checks and Audits*) and Article II.24 (*Confidentiality*), shall survive the termination or expiration of the Contract.

**[OTHER SPECIFIC PROVISIONS]**

**I.23. [Warranty for Limited Occurrences**

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

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

**I.24. [Qualified Providers**

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

**I.25. [ASSEMBLY AND INSTALLATION**

**I.25.1.** *The Contractor shall assemble [and install] the Items in accordance with Section [•] of Annex B (Technical Specifications) and the [Common Site Rules<sup>12</sup> (AD-10)] within a period of [•] month(s), unless otherwise specified in the Contract.*

**I.25.2.** *[Insert any derogating rule to INCOTERM and/or Article I.18.1 (Transfer of Ownership), Article I.18.2 (Transfer of Risk) and Article I.5.3 (Delivery)]. In the event that prior storage under ITER IO's responsibility is needed, a transfer of risk for any loss or damage of the Items to ITER IO shall occur at delivery, upon visual inspection and acceptance by ITER IO. During the storage period under IO's responsibility, ITER IO shall bear the risks for any damage, loss or destructions of any or all of the Items that are under its possession. Upon the end of this storage period, all risks of loss and damage shall be transferred to the Contractor until the relevant Acceptance of those Items as specified in Section [•] of Annex B (Technical Specifications).*

**I.25.3.** *The Contractor shall be responsible for any loss or damage during assembly and installation of the Items and shall affect insurance as may be necessary to cover the risk of such loss or damage from any cause.*

**I.25.4.** *Any lack of conformity resulting from incorrect assembly and/or installation of the Items delivered shall be deemed to be equivalent to lack of conformity of the Items if the Items were assembled and/or installed by the Contractor or under its responsibility. This shall apply equally if the Items were to be installed by Fusion for Energy and were incorrectly installed owing to a shortcoming in the installation instructions.*

**[...]**

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<sup>12</sup> *Instructions: Please note that this name may change as the ITER IO/Fusion for Energy Working Group has not finalised the development of the whole documentation package for A&I. Another name under consideration is Contractor's Work Handbook.*

## **II. GENERAL CONDITIONS**

### **II.1. PERFORMANCE**

#### **II.1.1. General Performance Requirements**

- (a) The Contractor shall perform the Contract with due skill, care and diligence, in accordance with the high professional standards that can be expected from an experienced contractor in the field of the Contract.
- (b) The Contractor shall follow the instructions of Fusion for Energy given in writing by Fusion for Energy's Project Manager. If the Contractor receives instructions that jeopardize the economic, expeditious and/or 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.
- (c) The Contractor shall neither represent Fusion for Energy nor behave in any way that would give such an impression. The Contractor shall inform third parties that it and its employees do not belong to the European public service.

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

- (a) The Contractor shall ensure that Staff performing the Contract (including those of Subcontractors) have the professional qualifications, skills and experience required by the Contract. The Contractor shall have sole responsibility for Staff performing the Contract. The Contractor has the obligation to manage the team performing the Contract.
- (b) Upon request of Fusion for Energy, the Contractor shall justify the deployment of human resources, regarding the number and the professional qualification of Staff involved in the performance of the Contract.
- (c) The Contractor has the sole responsibility for complying with any applicable legal obligations with respect to its Staff and the Staff of its Subcontractor, notably those resulting from employment, tax, social security, health and safety legislation. The Contractor shall indemnify and hold Fusion for Energy harmless from any claim in that respect, including claims related to salary, tax, social security and health and safety obligations of the Contractor. If requested by Fusion for Energy, the Contractor shall submit copies of forms evidencing compliance with the aforementioned obligations.
- (d) The Contractor shall keep at all times in the site the legally required books and records containing information on its Staff and those of its subcontractors working on the site. Fusion for Energy shall have access to the information contained in such registry book.
- (e) The Contractor shall ensure that: (1) Staff performing the Contract 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.
- (f) The Contractor shall make all reasonable efforts to minimize the risk of labour-related delays or disruption of the work. The Contractor shall promptly take all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labour jurisdictional disputes.

The Contractor shall promptly inform Fusion for Energy in writing of any actual or potential labour dispute, known to the Contractor, that could materially affect the performance of the Contract (including by its subcontractors). Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labour dispute shall be at the discretion of the Party having the difficulty.

- (g) The Contractor shall replace a Staff member without delay in case an action or omission of that Staff member causes disruption or in case a Staff member does not have the expertise required by the Contract.
- (h) Fusion for Energy has the right to request the replacement of any member of Staff, stating its reasons for so doing. Replacement Staff must have the necessary qualifications and be capable of performing this Contract under the same contractual conditions. The Contractor shall ensure the continuity of the service and the transfer of knowledge from the replaced Staff to the replacement Staff. The Contractor shall be responsible for any delay in the execution of this Contract resulting from the replacement of Staff.

### **II.1.3. Communication**

- (a) Communication relating to the Contract shall be in writing, in English, and shall bear the Contract number.
- (b) All communications shall be done by mail, DACC or email, save as otherwise provided in the Contract. The date of reception of ordinary mail is the date of its registration by Fusion for Energy.
- (c) Any communication or document sent, notified or approved in DACC is considered as equivalent to a paper document in writing with a handwritten signature and shall be admissible as evidence in legal proceedings.

### **II.1.4. Compliance during performance of the Contract**

- (a) The Contractor shall comply with the quality and management requirements laid down in the Annexes and Applicable Documents to the Contract.
- (b) The Contractor shall comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by European Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>13</sup> and compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.
- (c) The Contractor has the sole responsibility for taking the necessary steps to obtain any permit or licence required to perform this Contract under the laws and regulations in force at the place where the Contract is performed.
- (d) The Contractor shall ensure compliance with the health and safety regulations, and standards applicable in the places where the Contract is performed. Any Items supplied must comply with the health and safety regulations, standards and procedure applicable at the place of manufacture and at the place of delivery.
- (e) If the Contract involves Protection Important Components or Protection Important Activities, the Contractor must comply with the requirements set out in the Supplier Nuclear Safety Management Requirements (AD10).
- (f) Where applicable, the Contractor shall be responsible for the implementation of the CE Markings requirements.

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<sup>13</sup> OJ L 94 of 28.03.2014, p. 65

### **II.1.5. Early Warning**

- (a) The Contractor shall promptly notify Fusion for Energy of any event or circumstance that affects or could reasonably be expected to affect the performance of the Contract. Unless a shorter period is foreseen in the Contract, this notification must be done within 10 (ten) Days since the Contractor became aware of such event or circumstance or should have become aware of it.
- (b) The Contractor is responsible for the costs and delays resulting from a breach of the early warning obligations as defined in this article.
- (c) The Contractor shall use its best efforts to mitigate the effect of such event or circumstance on the performance of the Contract.

