



*MODEL CONTRACT FOR ADJUDICATION
EXPERT IN THE AREA OF ITER BUILDINGS
(CONSTRUCTION), WHICH MAY BE SUBJECT
TO NECESSARY ADJUSTMENTS*

CONTRACT FOR ADJUDICATION EXPERT

CONTRACT NUMBER - [*]

THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ("F4E"), represented for the purposes of the signature of this contract (this "**Contract**") by Laurent SCHMIEDER, Site and Buildings and Power Supplier Project Team Manager;

and

[*]

National Passport: [*]

Address: [*]

(the "**Appointee**");

WHEREAS

- A. F4E, as part of its mission, will oversee the preparation of the ITER Site in Cadarache (France), and provide components, equipment, materials and other resources to the ITER International Fusion Energy Organisation;
- B. F4E has entered, and will enter, into various design, construction and consultancy contracts (each a "**Buildings Contract**" and together the "**Buildings Contracts**"), as the Employer under the Buildings Contract(s), with its contractor(s) (each a "**Contractor**" and together the "**Contractors**") for the design, construction, commissioning and completion of buildings and site infrastructure, and major civil engineering works to enable the construction and operation of a new tokamak device of unprecedented size;
- C. Works relating to site adaptation, installation of certain seismic bearings, foundations of the tokamak complex as the tokamak complex itself are on-going on the ITER Site. The construction of a poloidal field coils fabrication building has been recently completed;
- D. The Contractors have been, or will be, engaged by F4E to carry out works concurrently on the ITER Site, and to this effect, the Contractors have entered, or will enter, into an interface agreement (the "**Interface Agreement**") to facilitate the coordination of the works to be undertaken between the Contractors and to regulate the relationships between the Contractors;

- E. The Buildings Contract(s) make(s) provisions for any Disputes (as defined in the Buildings Contract(s)) under the Buildings Contract(s) to be referred to the Panel of Adjudicators (as defined in the Buildings Contract(s)) and for the resolution of the Disputes (as defined in the Buildings Contract(s)) by the Adjudicators (as defined in the Buildings Contract(s)) to be made in accordance with the respective annex on procedural rules for adjudication to the Buildings Contract(s);
- F. The Interface Agreement makes provisions for any Disputes (as defined in the Interface Agreement) under the Interface Agreement to be referred to adjudication in accordance with Schedule 4 (Adjudication Procedure) to the Interface Agreement;
- G. The Appointee has answered the call for expression of interest for the establishment of a list of prospective individual experts to act as adjudicators for disputes arising from F4E's operational contracts, published on F4E's website in March 2015, and has been subsequently registered on such a list by F4E;
- H. The Appointee will be appointed to serve as an adjudicator in the Panel of Adjudicators on the terms set out herein, and the Appointee wishes to accept such appointment on the terms set out herein;
- I. F4E agrees that the parties to any Dispute under the Interface Agreement may engage an adjudicator in the Panel of Adjudicators, provided that such parties must make their own arrangements directly with the respective adjudicator for them to act as an Adjudicator in connection with the Interface Agreement;

HAVE AGREED

the Special Conditions, the General Conditions and the following Annexes:

- Annex I:** Terms of Appointment and Rules of Procedure
- Annex II:** Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests
- Annex III:** Request for Payment, Timesheet and Cost Declaration Form
- Annex IV:** Award of the Costs Form
- Annex V:** Decision Form
- Annex VI:** List of Buildings Contracts (as may be amended from time to time)
- Annex VII:** Form of Interface Agreement

which form an integral part of this Contract.

I – SPECIAL CONDITIONS

ARTICLE I.1 – PRIORITY OF DOCUMENTS, INTERPRETATION AND PURPOSE OF THIS CONTRACT

- I.1.1** The terms set out in the Special Conditions shall take precedence over those in the other parts of this Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The priority of the Annexes shall be in accordance with the numeric sequence of the Annexes. Notwithstanding the foregoing, if a conflict arises between this Contract and the Buildings Contract(s) or the Interface Agreement, the respective Buildings Contract(s) or the Interface Agreement, as the case may be, prevails.
- I.1.2** Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by F4E. However, in the case of a conflict between different Buildings Contracts arisen in relation to adjudication only, the Adjudicator shall attempt in good faith to resolve such conflict in the spirit of the principles set for adjudication in Annex I (Terms of Appointment and Rules of Procedure).
- I.1.3** In this Contract, except where the context requires otherwise, words indicating one gender include all genders, words indicating the singular also include the plural and words indicating the plural also include the singular, provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record. The headings shall not be taken into consideration in the interpretation of this Contract.
- I.1.4** Unless the context otherwise requires or unless otherwise defined herein, the expressions defined in the Buildings Contract(s) and/or the Interface Agreement shall have the same meanings as in this Contract.
- I.1.5** This Contract implements the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), and complementarily Clause 7 (Disputes) of, and Schedule 4 (Adjudication Procedure) to, the Interface Agreement to the extent that is necessary and is not in contradiction with any separate arrangements of the parties to the Dispute under the Interface Agreement made directly with the Appointee, if any.