## **II.2. APPROVAL OF AN ACCEPTANCE DATA PACKAGE LINKED TO PAYMENTS**

**II.2.1.** When the Contractor must submit an ADP linked to a payment, Fusion for Energy has 60 (sixty) days from receipt of the relevant ADP and the relevant request for payment, unless another period of time is foreseen in the Contract:

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

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

If Fusion for Energy rejects the ADP, the Contractor shall submit a new ADP which shall likewise be subject to the above provisions. The deadline for submission of any other ADP and other deadlines set out in the Contract are not affected or deferred due to Fusion for Energy's rejection of a given ADP.

## **II.3. GENERAL PROVISIONS CONCERNING PRICES AND PAYMENTS**

**II.3.1.** Prices include all expenses related to the performance of the Contract. All prices are fixed and firm, not subject to revision during the lifetime of the Contract, regardless of any variations in the prices of materials, equipment or labour, except as otherwise stipulated in the Contract.

**II.3.2.** Payments are made only if the Contractor has fulfilled all its contractual obligations by the date on which the request for payment is submitted.

**II.3.3.** Should the Contractor fail to perform its contractual obligations, Fusion for Energy may – without prejudice to its right to terminate the Contract and any other remedies it may have at law– suspend, reduce or recover payments in proportion to the scale of the non-performance.

**II.3.4.** Fusion for Energy may suspend the payment periods referred to in Article I.8 (*Payment Arrangements*) if the invoice is not admissible. An invoice is not admissible for the following reasons:

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

**II.3.5.** Each invoice submitted by the Contractor must contain the reference number of the Contract, the bank account as detailed in the Contract, the value added tax (VAT)

registration number and, if applicable, a breakdown of the payment amount(s) as foreseen in the Contract (before indexation) and the indexation amount.

- II.3.6. In the event of doubt on the admissibility of the invoice, Fusion for Energy may suspend the time limit for payment for the purpose of further verification, including on-the-spot checks, in order to ascertain, prior to payment, that the invoice is admissible.
- II.3.7. Fusion for Energy shall promptly notify the Contractor of a suspension of the time-limit for payment and provide the reasons therefore. The suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the reasons for suspension are removed. Where the suspension of payment exceeds two months, the Contractor may request Fusion for Energy's decision on whether the suspension must be continued.
- II.3.8. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.
- II.3.9. In the event of late payment, the Contractor is entitled to interest calculated using the European Central Bank's (ECB) reference rate in force on the first Day of the month in which the payment is due, increased by 8 (eight) percentage points. Interest is payable for the period starting on the Day following expiry of the time limit for payment up to the Day of payment. Suspension of payment by Fusion for Energy does not constitute late payment. When the calculated interest is lower or equal to EUR 200, it must be paid only if the Contractor requests it within two months of receiving late payment.

#### II.4. GUARANTEES

- II.4.1. If so required by Fusion for Energy, the Contractor shall provide a guarantee for the performance of its obligations for the amount stipulated in the Contract and in accordance with the form listed under the Applicable Documents to the Contract.
- II.4.2. The guarantee(s) shall be issued in favour of Fusion for Energy by an authorised bank or any other financial institution (the "**Guarantor**") established in 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. It shall be denominated in EURO.
- II.4.3. The Guarantor shall stand as first-call guarantor and shall not require Fusion for Energy to have recourse against the Contractor (the principal debtor).
- II.4.4. The Contractor shall bear the costs of providing the Guarantee and any extension thereof.
- II.4.5. The pre-financing guarantee must remain in force until the pre-financing is cleared against (an) interim payment(s) or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for 3 (three) months after the debit note is sent to the Contractor. Fusion for Energy must release the guarantee within the following month.
- II.4.6. The performance guarantee covers compliance with contractual obligations from the execution of the balance payment, unless another starting date is explicitly provided for in the Contract. Fusion for Energy must fully release the performance guarantee 30 (thirty) Days after expiry of the Warranty Period.
- II.4.7. Retention money guarantees cover full delivery of the supplies in accordance with the Contract including during the Warranty Period. Fusion for Energy must release the Retention money guarantee at the latest after the expiry of the Warranty Period.
- II.4.8. Fusion for Energy may not request a retention money guarantee where it has requested a performance guarantee and not released it.

## II.5. RECOVERY

- II.5.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in Euro upon receipt of the debit note within the time limit specified in the debit note.
- II.5.2.** In the event of failure to reimburse within the time limit specified in the debit note, Fusion for Energy may, after informing the Contractor in writing, recover the amount due by: (a) offsetting it against any amount owed by Fusion for Energy to the Contractor; (b) calling a financial guarantee; (c) taking legal action.
- II.5.3.** In the event of failure to reimburse within the time limit specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.3.9 (*General Provisions Concerning Prices and Payments*). Interest is payable from the Day following the expiry of the time limit up to the Day on which the debt is repaid in full. Any partial payment is first entered against charges and interest for late payment and then against the principal amount.
- II.5.4.** If the Contract is signed by a group of economic operators (joint tender), the group is jointly and severally liable under the conditions set out in Article I.13 (*Liability*). Fusion for Energy first claims the full amount from the leader of the group. If the leader does not (fully) reimburse by the time limit and if the (remaining) amount cannot be offset in accordance with Article **Error! Reference source not found.**(a), Fusion for Energy may claim the full or remaining amount from any other member of the group.

## II.6. TAXATION

- II.6.1.** The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union<sup>14</sup>.
- II.6.2.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Items and services required for performance of the Contract are exempt from taxes and duties, including VAT. The Contractor remains responsible for the proper application of the rules on VAT at the place where it is taxable. Fusion for Energy reserves the right to communicate information on the Contract to the Member State in which the Contractor is liable for VAT.
- II.6.3.** Invoices submitted by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## II.7. CHECKS AND ACCESS RIGHTS

- II.7.1.** For the purpose of checking the performance of the Contract and subject to prior, written notification (which shall not be less than 5 (five) days), Fusion for Energy, or any entity it designates, has the right to carry out onsite checks on the premises of the Contractor. The Contractor, and its Subcontractors, shall grant unlimited and unrestricted access to its relevant facilities and documentation as set out in in Applicable Document AD01 (*Supplier Project Management and Quality Requirements*).

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<sup>14</sup> OJ C 321 E of 29.12.2006 p. 0318-0324

- II.7.2. Fusion for Energy shall notify the Contractor in writing of the names of the persons entitled or designated to perform the checks (the "**Representatives of Fusion for Energy**").
- II.7.3. In carrying out the checks, the Representatives of Fusion for Energy shall comply with the internal rules of procedure, safety and security of the Contractor and Subcontractors as well as any restriction imposed by the applicable safety and security law.
- II.7.4. In addition to the rights of Fusion for Energy set out in Applicable Document AD01 (*Supplier Project Management and Quality Requirements*), Fusion for Energy is entitled to a reasonable number of copies (and unless otherwise indicated by Fusion for Energy, not less than 3 (three) in paper and electronic form of the documents required in accordance with Applicable Document AD01 (*Supplier Project Management and Quality Requirements*) at any time at no cost for Fusion for Energy.
- II.7.5. The Contractor shall provide to the Representatives of Fusion for Energy, at no cost for Fusion for Energy, suitable office accommodation, facilities, appliances, materials and labour as may be required for the purpose mentioned in this Article II.7.
- II.7.6. Nothing under this Article II.7 shall relieve the Contractor of any of its obligations and responsibilities under the Contract.

## II.8. REPORTING AND TESTING

- II.8.1. The Contractor shall provide Fusion for Energy with reports on the progress of performance of the Contract in accordance with the requirements set out in Annex A (*Management Specification*) and Annex B (*Technical Specifications*).
- II.8.2. Should any unforeseen event, action or omission directly or indirectly negatively impact execution of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem, an indication of the date on which it started and the Remedial and Corrective Action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.8.3. The Contractor shall give Fusion for Energy at least 2 (two) weeks' notice in writing of any tests that are to be carried out in accordance with the Contract in the presence of representative of Fusion for Energy, unless otherwise indicated in the Annex A (*Management Specification*) or Annex B (*Technical Specifications*).
- II.8.4. The expenses for 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 have to be repeated for reasons attributable to the Contractor, the Contractor shall pay the additional costs associated with the repetition or extension of the test or for any extra visit.
- II.8.5. If during the course of a test, the representatives of Fusion for Energy wish to make minor modifications to the test procedures or programmes which has no impact on the schedule, i.e. modifications involving little extra work or expense, the Contractor shall not unreasonably withhold its consent. Substantial modifications to test procedures or programmes shall be agreed in good faith by the Parties in advance.
- II.8.6. Each test procedure has to be approved by Fusion for Energy prior to the test. Each test report has to be approved by Fusion for Energy. One copy of the test report shall be delivered to Fusion for Energy within 10 (ten) days from the end date of each test.
- II.8.7. If the Parties disagree on the results of a test, a final test shall be carried out by or under supervision of a third party especially designated for this purpose by Fusion for Energy. The associated expenses and delays shall be borne by the Party shown to be wrong by the results of this final test.

## II.9. CONFLICT OF INTERESTS

- II.9.1.** The Contractor shall take all necessary measures to prevent a Conflict of Interest or Professional Conflicting Interest of the Contractor itself, its Staff, board and directors. Any Conflict of Interest or Professional Conflicting Interest that arises during performance of the Contract must be notified to Fusion for Energy in writing without delay.
- II.9.2.** The Contractor shall immediately take all necessary measures to rectify a Conflict of Interest or Professional Conflicting Interest. Fusion for Energy reserves the right to verify that such measures are adequate and to require additional measures, if necessary, within a reasonable time limit. The Contractor shall ensure, without prejudice to Article II.1.2 (*General Provisions Regarding the Contractor's Staff*), the immediate replacement of any member of its staff in such situation, without compensation from Fusion for Energy.
- II.9.3.** The Contractor declares:
- (a) that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract;
  - (b) that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of the Contract.

## II.10. PROCESSING OF PERSONAL DATA

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

Any personal data included in or related to this Contract, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purpose of implementation, management and monitoring of this Contract by the data controller.

The Contractor, or any other person whose personal data is processed by the data controller in relation to this Contract, has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and, where applicable, the right to restrict, to object to processing, or the right to data portability.

Should the Contractor or any other person whose personal data is processed in relation to this Contract have any queries concerning the processing of their personal data, they shall refer to the Data Controller. They may also refer to the Data Protection Officer. They have the right to lodge a complaint at any time to the European Data Protection Supervisor (EDPS).

Details concerning the processing of personal data are available in the Privacy Notice referred to in Article I.20.1 (*Processing of personal data by Fusion for Energy*).

### II.10.2. Processing of Personal Data by the Contractor

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

The Contractor may act only on documented instructions and under the supervision of the Data Controller, in particular with regard to the purpose of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights. The Contractor shall have measures in place to ensure that the data subjects can exercise their rights.



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

The Contractor shall assist the Data Controller in the fulfilment of its obligation to respond to requests for exercising rights of persons whose personal data is processed in relation to this Contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The Contractor shall inform without delay the Data Controller of such requests.

The Contractor shall grant its Staff access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract. The Contractor must ensure that Staff authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.24 (*Confidentiality*).

The Contractor shall adopt appropriate technical and organisational security measures, addressing the risks inherent in the processing, the nature, the scope, the context and the purpose of the processing, in order 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 continuous 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 to ensure the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, erasure, unauthorised disclosure and use of or access to personal data transmitted, stored or otherwise processed.

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

In case the Contractor is asked by Fusion for Energy to use ITER Organization IT applications and/or systems, the above mentioned technical and organizational security measures apply to the extent they fall under the Contractor's responsibility.

The Contractor shall notify any breach in the technical and organisational security measures protecting personal data (personal data breach) to the Data 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 data controller with at least the following information:

- (a) the 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) the likely consequences of the breach;
- (c) the measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible consequences.

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 data protection provisions of the European Union or its Member States as referred to in the procurement documents.

The Contractor shall assist the Data Controller in fulfilment of its obligations pursuant to Article 33 to 39 under Regulation (EU) 2018/1725 in order 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 ITER Organization IT applications and/or systems, this applies to the extent it falls under the Contractor's responsibility.
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) promptly inform the data subject of a personal data breach;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The Contractor shall maintain a record of all:

- data processing operations carried out on behalf of the data controller,
- transfers of personal data,
- personal data breaches,
- responses to requests for exercising rights of people whose personal data is processed and
- requests for access to personal data by third parties.

The Contractor acknowledges that it bears all costs associated with the implementation of its obligations under this article.

Fusion for Energy is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.20 (*Processing of Personal Data*)) and data security, which includes personal data held on behalf of Fusion for Energy in the premises of the Contractor or Subcontractor.

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

The duration of processing of personal data by the Contractor shall not exceed the period referred to in Article II.23 (*Checks and Audits*). Upon expiry of this period, the Contractor shall, at the choice of the Data Controller, either return without any undue delay all personal data processed on behalf of the data controller (and all copies thereof) in a commonly agreed format or delete all personal data, unless European Union or national law require a longer storage period.

For the purpose of Article II.14 (*Subcontracting*), if part or all of the processing of personal data is subcontracted, the Contractor shall pass on the obligations referred to in Articles I.20 (*Survival of Obligations*) and II.10.2 (*Processing of Personal Data by the Contractor*) in writing to those subcontractors. At the request of Fusion for Energy, the Contractor shall provide documentary evidence of this commitment.