ARTICLE I.2 – APPOINTMENT OF THE ADJUDICATOR

- I.2.1** F4E hereby appoints the Appointee to be an adjudicator in the Panel of Adjudicators in order to act as an Adjudicator in any Dispute (i) arising from or in relation to the Buildings Contract(s) between F4E and its Contractor(s) (or any third party who has been accepted to join the adjudication) once the conditions under the respective provisions on adjudication of the Buildings Contract(s) are met, and (ii) arising from or in relation to the Interface Agreement between the Contractors (or any third party who has been accepted to join the adjudication) once the conditions under Schedule 4 (Adjudication Procedure) to the Interface Agreement are met.

- I.2.2** Subject to the conditions under the respective provisions on adjudication of the Buildings Contract(s) and under Schedule 4 (Adjudication Procedure) to the Interface Agreement, the Appointee hereby accepts to be an adjudicator in the Panel of Adjudicators and agrees that he may be nominated as an Adjudicator, which will be a personal nomination, by the Chairman of the Panel of Adjudicators, and agrees to be bound by the terms and conditions of this Contract and to follow the relevant provisions of the Buildings Contract(s) and the Interface Agreement, as the case may be. In order to effectuate such nomination, the Appointee undertakes to sign a declaration in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests).
- I.2.3** The scope of adjudication is described in detail in Annex I (Terms of Appointment and Rules of Procedure). Without prejudice to Article I.1.2, the Appointee agrees (i) to follow the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s) that will enter into force after the Commencement Date and shall be added to this Contract, to the extent that such provisions and annex of such Buildings Contract(s) are identical or similar in all material particulars to the provisions referred to in Annex I (Terms of Appointment and Rules of Procedure); and (ii) to consider in good faith a request from F4E to bind himself to the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s) that differ in material respects from the provisions set out in Annex I (Terms of Appointment and Rules of Procedure), and allow such Buildings Contract(s) to be added to this Contract, and if refusing to bind himself, to provide his reasons for so refusing.
- I.2.4** The Appointee shall, amongst others:
- a) be reasonably available for F4E and its Contractor(s) so that they have effective resort to adjudication;
 - b) serve as an Adjudicator and/or act as the chairman of the panel of Adjudicators in any Dispute arising between F4E and its Contractor(s) (or any third party who has been accepted to join the adjudication) under the respective Buildings Contract(s), subject to the terms and conditions of this Contract, when nominated by the Chairman of the Panel of Adjudicators;
 - c) serve as an Adjudicator and/or act as the chairman of the panel of Adjudicators, in any Dispute arising between the Contractors (or any third party who has been accepted to join the adjudication) under the Interface Agreement, subject to the terms and conditions of this Contract unless the separate arrangements of the parties to such Dispute made directly with the Appointee provides otherwise, when agreed by the Contractors or nominated by the Engineer (as defined in the Interface Agreement);
 - d) attend visits on the ITER Site (the “**Visit**” or the “**Visits**”), meetings or

hearings, when requested or instructed in accordance with this Contract, or under the Buildings Contract(s) or the Interface Agreement, as the case may be;

- e) provide his adjudication expertise, amongst others, by giving recommendations or delivering opinions in relation to the implementation of the Buildings Contract(s) and/or the Interface Agreement, if so requested jointly by F4E and the Contractor(s), or the parties to the adjudication, as the case may be,

in accordance with this Contract, the Buildings Contract(s) and/or the Interface Agreement, as the case may be.

The Chairman of the Panel of Adjudicators shall be entitled to nominate (i) one (1) adjudicator, (ii) other two (2) adjudicators in the Panel of Adjudicators to be Adjudicators in the panel of Adjudicators in addition to himself, or (iii) three (3) adjudicators in the Panel of Adjudicators to be Adjudicators in the panel of Adjudicators to act as (an) Adjudicator(s), in accordance with the respective provisions on adjudication of the Buildings Contract(s). However, if the Chairman of the Panel of Adjudicators is unable for any reasons to act in relation to a Dispute under the Buildings Contract(s), he shall nominate an adjudicator in the Panel of Adjudicators to act as the Chairman of the Panel of Adjudicators in relation to that Dispute.

In the case of adjudication under the Interface Agreement, the Dispute between the Contractors, or any other parties to the adjudication, may be resolved by one (1) Adjudicator (also by the Chairman of the Panel of Adjudicators) as agreed by the parties to the adjudication or as nominated by the Engineer (as defined in the Interface Agreement) in accordance with Schedule 4 (Adjudication Procedure) to the Interface Agreement.

I.2.5 The Appointee shall not be bound by any instructions except from those given in accordance with this Contract; he shall be completely independent in the performance of his tasks. F4E shall not seek advice from, or consultation with, the Appointee regarding the Buildings Contract(s), the Interface Agreement and/or the ITER project otherwise than within providing his adjudication expertise in accordance with this Contract. The only exception to this prohibition shall be where F4E and all respective Contractors, or all parties to the adjudication, as the case may be, jointly agree in writing to do so.

I.2.6 The Appointee shall be entitled, unless effective resort to adjudication of F4E and/or its Contractor(s) would be prevented by such resignation, to resign from this appointment by giving a 90 (ninety) calendar day reasoned notice in writing to F4E. Resignation shall be considered as resignation from the nomination as Adjudicator or chairman of the panel of Adjudicators, if applicable, in relation to adjudication, and termination of this Contract. During the foregoing termination period the

Appointee shall not participate in resolving any Dispute under the Buildings Contract(s) and/or the Interface Agreement unless otherwise instructed by F4E and its Contractor(s), or the parties to the adjudication, however, he shall still be subject to the terms and conditions of this Contract and shall act in compliance with the highest professional standards applicable to adjudicators and shall take any immediate or reasonable steps which are necessary or desirable to take for the interests of F4E and its Contractor(s), or the parties to the adjudication.