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

**II.11.1.** The Contractor hereby declares and warrants that it shall carefully review the Contract and its Annexes within the Review Period and that it shall notify Fusion for Energy, promptly and in any case no later than the end of the Review Period, of any errors, faults, omissions, discrepancies or ambiguities contained therein.

**II.11.2.** Errors, faults, omissions, discrepancies or ambiguities in the Contract and its Annexes that are not notified in accordance with paragraph 1 of this article cannot be a ground

for an extension of time and/or additional cost, except under the conditions set out in Article II.16 (*Compensation Event*).

## II.12. ACCEPTANCE

### II.12.1. General

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

Signing of the consignment note by Fusion for Energy, as provided for in Article I.5 (*Delivery*) is an acknowledgment of the delivery and does not imply acceptance by Fusion for Energy that the Items delivered are in conformity with the Contract.

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

Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Items, it shall notify the Contractor.

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

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

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

- (a) The Items delivered by the Contractor to Fusion for Energy must be in conformity in quantity, quality, price with the Contract.
- (b) The Items delivered shall:
  - correspond to the specifications given in Annex A (*Management specification*) and Annex B (*Technical Specifications*) and appendixes;
  - be packaged in accordance with the provision of Article I.12 (*Transportation, Packing and Importation for the Items to be Delivered by the Contractor*);
- (c) The Items must be delivered in accordance with the schedule and milestones defined in the Contract.

### II.12.3. Remedies

- (a) The Contractor is liable to Fusion for Energy for any Nonconformity existing at the time the Items are verified.
- (b) In case of Nonconformity, without prejudice to Article I.15 (*Liquidated Damages*), Fusion for Energy is entitled, at its own discretion to either:
  - have the Item brought into conformity, at no additional cost for Fusion for Energy, by repair or replacement ; or
  - apply a reduction in the price proportionate to the Nonconformity.
- (c) Repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking into account the nature and purpose of the Items;
- (d) In case the Contractor will not be able to bring the Item into conformity or that delivery loses its purpose as a result of the repair or replacement the Item, Fusion for Energy may refuse the delivery of the Item and/or terminate the contract in accordance with Article II.20.1(i) (*Termination by Fusion for Energy for Cause*).

#### **II.12.4.Assembly and Installation**

If Assembly is required by the Contract, the Contractor shall assemble the Items delivered within the period specified in the Contract.

The Contractor is liable for any loss or damage incurred during Assembly of the Items and shall take out insurance necessary to cover the risk of such loss or damage.

Any Nonconformity resulting from incorrect Installation of the Items delivered is considered a Nonconformity of the Items if Installation is required by the Contract and the Items were installed by the Contractor or under its responsibility. This applies equally if the Items were incorrectly installed by Fusion for Energy due to a shortcoming in the installation instructions.

### **II.13. WARRANTY**

#### **II.13.1.Scope and Duration**

The Contractor warrants the Items against all defects falling under its responsibility as a result of performance of the Contract for the duration of the Warranty Period. The Contractor does not warrant the Items against normal wear and tear and does not cover defects resulting from lack of maintenance by Fusion for Energy or third parties.

The Contractor is exempted from the above obligation during the Warranty Period if it proves that the defect was caused exclusively after Final Acceptance by Fusion for Energy, a Third Party or by Force Majeure. Notwithstanding, the Contractor shall start remedying the defect rather than determine liability, without prejudice to the Contractor's right to reimbursement of its documented Costs in case it proves that the defect did not fall under the Warranty.

The Contractor is responsible for any defect that exists at the time of Final Acceptance, even if this defect does not appear until a later date during the Warranty Period.

If a defect originates from a systematic flaw in the design for which the Contractor is responsible, the Contractor shall replace or Repair all parts manufactured in accordance with the flawed design and incorporated in other Items, even though these parts have not caused any incident. The parts replaced or Repaired shall be warranted under the same terms and conditions for a further period equal to the Warranty Period.

Any defect resulting from incorrect installation of the Items is considered equivalent to a defect of the Items if the Items were installed by the Contractor or under its responsibility. The same applies if the Items are installed by Fusion for Energy and the incorrect installation is due to a shortcoming in the installation instructions provided by the Contractor.

#### **II.13.2.Remedies**

In case of defect, Fusion for Energy is entitled to:

- have the Item brought into conformity free of charge by Repair or replacement;  
or
- to have an appropriate reduction of the Total Contract Price; or
- to terminate the Contract with regard to those Items.

As a first remedy, Fusion for Energy may request the Contractor to Repair or replace the Items, at no additional cost for Fusion for Energy, unless this is impossible or disproportionate, in which case the other remedy shall apply.

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

- the value of the Items;

- the significance of the defect; and
- whether the alternative remedy can be completed without significant inconvenience to the Contractor.

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

The Contractor shall bear all expenses incurred by performance of a Warranty obligation. Therefore, the term “at no additional cost for Fusion for Energy” in this Article refers to all costs incurred to bring the Item into conformity with the Contract, in particular the cost of transportation, labour, accommodation, travel and materials.

### **II.13.3.Repair and Replacement**

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

If the Contractor fails to Repair or replace the Item by a reasonable deadline, Fusion for Energy is entitled to Repair or replace the Item itself or have it Repaired or replaced by a third party at the Contractor’s expense.

In case of Repair or replacement of the Item, the Warranty Period is suspended from notification of the defect until Acceptance of the repaired or replaced Item. In case of replacing the Items or one of its major components, the Warranty Period provided for enforcement of the Warranty rights shall recommence in respect of the replaced Items (components).

### **II.13.4.Reduction of Price and Termination**

Fusion for Energy may require an appropriate reduction of the Total Contract Price and terminate the Contract or part thereof in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*), if:

- Fusion for Energy is not entitled to Repair or replacement of an Item; or
- the Contractor has not remedied the Item within a reasonable time; or
- the Contractor has not remedied the Item without significant inconvenience to Fusion of Energy, including where completion of the remedy has lost its purpose.

### **II.13.5.Services**

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

## **II.14. SUBCONTRACTING**

**II.14.1.**The Contractor shall not subcontract any part of the work, nor cause or allow the Contract to be performed by a third party without prior written authorisation from Fusion for Energy. Fusion for Energy may waive its right for prior authorisation for specific parts of the Contract in writing and subject to the conditions it may define in that written communication.

**II.14.2.**The authorisation referred to in Article II.14.1 shall be requested by the Contractor in writing and shall be accompanied by identification of: (i) the part of the scope to be subcontracted and the total amount estimated to be paid and (ii) the proposed Subcontractor, (iii) whether it qualifies as a small and medium-sized enterprise, (iv) references of its qualifications and experience, (v) its place of establishment.

**II.14.3.**In case Fusion for Energy authorises the Contractor to subcontract to a third party, the Contractor shall nonetheless remain bound by its obligations under the Contract and shall bear exclusive liability for proper performance of the Contract. The Contractor is responsible towards Fusion for Energy for the acts and omissions of Subcontractors. Fusion for Energy is not responsible for any payment to a Subcontractor or its employees. In case Fusion for Energy authorises the Contractor to subcontract to a third party, the contract with the Subcontractor shall provide for application of the same obligations applicable to the Contractor regarding the processing of personal data. The initial processor remains fully liable to the data controller for the performance of those other processors' obligations.

**II.14.4.**Upon request from Fusion for Energy, the Contractor shall provide a list of the legal commitments it entered into for the purpose of performing the Contract and the amounts paid or to be paid to any Subcontractor. No later than 30 (thirty) days from receipt of Fusion for Energy's request (except if otherwise indicated), the Contractor shall, provide evidence of payment of salaries, social security contributions as well as labour benefits of its employees and Subcontractor employees, as the case may be, and provide evidence that the Contractor and the Subcontractor comply with all their legal obligations (of any nature) in respect to their employees.

**II.14.5.**All the contract between the Contractor and a Subcontractor shall be in writing, shall be compliant and consistent with the terms and conditions of the Contract and shall not affect the rights and guarantees to which Fusion for Energy is entitled by virtue of the Contract.

## **II.15. SIGNIFICANT ORGANISATIONAL CHANGE**

**II.15.1.**The Contractor shall promptly notify Fusion for Energy of any planned Significant Organisational Change. This written notification shall clearly state (i) the reason(s) for the planned Significant Organisational Change, and (ii) its impact on the performance of the Contract..

If applicable, the notification shall be accompanied by the following supporting information:

- (a) legal entity form;
- (b) bank account form;
- (c) evidence that despite the Significant Organisational Change the Contractor and/or its Subcontractors do not fall within any of the exclusion criteria according to Articles 136(1) or Article 136(2) of the Financial Regulation<sup>15</sup>; and
- (d) evidence of professional and financial capacity to perform the Contract despite the Significant Organisational Change.

**II.15.2.**Fusion for Energy can object to the proposed Significant Organisational Change if it negatively affects performance of the Contract and/or the ITER Project as a whole and/or would amount to a substantial modification of the Contract not allowed under Fusion for Energy's Financial Regulation. Fusion for Energy shall notify the

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<sup>15</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.07.2018, p. 1) to which article 89 of Fusion for Energy Financial Regulation refer. ([http://fusionforenergy.europa.eu/downloads/procurements/F4E\\_Financial\\_Regulation.pdf](http://fusionforenergy.europa.eu/downloads/procurements/F4E_Financial_Regulation.pdf)).

Contractor of its decision on the proposed Significant Organisational Change within 30 (thirty) days from receipt of the notification.

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

## II.16. COMPENSATION EVENT

**II.16.1.** The following events are Compensation Events:

- (a) Errors in Fusion for Energy's requirements: if the Contractor suffers a delay or incurs additional Cost as a result of an error, fault, omission, discrepancies or ambiguities in the Contract or its Annexes, the Contractor is only entitled to an extension of time and/or payment of such Cost under the following conditions:
  - a. the Contractor notified the error, fault, omission, discrepancies or ambiguities to Fusion for Energy in accordance with Article II.11.III.11 (*Error in Fusion for Energy's requirements*) and submitted the supporting evidence to substantiate the claim; or
  - b. the Contractor proves that such an error, fault, omission, discrepancies or ambiguities could not have been discovered and notified by an experienced contractor exercising due care during the Review Period, in accordance with Article II.1.1 (*General Performance Requirements*), and the Contractor promptly notified Fusion for Energy, and in any case within ten (10) Days since the Contractor became aware of it or should have become aware of it, including the supporting evidence.
- (b) Change in legislation: if the Contractor suffers a delay or incurs additional Cost 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) after the Commencement Date that directly affects the performance of the Contract, the Contractor is only entitled to an extension of time and/or payment of such Cost under the following conditions:
  - a. the Contractor has notified Fusion for Energy including a substantiation of any the delay and/or additional costs within thirty (30) days from the date the change entered into force. Fusion for Energy may accept a later notification for duly justified reasons, and
  - b. Fusion for Energy does not terminate the Contract pursuant to Article II.21 (*Termination by Fusion for Energy for Convenience*), and
  - c. The impact of the Change in Legislation is not already covered by another provision of the Contract, and
  - d. The Contractor could not have expected such delay or additional Cost, and
  - e. the Contractor is a national of or is legally established in one of Fusion for Energy Member States at the time of the notification referred to in this Article.
- (c) Suspension of the Contract: if the Contract is suspended in accordance with Article II.19 (*Suspension of the Contract*) for more than 3 (three) months continuously for the same cause, the Contractor is only entitled to a compensation for the additional Cost incurred as a result of the suspension from the beginning of the 4<sup>th</sup> (fourth) month of suspension under the condition that the Contractor notified Fusion for Energy of such Cost, with supporting evidence, within 30 (thirty) Days after the end of the suspension. The supporting evidence shall include the relevant proof of the precise nature and extent of the additional Cost, including their detailed breakdown. For the sake

of clarity, the Contractor is not entitled to payment of any cost incurred during the first three (3) months of suspension of the Contract.

**II.16.2.** The Contractor shall notify the Compensation Event to Fusion for Energy within the period defined in the Contract. Any Claim based on a Compensation Event or on another provision of the Contract shall be submitted in accordance with the rules defined in Annex I (Rules for Submitting Claims) unless specified otherwise in the Contract.

**II.16.3.** The Parties shall agree in good faith and in accordance with the rules defined in Annex I (Rules for submitting Claims), on the possible extension of time and/or payment of additional Cost, as applicable. Additional Cost under this Article is limited to duly documented, direct Cost. Any agreement on extension of time and/or payment of additional Cost shall be implemented pursuant to Article II.25 (*Amendments and Deviations*).

**II.16.4.** The application of Article II.16 is subject to compliance of the Contractor with Article II.1.5 (*Early Warning*).

## **II.17. FORCE MAJEURE**

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

**II.17.2.** The Parties shall promptly take all necessary measures to minimise any delay and to reduce any damage due to Force Majeure.

**II.17.3.** Subject to Article II.17.1, a Party shall not be liable for any delay or failure to perform its obligations under the Contract, if that delay or failure is the result of a Force Majeure, and as long as the Force Majeure prevents the Party from performing its obligations. If the Contractor is unable to perform its obligations due to a Force Majeure, it only has the right to be paid for Items delivered and accepted.

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

**II.17.5.** In case of Force Majeure notified in accordance with Article II.17.1 and exceeding 6 (six) months, a Party may terminate the Contract with immediate effect, where performance cannot be resumed within an additional period of 6 (six) months. Article II.20 (*Termination by Fusion for Energy for Cause*) shall apply *mutatis mutandis* to the effects of such termination, unless otherwise indicated in the Contract or agreed.