ARTICLE I.3 – COMMENCEMENT AND DURATION

- I.3.1** This Contract shall enter into force on 1 January [*] (the “**Commencement Date**”) and shall last until 31 December [*]. Notwithstanding the foregoing, this Contract shall be automatically renewed maximum [*] ([*]) times for each calendar year from 1 January until 31 December of such calendar year unless it is terminated in accordance with this Contract, or all the Buildings Contracts and the Interface Agreement are terminated for whatever reason. The contracting parties may however agree under exceptional circumstances to extend the duration of this Contract in order to ensure consistency in the decisions of the Adjudicator(s) taken with respect to the Buildings Contract(s) and/or the Interface Agreement.
- I.3.2** The total duration of the Appointee’s appointment under this Contract shall not exceed 220 (two hundred twenty) calendar days per calendar year on which his tasks are performed. The total number of calendar days of performing his tasks in accordance with this Contract may only be extended with the express written agreement of F4E.
- I.3.3** Periods and deadlines available for the contracting parties and the Contractor(s) to make procedural steps and actions within the scope of adjudication are set out in the respective provisions on adjudication of, and the respective annex on the procedural rules for adjudication to, the Buildings Contract(s) and Schedule 4 (Adjudication Procedure) to the Interface Agreement.
- I.3.4** Performance of the tasks shall not start before the Commencement Date. The Appointee may perform his tasks remotely. Performance of the tasks of the Appointee as an Adjudicator shall only start, by signing a declaration in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests), upon receipt of a written notice of the Chairman of the Panel of Adjudicators on nomination.

ARTICLE I.4 – FORESEEN ACTIVITIES

- I.4.1** It is expected that there will be one (1) Visit after the Commencement Date, on which the attendance of the Appointee is required. This Visit shall give the Appointee the opportunity to become familiar with the progress of the implementation of the Buildings Contract(s) and anticipate any issue that could lead to a Dispute between F4E and its Contractor(s) under the Buildings Contract(s)

and/or between the Contractors under the Interface Agreement. Payment of the Daily Fees and reimbursement of the Expenses relating to this Visit will be borne and paid by F4E according to this Contract.

- I.4.2** The Appointee shall visit the ITER Site at such intervals and/or at such times of critical construction events as F4E shall request, but not more frequently than four (4) times a calendar year and not less than once a calendar year in any event. Payment of the Daily Fees and reimbursement of the Expenses relating to such Visit(s) will be borne and paid by F4E according to this Contract.

ARTICLE I.5 – PAYMENT OF DAILY FEES AND REIMBURSEMENTS OF EXPENSES

- I.5.1** The Appointee will be paid a daily fee of EUR 950 (nine hundred fifty euro) which shall be considered as payment in full for providing his adjudication expertise under this Contract or the Buildings Contract(s), including amongst others:

- a) each calendar day spent on studying the working files/submissions of the parties to the adjudication/preparation for a hearing/meeting; and
- b) each calendar day spent on Visits or any hearing/meeting held in accordance with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s),

(the “**Daily Fee**”).

All charges related to, amongst others, postage, telephone calls, facsimiles, photocopies shall be deemed to be covered by the Daily Fee and shall not give rise to reimbursement.

- I.5.2** Where only part of a calendar day is spent on the tasks performed in relation to providing his adjudication expertise under this Contract or the Buildings Contract(s), the Daily Fee shall be reduced proportionately for that part calendar day (where eight (8) hours shall be considered equal to one (1) calendar day, and four (4) hours shall be considered equal to half a calendar day). The Appointee shall not be entitled to get any Daily Fee for any time spent travelling.

- I.5.3** The Daily Fee shall not be subject to revision until 31 December [*]. As from 1 January [*], the Daily Fee shall be subject to automatic revision according to this Contract, and will be revised upwards or downwards once in December in each calendar year. The revised Daily Fee shall be applicable as from the first calendar day of the subsequent calendar year until 31 December of such calendar year. The revision shall be determined by the Harmonized Indices of Consumer Prices (HICPs) (Global Index – European Union 27 countries) published by the Office for Official Publications of the European Union in the EUROSTAT monthly bulletin at <http://www.ec.europa.eu/eurostat/> or any other official publication in relation with

the structure of costs.

Revision shall be calculated in accordance with the following formula:

$$Fr = Fo \left(0.2 + 0.8 \frac{Ir}{Io} \right)$$

where:

Fr = revised Daily Fee;

Fo = EUR 950 (nine hundred fifty euro);

Io = index for the calendar month corresponding to the Commencement Date;

Ir = index for December of the calendar year in which the revision takes place.

I.5.4 Without prejudice to Article I.3.2, the total amount of the Daily Fees to be paid to the Appointee by F4E under this Contract (with the exception of payment of the Daily Fees to be made based on the award of the costs taken in line with the respective provisions on adjudication of the Buildings Contract(s) as per Article I.6.5, which will be paid under the respective Buildings Contract(s) and according to the award of the costs) shall not exceed EUR 9,500 (nine thousand five hundred euro) in [*] or in each subsequent full calendar year. If this Contract is terminated for whatever reason during the calendar year, these amounts shall be reduced respectively and proportionately for that part calendar year. Such total amount of the Daily Fees shall be automatically adjusted, if the revised Daily Fee is higher than the Daily Fee set out in Article I.5.1, by the percentage of the increase in the amount of the Daily Fee revised in accordance with Article I.5.3.