## **II.18. ASSIGNMENT**

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

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

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

## **II.19. SUSPENSION OF THE CONTRACT**



- II.19.1.** Fusion for Energy may, at any time and for duly justified reasons, suspend performance of the Contract, or any part thereof, by notifying the Contractor. The suspension shall take effect on the date of receipt of the notification, or at a later date indicated therein. The notification shall indicate the expected duration of the suspension. Following suspension, Fusion for Energy may notify the Contractor to resume performance of the Contract at any time.
- II.19.2.** Should Fusion for Energy decide to suspend the Contract for a period of over 12 (twelve) months, the Contractor is entitled to ask for the Contract to be terminated, by notifying Fusion for Energy in writing within 1 (one) month of the date of notification of the suspension. The same shall apply in the event of a series of suspensions totalling a period of over 18 (eighteen) months. The 1 (one) month's deadline mentioned above for the request to terminate shall commence on the date of the reception of the decision resulting in the suspension of the Contract for over 12 (twelve) months or for 18 (eighteen) months respectively. If the Contract is suspended for more than 12 months (twelve) without prior indication of the period of suspension in the notification, the 1 (one) month deadline mentioned above for the request to terminate shall commence on the Day following the expiration of the 12 (twelve) months period.
- II.19.3.** In case of termination under the conditions mentioned in this Article, the provisions regarding termination for convenience established in Articles II.21.3 to II.21.7 (*Termination by Fusion for Energy for Convenience*) shall apply.
- II.19.4.** Within 15 (fifteen) Days from the date on which performance of the Contract is resumed, the Parties shall convene to negotiate in good faith an adequate updated schedule for performance of the Contract. Article II.25 (*Amendments and Deviations*) shall apply.
- II.19.5.** The compensation for suspension of the Contract exceeding 3 (three) months, referred to in article II.16.1(c) (*Compensation Event*), shall be the Contractor's exclusive remedy on this ground.
- II.19.6.** The conditions of this Article II.19 shall also apply to the contracts with Subcontractors.

## **II.20. TERMINATION BY FUSION FOR ENERGY FOR CAUSE**

### **II.20.1. Grounds for Termination**

Fusion for Energy is entitled to 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 under 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 European 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 Conflict of Interest or a Professional Conflicting Interest as referred to in Article II.9 (*Conflict of Interests*);
- (f) where, due to the Contractor, the performance of the Contract has not commenced 15 (fifteen) Days after the date of entry into force of the Contract or any agreed date for the start of performance of the Contract;

- (g) where the Contractor is unable, through its own fault, to obtain a permit or licence required for performance of the Contract;
- (h) where the total amount of liquidated damages due to Fusion for Energy in accordance with Article I.15 (*Liquidated Damages*) is higher than the maximum amount established in Article I.15.1 (*Liquidated Damages*);
- (i) where the Contractor is in breach of a substantial contract obligation or the tender specification. For the purpose of this Article, a failure to meet the progress and/or delivery requirements to such an extent as to jeopardising the performance of the Contract or the purpose of the delivery is a breach of a substantial contract obligation;
- (j) where the Contractor is in a substantial breach of a contract obligation as set out in Article II.20.4 (*Covenants*). For the avoidance of doubt, in case of a group of companies or consortium, Fusion for Energy is entitled to terminate the Contract with effect to the group of companies or consortium;
- (k) where a change to the Contractor's legal, financial, technical, organisational or ownership situation does or is likely to substantially affect the performance of the Contract or substantially modifies the conditions under which the Contract was awarded or where the Contractor failed to notify the Significant Organisation Change in accordance with the Contract;
- (l) where the Contractor is in breach of its obligations under Article II.26 (*Export Control Requirements*);
- (m) in the case and under the conditions set out in Article II.13 (*Warranty*);
- (n) where the Contractor is in breach of an obligation under Article II.10.2 (*Processing of Personal Data by the Contractor*) or where the Contractor does not comply with the applicable data protection obligations under Regulation (EU) 2016/679.

### **II.20.2.Procedure**

- (a) Fusion for Energy must notify the Contractor in writing of its intention to terminate the Contract and the grounds therefore. The Contractor has the right to submit its observations, including any measures taken to continue fulfilling its contractual obligations, no later than 10 (ten) Days after receipt of the notification, unless otherwise indicated in the notification. Failing that, the decision to terminate enters into force on the day after the time limit for submitting observations.
- (b) In case the Contractor submits observations, Fusion for Energy must notify the Contractor either of the withdrawal of its intention to terminate or of its final decision to terminate. Termination takes effect on the date of receipt of this notification or any other date indicated therein.

### **II.20.3.Consequences of termination**

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

- (a) The Contractor shall take immediate steps to cease its activities under the Contract. It must take all appropriate measures to minimise Cost, prevent and minimise damage, and cancel or reduce its commitments.
- (b) The Contractor shall deliver all documents, data, Foreground, Information and/or goods produced under the Contract. Upon Fusion for Energy's request, the Contractor shall draw up and provide the documents required by the Contract for the Items accepted up to the date on which termination takes effect. These documents must be provided at the latest 60 (sixty) Days after the termination date. Upon Fusion for Energy's request, the Contractor shall

deliver all documents, data, Foreground, Information and/or goods produced pursuant to the Contract.

- (c) The Contractor is not entitled to any compensation for loss or damages resulting from termination of the Contract, including loss of anticipated profit.
- (d) Subject to the limitations foreseen in Article I.14.1 (*Liability*), Fusion for Energy has the right to claim from the Contractor compensation for any loss or damage sustained as a result of the termination and to recover the corresponding amount in accordance with Article II.5 (*Recovery*), unless the ground for termination was Force Majeure.
- (e) Subject to the limitations foreseen in Article I.13.1 (*Contractor's Liability*), Fusion for Energy is entitled to claim from the Contractor all additional costs incurred for completing the performance of the Contract, unless the ground for termination was Force Majeure. Fusion for Energy may engage one or several other contractor(s) of its choice to replace the Contractor.
- (f) The Contractor is entitled to be paid for the Items delivered and accepted by Fusion for Energy in accordance with Article II.12 (*Acceptance*) on the date of receipt of the notification of the termination. Payment will be done after off-setting the amount due or already paid to the Contractor against the amount of loss and damage due by the Contractor to Fusion for Energy pursuant to this Article. Any balance to the Contractor will be paid only after recovery of Fusion for Energy's loss and damage pursuant to this Article.
- (g) The Contractor is only entitled to compensation for the Costs of other Deliverables than the Items, of materials, of unfinished work or of goods manufactured before receipt of the notification mentioned in Article II.20.2(a) (*Procedure*), 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 G*). Costs shall be determined on the basis of evidence produced by the Contractor and accepted by Fusion for Energy. Payment will be done after off-setting the amount due or already paid to the Contractor against the amount of loss and damage due by the Contractor to Fusion for Energy pursuant to this Article. Any balance to the Contractor will be paid only after recovery of Fusion for Energy's loss and damage pursuant to this Article.
- (h) In the case of a group of companies or a consortium, Fusion for Energy may terminate the contract with each member of the group separately on the basis of points (a), (b) or (d) of Article II.20.1 (*Grounds for Termination*).