I.5.5 Without prejudice to Article I.6.5, travel and subsistence expenses directly connected with the performance of the tasks (the “**Expenses**”) shall be reimbursed as follows:

- a) transport costs incurred when travelling from a point within the EU or Switzerland to a Visit or a hearing/meeting within the EU or Switzerland shall be reimbursed at a flat rate of EUR 500 (five hundred euro) per round trip; this shall cover all transport expenses incurred, such as flight, taxi, car rental; the Appointee travelling less than 200 km (two hundred kilometre) distance will receive a flat rate reduced by 50% (fifty per cent) corresponding to EUR 250 (two hundred fifty euro);
- b) accommodation costs incurred shall be reimbursed at a flat rate of EUR 150 (one hundred fifty euro) per night. The number of nights may not exceed the number of hearing/meeting/performance of tasks calendar days plus one (+1);
- c) a per diem of EUR 100 (one hundred euro) per calendar day of the Visit or the hearing/meeting shall cover, as a daily flat rate, all expenditure at the

place where the Visit or the hearing/meeting is held, including for example meals, local transport (bus, tram, metro, taxi), parking, motorway tolls, fuel, etc., as well as any insurance.

- I.5.6** Instruction of F4E to attend a Visit or a meeting will be given to the Appointee at least 14 (fourteen) calendar days before the date of the respective Visit or meeting in accordance with Article I.8. However, where the request/instruction to attend a Visit or any other meeting, as the case may be, was made/given within 48 (forty-eight) hours as from the date of the Visit and the meeting and travel expenses exceed the EUR 500 (five hundred euro) flat rate, the Appointee may request the difference to be paid by F4E on the basis of the original proof of payment document(s) and the boarding pass(es) of economic class flight ticket(s). In the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es) shall be attached to such request.
- I.5.7** Without prejudice to Article I.3.2, the total amount of the Expenses to be reimbursed to the Appointee by F4E under this Contract (with the exception of reimbursement of the Expenses to be made based on the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on the procedural rules for adjudication to, the Buildings Contract(s) as per Article I.6.5, which will be made under the respective Buildings Contract(s) and according to the award of the costs) shall not exceed EUR 5,000 (five thousand euro) in [*] or in each subsequent full calendar year. If this Contract is terminated for whatever reason during the calendar year, these amounts shall be reduced respectively and proportionately for that part calendar year.
- I.5.8** Without prejudice to the last paragraph of Article I.5.1, charges for couriers incurred in connection with the Appointee's tasks shall be reimbursed upon presentation of the original proof of payment documents up to the maximum amount of EUR 1,500 (one thousand five hundred euro) in [*] or in each subsequent full calendar year. If this Contract is terminated for whatever reason during the calendar year, these amounts shall be reduced respectively and proportionately for that part calendar year.
- I.5.9** If the Expenses are incurred in a currency other than euro, the conversion rate, applicable for the calendar month in which such Expenses incurred (as evidenced in accordance with this Article I.5), available from time to time at the following link: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm shall be used.
- I.5.10** Notwithstanding any provision of this Contract, the remuneration of the Adjudicator in relation to any Dispute under the Interface Agreement shall be subject to separate arrangements of the parties to such Dispute made directly with the Appointee, unless F4E becomes a party to such Dispute in which case this Article I.5 shall mutatis mutandis apply to the extent F4E is concerned in such Dispute.

ARTICLE I.6 – PAYMENT MODALITIES

- I.6.1** Payment of the Daily Fees and reimbursement of the Expenses to the Appointee as an Adjudicator for the performance of his tasks related to a Dispute under the Buildings Contract(s) shall be calculated in line with this Contract and shall be paid under the respective Buildings Contract(s) according to the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s). The award of the costs shall reflect the relative success or failure of the parties to the adjudication in the respective Dispute, and therefore, F4E and/or its Contractor(s), as the case may be, shall pay (the respective part of) the Daily Fees and the Expenses incurred in relation to the Dispute by the Adjudicator according to the award of the costs. Notwithstanding the foregoing, payments of the Daily Fees and reimbursement of the Expenses to the Appointee for Visits not directly related to a Dispute under the Buildings Contract(s) and instructed by F4E, and payments of the Daily Fees and reimbursement of the Expenses to the Appointee for meetings which are not directly related to a Dispute and on which the Appointee's attendance is required as per the instruction of F4E shall be calculated, borne and made by F4E, in accordance with this Contract.
- I.6.2** It is understood that payment of the Daily Fees and reimbursement of the Expenses to the Appointee, or any other type of remuneration as the case may be, in relation to any Dispute under the Interface Agreement shall be agreed by, and calculated in accordance with the separate arrangements of, the parties to such Dispute, made directly with the Appointee, and any of such amounts shall be borne and paid by such parties according to such arrangements; therefore, this Article I.6 shall not apply to any such Disputes unless F4E becomes a party such Dispute in which case this Article I.6 shall mutatis mutandis apply to the extent F4E is concerned in such Dispute.
- I.6.3** The Daily Fees of the Appointee for a Visit not directly related to a Dispute and instructed by F4E, and the Daily Fees of the Appointee for meetings which are not directly related to a Dispute and on which the Appointee's attendance is required as per the instruction of F4E, shall be paid (i) after occurrence, (ii) in the case of a Visit, on presentation of a written report produced by the Appointee in relation to such Visit as per Article III.6.2, and (iii) in the case of a meeting, a mission statement obtained from the representative of F4E being present on such meeting confirming the attendance of the Appointee on such meeting. Requests for payment of such Daily Fees shall be submitted and addressed to F4E, and accompanied by (i) the instruction of F4E regarding such Visit/meeting, (ii) in the case of a Visit, a copy of the written report produced by the Appointee in line with Article III.6.2, (iii) in the case of a meeting, the mission statement referred to in this Article I.6.3, and (iv) the timesheet form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form). All requests for payment of such Daily Fees must be dated and must clearly quote the reference number of this Contract and the

respective Buildings Contract(s), or the Interface Agreement, if applicable. Requests for payment under this Article I.6.3 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Daily Fees of the Adjudicator related to a Dispute shall be established according to Article I.6.5.

- I.6.4** The Expenses of the Appointee for a Visit not directly related to a Dispute and instructed by F4E, and for meetings which are not directly related to a Dispute and on which the Appointee's attendance is required as per the instruction of F4E, shall be reimbursed (i) after occurrence, (ii) if related to a Visit not directly related to a Dispute, or any other meeting, instructed by F4E in either case, once per Visit, following which a written report is drawn up as per Article III.6.2, or meeting, and (iii) on presentation of the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). Requests for reimbursement of the Expenses shall be submitted and addressed to F4E, and accompanied by (i) the reimbursement form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form), and (ii) the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). All requests for reimbursement of such Expenses must be signed and dated by the Appointee and must clearly quote the reference number of this Contract and the respective Buildings Contract(s), or the Interface Agreement, if applicable. Reimbursement of charges for couriers as per Article I.5.8 shall be requested in accordance with this Article I.6.4, and if applicable, together with the reimbursement of the Expenses. Requests for reimbursement under this Article I.6.4 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Expenses of the Adjudicator related to a Dispute shall be established according to Article I.6.5.
- I.6.5** The Appointee, acting as an Adjudicator in the case of a Dispute, agrees that the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), or the award of the costs taken in line with Schedule 4 (Adjudications Procedure) to the Interface Agreement if F4E becomes a party to such Dispute to the extent F4E is concerned in such Dispute, shall comply with this Contract and shall be taken in the form as attached hereto as Annex IV (Award of the Costs Form). The award of the costs will state the Daily Fees (the number of calendar days on which his tasks are performed as per Article I.5.1 a) and the number of calendar days on which his tasks are performed as per Article I.5.1 b)) of the Adjudicator) incurred in relation to the Dispute in compliance with Article I.5.1, Article I.5.2 and Article I.5.3. Reimbursement of the Expenses incurred in relation to the Dispute by the Adjudicator the following amounts shall be paid as a lump sum, including the charges for couriers, if applicable. If the Daily Fees of the Adjudicator regarding the calendar days on which his tasks are performed as per Article I.5.1 b) are below or

equal to the amount indicated below, the corresponding lump sum of the Expenses shall be as follows:

Maximum amount of Daily Fees as per Article I.5.1 b) (EUR)	Corresponding lump sum of Expenses (EUR)
1,900	1,000
4,750	2,500
9,500	4,000
14,250	6,500
19,000	9,000
28,500	12,000

If the amount of Daily Fees of the Adjudicator regarding the calendar days on which his tasks are performed as per Article I.5.1 b) is above EUR 28,500 (twenty eight thousand five hundred euro), the corresponding lump sum of Expenses of the Adjudicator shall be nonetheless fixed at EUR 12,000 (twelve thousand euro). If there is no Daily Fee payable as per Article I.5.1 b), the charges for couriers shall be reimbursed upon presentation of the original proof of payment documents. The award of the costs will set a deadline for payments to be made by F4E and/or its Contractor(s), as the case may be; Article I.6.6 shall apply by analogy to the deadline to make payments. If the Dispute is decided by a (three-member) panel of Adjudicators, the award of the costs will have separate provisions for each Adjudicator being a member of such panel of Adjudicators. Requests for payment of such Daily Fees and requests for reimbursement of such Expenses as per the award of the costs shall be issued by each Adjudicator being member of the panel of Adjudicators in line with the award of the costs and this Contract, and, if submitted with F4E, accompanied by the award of costs (or a certified copy thereof) supported by the proof of attendance on the respective Visits and/or hearings/meetings (such as letter/e-mail of invitation or minutes of hearing/meeting) in relation to which the lump sum of Expenses is claimed. All requests for payment of the Daily Fees and requests for reimbursement of the Expenses will be signed and dated by the Adjudicator and will clearly quote the reference number of this Contract, the respective Buildings Contract(s) (or the Interface Agreement if applicable) and the award of the costs.

- I.6.6** F4E shall pay the Appointee within 45 (forty-five) calendar days of receipt of the original of any admissible request for payment/reimbursement under this Article I.6, unless the time-limit has been suspended or the payment/reimbursement (further referred to as “payment”) is refused by F4E as stipulated in Article II.4.
- I.6.7** All payments under this Contract or based on the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), to be made under the respective Buildings Contract(s) to the Appointee as an Adjudicator, shall be made

by F4E in euro to the bank account of the Appointee indicated in Article I.7.