#### **II.20.4.Covenants**

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

- (a) not take or omit to take any action which might result in the alteration or impairment of any right of Fusion for Energy under the Contract or which might adversely affect the implementation of the Contract;
- (b) promptly, but not later than 4 (four) Days after the Contractor became aware of it or should have reasonably become aware of it, notify Fusion for Energy of any event or circumstance which adversely affects or is reasonably expected to adversely affect the performance of the Contractor's obligations. This event or circumstance includes, without limitation, the filing of a petition for bankruptcy or insolvency of the Contractor, the initiation of any similar proceedings, the termination of the Contractor's commercial activities or the winding-up of the

Contractor. In case of a group of companies or a consortium, the above event or circumstance relates to any member of the group or consortium;

- (c) not pass any resolution, according to the applicable law to the Contractor (and in case of a group of companies or a consortium, of any member of the same), (i) to dissolve and/or liquidate the Contractor or to authorise an application for the bankruptcy or insolvency of the Contractor (in case of a group of companies or a consortium, of any member of the same) unless required by mandatory laws applicable to the Contractor, or (ii) to reduce the authorized or issued capital stock or any equivalent thereof of the Contractor, save for a decrease of such to be made in accordance with a mandatory statutory requirements set out in applicable law to the Contractor (in case of a group of companies or a consortium, of any member of the same);
- (d) promptly provide Fusion for Energy, upon its request, with statements on such other matters and information relating to this Contract as Fusion for Energy may request from time to time.

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

## II.21. TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

- II.21.1. Fusion for Energy may, at any time and at its discretion, terminate the Contract or any part thereof, in accordance with this Article.
- II.21.2. Termination under this Article is effected by notifying the Contractor in writing. The notification must specify the extent to which the Contract is terminated and the effective date of the termination.
- II.21.3. Upon receipt of a notification under this Article, the Contractor shall discontinue performance of the Contract in accordance with the notification. The Contractor shall take any reasonable measures which are necessary or desirable to discontinue performance in a safe and timely manner, to minimise costs associated with the termination, to prevent and minimise damage and to cancel or reduce its commitments.
- II.21.4. Subject to fulfilment of the Contractor's obligations, Fusion for Energy shall reimburse the Contractor for its additional Cost incurred as a direct result of the termination of the Contract or any part thereof and which would not have been incurred but for the termination. The Contractor shall, as soon as possible but not later than 30 (thirty) Days after the effective date of termination, submit to Fusion for Energy its claim for reimbursement. Such claim shall be in writing and shall include a Cost breakdown with supporting evidence.
- II.21.5. The amount of reimbursement payable under Article **Error! Reference source not found.** is determined on the basis of the supporting evidence produced by the Contractor and accepted by Fusion for Energy. This determination shall take account of the proportion of the Contract completed and accepted by Fusion for Energy in accordance with the provisions of the Contract, and shall be consistent with Article II.21.7. The Contractor is not entitled to claim any loss of profit in respect of the uncompleted or outstanding work that was to be performed after the termination date.
- II.21.6. The Contractor is entitled to a payment of a termination fee corresponding to 3% (three percent) of any remaining payment under the Contract or the part of the Contract which is terminated. No termination fee shall be paid if termination is a result of a change in legislation pursuant to Article II.16 (*Compensation Event*) or Article II.21.8.
- II.21.7. Fusion for Energy shall in no circumstance pay any sum which when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the Total Contract Price.

**II.21.8.** Articles II.21.4 to II.21.5 shall not apply in case Fusion for Energy terminates the Contract due to the Contractor's inability to perform the Contract in compliance with EU laws because of the United Kingdom's withdrawal from the European Union. In that case, II.20.3 (b) (c) (d) and (e) shall apply *mutatis mutandis*.

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

**II.22.1.** In case the procurement procedure or performance of the Contract prove to have been subject to substantial errors, irregularities or fraud attributable to the Contractor, Fusion for Energy may refuse to pay, may recover amounts already paid and/or may terminate any contract concluded with the Contractor, in proportion to the seriousness of the error, irregularity or fraud. The consequences described in Article II.20 (*Termination by Fusion for Energy for Cause*) shall apply.

## **II.23. CHECKS AND AUDITS**

**II.23.1.** In accordance with Article 5(a) of Fusion for Energy Council Decision<sup>16</sup>, the European Commission and the European Court of Auditors or their representatives have the power to audit any natural or legal person receiving payment from the budget of Fusion for Energy on the basis of documents and performance of on-the-spot checks and inspections. The power to audit applies from Commencement Date of the Contract up to 5 (five) years after payment of the balance.

**II.23.2.** For the purpose of checks and audits on performance of the Contract, Fusion for Energy, or an outside body of its choice, has the same rights as the European Commission and the European Court of Auditors for the same duration.

**II.23.3.** In accordance with Article 5(a) of Fusion for Energy Council Decision, the European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections<sup>17</sup> from Commencement Date of the Contract, up to 5 (five) years after payment of the balance.

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

## **II.24. CONFIDENTIALITY**

**II.24.1.** The Contractor undertakes to treat in the strictest confidence and not divulge to third parties, any information or documents which are linked to performance of the Contract.

**II.24.2.** This Article II.24 does not apply when:

- (a) the Confidential Information is publicly available not through a breach of confidentiality obligations; or
- (b) the disclosing party subsequently informs the recipient that the Confidential Information is no longer confidential; or

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<sup>16</sup> Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (2007/198/Euratom)

<sup>17</sup> In accordance with European Parliament and Council Regulation (Euratom, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996

- (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 of the Confidential Information is required by law or permitted under another provision of the Contract, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.

**II.24.3.** The Contractor shall continue to be bound by this Article for a period of 10 (ten) years after completion of the obligations of the Parties under the Contract.

**II.24.4.** The Contractor shall obtain from each member of its staff, board and directors which need to know the Confidential Information, an undertaking that they will respect the obligations under this Article for a period of 10 (ten) years after completion of the obligations of the Parties under the Contract. These obligations include the prohibition to use Confidential Information for their own benefit or that of any third party.

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

## **II.25. AMENDMENTS AND DEVIATIONS**

**II.25.1.** Any amendment to the Contract shall be in writing, dated and signed by the authorised legal representatives of the Parties. An oral agreement is not binding on the Parties.