ARTICLE I.7 – BANK ACCOUNT

I.7.1 Payments shall be made to the Appointee’s bank account denominated in euro, identified as follows:

Name of bank: [complete]
Branch Address in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
IBAN code: [complete]

ARTICLE I.8 – COMMUNICATION

I.8.1 Any communication relating to this Contract shall be made in writing and shall bear the number of this Contract. Ordinary mail shall be deemed to have been received by F4E on the date on which it is registered by F4E internal mailing service.

Communications shall be sent to the following addresses:

To F4E:

The European Joint Undertaking for ITER and the Development of Fusion Energy ('F4E')
Legal Service Unit
Attn.: Karoly OLAJOS
c/Josep Pla 2
Torres Diagonal Litoral
Building B3
08019 Barcelona
Spain

E-mail: Karoly.Olajos@F4E.europa.eu

To the Appointee:

[*]
Address: [*]
E-mail: [*]

I.8.2 Save in exceptional circumstances, the Appointee shall inform F4E of any changes which may have an impact on this Contract or the implementation of it, such as, for example, change of address (place of residence), at least 14 (fourteen) calendar days before the change takes effect.

I.8.3 The contact person for administrative matters within F4E is:

Stephanie RATHIER
Legal Service Unit
c/ Josep Pla 2
Torres Diagonal Litoral
Building B3
08019 Barcelona
Spain

E-mail: Stephanie.Rathier@F4E.europa.eu

ARTICLE I.9 – APPLICABLE LAWS AND SETTLEMENT OF DISPUTES

I.9.1 This Contract shall be governed by Community and European Union law, complemented, where necessary, by the rules of law in force in France other than its rules of private international law. The Contract shall be interpreted in accordance with its true meaning and effect, and, as a consequence of F4E's status as a Euratom joint undertaking, independently from any municipal law. Provided that if and insofar as the provisions of the Contract do not stipulate, or any other terms and conditions are ambiguous or unclear, then in those circumstances only, reference shall be had to mandatory French law.

I.9.2 Any dispute between the contracting parties resulting from the interpretation or application and/or performance of this Contract (but not arising from or in connection with any decision (including any award of the costs) of the Adjudicator in relation to the Buildings Contract(s), or the Interface Agreement, if applicable) which cannot be settled amicably shall be brought before the Court of Justice of the European Union. The language of such proceeding shall be English.

ARTICLE I.10 – SURVIVAL OF OBLIGATIONS

I.10.1 Obligations under this Contract and/or in its Annexes, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in Article II.2 (Liability), Article II.5 (Use, distribution and publication of information), Article II.6 (Confidentiality), Article II.9 (Substantial errors, irregularities and fraud attributable to the Appointee), Article II.10 (Checks and audits), Annex I (Terms of Appointment and Rules of Procedure) and the declaration signed by the Appointee in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests) shall survive the termination or expiration of this Contract and/or its Annexes.

II. – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THIS CONTRACT

- II.1.1** The Appointee shall perform this Contract with the highest professional standards. The Appointee shall have the professional qualifications and experience and language skills required for the performance of the tasks assigned to him. The Appointee shall take out and maintain adequate professional indemnity insurance relating to his tasks assigned to him under this Contract, in accordance with the national laws of the country in which the Appointee is resident.
- II.1.2** The Appointee shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from legislation on tax and social security contribution. The Appointee shall have sole responsibility for compliance with social security laws and health and safety regulations that apply to the Appointee.
- II.1.3** The Appointee shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for the performance of this Contract under the laws and regulations in force at the place where the tasks assigned to him are to be performed.
- II.1.4** The Appointee is deemed to act in his personal capacity and, in performing his tasks, shall not represent any economic operator/organisation. Accordingly, the Appointee shall neither represent F4E nor behave in any way that would give such an impression. F4E may not under any circumstances be considered to be the Appointee's employer.
- II.1.5** The Appointee shall have the sole responsibility to perform the tasks personally assigned to him. The Appointee shall not subcontract nor cause this Contract to be performed in fact by third parties. The Appointee shall not assign the rights and obligations arising from this Contract, in whole or in part.
- II.1.6** Should any unforeseen event, action or omission directly or indirectly hamper the performance of his tasks, either partially or totally, the Appointee shall immediately and on his own initiative record it and report it to F4E. The report shall include a description of the problem, an indication of the date on which it started and of the remedial action taken by the Appointee to ensure full compliance with his obligations under this Contract.
- II.1.7** Should the Appointee fail to perform his obligations and/or fail to comply with his undertakings, such as his confidentiality undertaking, no conflict of interests, independence and impartiality obligations, under this Contract, F4E may, without prejudice to its right to terminate this Contract in accordance with Article II.8, reduce or recover payments in proportion to the scale of the failure.

ARTICLE II.2 – LIABILITY

- II.2.1** F4E shall not be liable for damage sustained by the Appointee in performance of this Contract except in the event of wilful misconduct or gross negligence on the part of F4E. F4E shall not be liable to provide the Appointee with any compensation or coverage in the event of injury or illness, unless otherwise provided in this Contract. F4E shall not be liable for any act or default on the part of the Appointee in the performance of this Contract.
- II.2.2** With the exception of the breach of confidentiality undertaking, no conflict of interests, independence and impartiality obligations of the Appointee and without prejudice to Article II.8.4, the Appointee shall in no circumstances be liable to F4E for claims of any kind for anything done or omitted in the discharge of his tasks or functions as an Adjudicator, whether in negligence or otherwise, unless the act or omission is shown to have been in bad faith. However, the application of this Article II.2.2 shall not prevent F4E to terminate this Contract in accordance with Article II.8.
- II.2.3** In the case of breach of confidentiality undertaking, no conflict of interests, independence and impartiality obligations of the Appointee, the Appointee shall not be entitled to payment of the Daily Fees and reimbursement of the Expenses in accordance with this Contract.

ARTICLE II.3 – GENERAL PROVISIONS CONCERNING PAYMENTS

- II.3.1** Payments shall be deemed to have been made on the date on which F4E's account is debited.
- II.3.2** Should a required form and/or supporting document related to a request for payment be incomplete or some clarification and additional information be required or the requested amount is not due, F4E reserves the right to suspend the time limit of 45 (forty-five) calendar days for payment.
- II.3.3** The same shall apply without prejudice to F4E's right to terminate this Contract in accordance with Article II.8 or the right to reduce or recover payments in proportion to the scale of the failure if the Appointee fails to perform his obligations under this Contract including complying with his confidentiality undertaking, no conflict of interests, independence and impartiality obligations.
- II.3.4** F4E shall notify the Appointee accordingly and set out the reasons for the suspension and the conditions to be met for lifting the suspension in line with Article I.8. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period shall begin to run again once the suspension has been lifted.
- II.3.5** F4E reserves the right to refuse to make payment of the Daily Fees and/or reimbursement of the Expenses if within 30 (thirty) calendar days upon sending the request by F4E to the Appointee regarding additional information and/or documentation as required under this Contract, no sufficient information and/or documentation has been provided by the Appointee. When F4E decides not to

proceed with the payment of the Daily Fees and/or the reimbursement of the Expenses, F4E shall duly inform the Appointee in line with Article I.8.

- II.3.6** F4E reserves the right to recover any payment/reimbursement made and to exclude from further tasks the Appointee who has breached any substantial obligations of this Contract, such as his confidentiality undertaking, no conflict of interests, independence and impartiality obligations. Recovery shall be made amongst others with respect to previously paid amounts to the Appointee in accordance with this Contract if, as a consequence of such breach, any proceedings or decisions of the Adjudicator are rendered void or ineffective in accordance with the provisions of the Buildings Contract(s) (or the Interface Agreement, if applicable).
- II.3.7** Arrangements as regards payment of the Daily Fees and reimbursement of the Expenses are between the Appointee and F4E. Upon request by any competent national authorities, F4E may inform them of any payment made for the performance of the tasks of the Appointee.
- II.3.8** In the event of late payment by F4E, the Appointee shall be entitled to interest, provided the calculated interest exceeds EUR 200 (two hundred euro). The Appointee may claim interest within two (2) calendar months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the reference rate) plus seven (7) percentage points (the margin). The reference rate in force on the first calendar day of the calendar month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the calendar day of payment. Suspension of payment by F4E may not be deemed to constitute late payment.

ARTICLE II.4 – RECOVERY

- II.4.1** If total payments made exceed the amount due under this Contract, or if recovery is justified in accordance with this Contract or by the laws applicable to this Contract, the Appointee shall reimburse the appropriate amount in euro on receipt of a debit note issued by F4E, in the manner and within the time limits set by F4E.
- II.4.2** F4E may, after informing the Appointee, recover amounts established as certain, of a fixed amount and due by offsetting if the Appointee also has a claim on F4E that is certain, of a fixed amount and due.

ARTICLE II.5 – USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

- II.5.1** The Appointee shall authorise F4E to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to this Contract, in particular the identity of the Appointee, the subject matter, the duration, and the amount paid.

II.5.2 The use of information obtained by the Appointee in the course of this Contract for purposes other than its performance shall be forbidden, unless F4E has specifically given prior written authorisation to the contrary. This provision shall not allow the publication of any information/documents relating to the adjudication without prior written authorisation of the parties to the adjudication.

ARTICLE II.6 – CONFIDENTIALITY

II.6.1 The Buildings Contract(s) include(s) provisions on confidentiality, which shall be respected by the Appointee in accordance with such provisions of the respective Buildings Contract(s), but at least for a period of ten (10) calendar years from termination of this Contract for whatever reason. The same shall apply in respect of the Interface Agreement. The Appointee shall be required to sign a declaration to this effect in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests).

II.6.2 In addition to the above, the Appointee undertakes to treat in the strictest confidence and not make use of or divulge to third parties, with the exception of the Contractor(s) (and any other party to the adjudication, as the case may be), any information or documents which are linked to the performance of this Contract. In particular, he undertakes not to reveal any detail of the adjudication and its outcome. The Appointee shall be responsible for maintaining the confidentiality of any documents or electronic files sent and for returning, erasing or destroying all confidential documents or files upon completing his tasks, unless otherwise instructed by F4E and its Contractor(s), or the parties to the adjudication. The Appointee shall continue to be bound, without any time limits, by this undertaking after completion of his tasks.

ARTICLE II.7 – TAXATION

II.7.1 The Appointee shall have the sole responsibility for compliance with tax laws which apply to him. Failure to comply shall make the respective requests for payment invalid.