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

**II.25.3.** 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.

**II.25.4.** Upon receipt of a Deviation Notice from Fusion for Energy, the Contractor shall submit an impact assessment including a detailed breakdown of the costs to be incurred for the implementation of the Deviation Notice. Unitary prices and productivity rates indicated in the financial forms of the Contractor’s Tender (*Annex G*) are applicable to the impact assessment. If this is not possible, they shall be deduced (extrapolation, interpolation, or proportionality) from the financial forms of the Contractor. Fusion for Energy reserves the right to request the Contractor to submit duly documented evidence regarding any of the proposed cost elements. The Contractor shall submit the impact assessment within a reasonable time and in no event later than 15 (fifteen) working days after receipt of the Deviation Notice, unless agreed otherwise.

**II.25.5.** Any Deviation Request issued by the Contractor shall include the impact assessment mentioned in II.25.4.

**II.25.6.** After reviewing the impact assessment, 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.

## **II.26. EXPORT CONTROL REQUIREMENTS**

- II.26.1.** The Contractor is responsible, including for its Subcontractors, to ensure compliance with the relevant requirements imposed by applicable legislation regarding exportation, re-exportation and transfer (including intra-Community transfer) of Dual-use Items subject to the Contract.
- II.26.2.** The Contractor shall act as an Exporter of the Dual-use Items under the Contract and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation, unless otherwise indicated by Fusion for Energy. 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 shall provide any necessary information or documentation.
- II.26.3.** When the Contractor fails to obtain any required export, re-export or transfer authorization (including customs) or fails to provide the requested information or documentation, Fusion for Energy is entitled to terminate the Contract in accordance with Article II.20 (*Termination by Fusion for Energy for Cause*), unless the Contractor proves that the failure is due to a Force Majeure.
- II.26.4.** At the latest at the Kick-off meeting, the Contractor shall produce a list of Dual-use Items with indication of their category based on applicable international export control lists, unless otherwise indicated by Fusion for Energy. The Contractor shall also identify any Dual-use Items that are to be provided by a Subcontractor.

## **II.27. SETTLEMENT OF DISPUTES**

- II.27.1.** The Parties shall resolve the Disputes in good faith, in accordance with this Article provisions.
- II.27.2.** A Dispute shall, in first instance, be referred for resolution to the Senior Representatives of the Parties by issuing a Referral Notice.
- The Referral Notice shall be accompanied by:
- (a) Full written factual particulars of the Dispute;
  - (b) The legal basis of the referring Party's claim;
  - (c) The remedy sought by the referring Party with the justification in support of that remedy; and
  - (d) All documents relied upon by the referring Party for its claim.

Following issue of a Referral Notice, the Senior Representatives shall meet and endeavour to resolve the Dispute by an agreement.

Notwithstanding the referral of a Dispute to the Parties' Senior Representatives, the Parties shall continue to perform their obligations under the Contract.

- II.27.3.** If the Senior Representatives fail to resolve the Dispute within 30 (thirty) Days from the date of the Referral Notice (or such other period as may be agreed in writing by the Senior Representatives), the Dispute shall be exclusively decided by the European Court of Justice (ECJ) in accordance with its own rules of procedure. The language of the proceedings shall be English. Neither Party is entitled to refer a Dispute to the ECJ pursuant to this Article unless the Dispute has first been referred to the Senior Representatives pursuant to Article II.27.2. Notwithstanding the referral of a Dispute to the ECJ, the Parties shall continue to perform their obligations under the Contract.
- II.27.4.** The Parties may submit the Dispute to Mediation in accordance with the rules set out in the Terms of Reference for Mediation (*Annex F*) at any time. The Mediation will take place at the location agreed by the Parties or, by default, at the location of the mediation centre. Mediation shall be conducted in English. Mediation does not prevent the Parties from commencing proceedings before the ECJ in accordance with Article II.27.3.

## II.28. MISCELLANEOUS

- II.28.1.** The Contract contains the whole agreement of the Parties relating to the scope of the Contract at the date of the Contract signature, excluding any terms implied by law which are not mandatory. It supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in the Contract.
- II.28.2.** The terms set out in the Special Conditions take precedence over those in the other parts of the Contract. The terms set out in the General Conditions take precedence over those in the Annexes, except those of Annex C (*Intellectual Property Provisions*) which take precedence over the terms set out in the General Conditions. The terms set out in the Annexes take precedence over those in Applicable Documents, except those in the Contractor's Tender (Annex G) over which the Applicable Documents take precedence. The terms set out in the Supplier Project Management and Quality Requirements (*Applicable Document AD01*) take precedence over those in the other Applicable Documents.
- II.28.3.** The documents forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between parts of the Contract shall be explained or rectified in writing by Fusion for Energy, subject to the rights of the Contractor under Article II.27 (*Settlement of Disputes*) in case of a Dispute.
- II.28.4.** Each provision of the Contract shall be interpreted in a manner which renders the provision effective and valid under Community, European Union and Spanish substantive law. If any provision of the Contract, or any part thereof, is prohibited by or invalid under applicable law, such provision or part thereof shall be ineffective without invalidating the remainder of the provision or of the Contract. The Parties shall negotiate in good faith to replace any prohibited or invalid provision with a legal and valid provision which is as similar as possible in substance to the prohibited or invalid provision.
- II.28.5.** For the purpose of the Contract, except as otherwise expressly provided or unless the context otherwise requires:
- (a) The terms defined in the Contract have the meaning assigned to them in the Contract and include the plural as well as the singular and the use of any gender herein shall include the other gender.
  - (b) All capitalized terms not defined in the Special or General Conditions of this Contract have the meaning attributed to them in the Annexes or the Applicable Documents.
  - (c) The captions used in the Contract are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope or content of the Contract or any provision thereof.
  - (d) The words "herein", "hereof", "hereunder", and other words of similar import refer to the Contract as a whole and not to any particular provision.
  - (e) The terms "include" or "including" mean, without limitation, by reason of enumeration and shall not be interpreted restrictively.
  - (f) Each reference to an "Annex" of the Contract shall include all sections of such Annex and each reference to an "Article" of the Contract or to a "Section" of its Annex shall include all subsections / points of such Article or section.
  - (g) Any terms used in the Contract and not otherwise defined herein shall have the meaning attributed thereto pursuant to any of its Annexes, in the Fusion for Energy Council Decision and/or the ITER Agreement.
  - (h) References to any element of the legislation, statute, act, law, regulation, or any provision thereof are, where applicable, deemed to be references to that element of the legislation, as amended or re-enacted.



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

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

**SIGNATURES**

For the Contractor,  
[company name/forename/surname/function]

For Fusion for Energy,  
[forename/surname/function]

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at Barcelona, [date]

In [•] (•) originals in English.