II.7.2 The Appointee acknowledges that F4E is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

ARTICLE II.8 – TERMINATION

II.8.1 F4E may terminate this Contract in the following circumstances:

- a) where F4E has evidence, or seriously suspects the Appointee, of professional misconduct;

- b) where F4E has evidence, or seriously suspects the Appointee or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the Community or the European Union;
- c) where F4E has evidence, or seriously suspects the Appointee or any related entity or person, of substantial errors, irregularities or fraud in the procedure to place this Contract or the performance of this Contract;
- d) where the Appointee is in a conflict of interests situation or in a situation in which a conflict of interests may exist;
- e) where the Appointee was guilty of misrepresentation in supplying the information required by F4E as a condition of participation in the procedure to award this Contract or failed to supply this information;
- f) where a change in the Appointee's personal situation could, in F4E's opinion, have a significant effect on the performance of this Contract;
- g) in the event of disruption of the performance of the tasks resulting from the action of the Appointee or in the event the expertise of the Appointee fails to correspond to the profile required by this Contract, stating the reasons for doing so;
- h) where the Appointee, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in a breach of his contractual obligations;
- i) at the discretion of F4E to withdraw the appointment of the Appointee in the Panel of Adjudicators by 60 (sixty) calendar day notice in writing, and to terminate this Contract. Such termination, if applicable, shall be without prejudice to any accrued rights of F4E, its Contractor(s) or the Appointee;
- j) where the Appointee has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the national laws of the country in which he is resident or with those of the country applicable to this Contract or those of the country where this Contract is to be performed; or
- k) otherwise provided by this Contract.

II.8.2 Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating this Contract is received by the Appointee, or on any other date indicated in the letter of termination. Termination of this

Contract, unless otherwise specified in such letter, shall entail withdrawal of the appointment of the Appointee as an adjudicator in the Panel of Adjudicators and of the nomination as an Adjudicator and the chairman of the panel of Adjudicators, if applicable, in relation to adjudication. Article I.2.6 shall apply respectively.

II.8.3 If F4E terminates this Contract in accordance with this Article II.8, the Appointee shall waive any claim for damages against F4E, including any loss of anticipated profits for uncompleted tasks. He shall draw up the documents required for the tasks performed up to the date on which termination takes effect, within a period not exceeding 28 (twenty-eight) calendar days from that date.

II.8.4 On termination F4E may engage any person from the list of prospective individual experts to act as adjudicators for disputes arising from F4E's operational contracts or nominate any other adjudicator in the Panel of Adjudicators to complete the tasks. If termination for whatever reason is deemed attributable to the Appointee, F4E shall be entitled to claim from the Appointee all extra costs incurred in making good and completing the tasks, without prejudice to any other rights it has under this Contract.

ARTICLE II.9 – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE APPOINTEE

II.9.1 Where, after the award of this Contract, the procedure to award this Contract or the performance of this Contract prove to have been subject to substantial errors, irregularities or fraud, and where such substantial errors, irregularities or fraud are attributable to the Appointee, F4E may refuse to make payments, may recover amounts already paid or may terminate this Contract in accordance with Article II.8 and all other contracts concluded with the Appointee, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE II.10 – CHECKS AND AUDITS

II.10.1 In accordance with Article 15 of the Statutes annexed to the Council Decision (Euratom) No 198/2007, the European Court of Auditors shall be empowered to audit the documents held by the Appointee receiving payments from the budget of F4E from the Commencement Date up to five (5) calendar years after receiving the last payment from F4E in accordance with this Contract.

II.10.2 F4E or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from the Commencement Date up to five (5) calendar years after receiving the last payment from F4E in accordance with this Contract.

II.10.3 In addition, the European Anti-Fraud Office (OLAF) may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (Euratom) No 1074/1999 from the

Commencement Date up to five (5) calendar years after receiving the last payment from F4E in accordance with this Contract.

ARTICLE II.11 – DATA PROTECTION

II.11.1 Any personal data included in this Contract, including its performance, or relating to this Contract or the implementation thereof shall be processed by F4E pursuant to Parliament and Council Regulation (EC) No 45/2001. It shall be processed solely for the purposes of the performance, management and follow-up of this Contract by F4E without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to F4E’s financial irregularities panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community and the European Union. The Appointee shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete.

II.11.2 Should the Appointee have any queries concerning the processing of his personal data, he shall address them to the F4E controller responsible for processing of the personal data in relation to this Contract (the “**Personal Data Controller**”). The Appointee shall have right of recourse at any time to the European Data Protection Supervisor.

II.11.3 The F4E responsible officers identified in Article I.8.3 shall inform the Appointee of the name of the Personal Data Controller.

II.11.4 In addition to the processing of personal data referred to in Article II.5.1 and Article II.11.1, F4E may publish for transparency reasons the name (first name and family name), gender, nationality and the technical area of the Appointee under this Contract on its public website at regular intervals.

ARTICLE II.12 – AMENDMENTS

II.12.1 Any amendment to this Contract, with the exception of Annex VI (List of Buildings Contracts), which may be updated by F4E by notifying the Appointee in accordance with Article I.2.3 and Article I.8, shall be subject to a written agreement duly signed by the Appointee and the authorized representative(s) of F4E. An oral agreement shall not be binding on the contracting parties.

This Contract has been read, understood and signed in approval by F4E and the Appointee as being in full accordance with their will on the date and at the place below.

SIGNATURES

For the Appointee,

[*]

For F4E,

Laurent SCHMIEDER, Site and Buildings

and Power Supplier Project Team Manager

Signature: _____

Done at [*], [*]

In duplicate in English.

Signature: _____

Done at Cadarache, [*]

ANNEX I
TERMS OF APPOINTMENT AND RULES OF PROCEDURE

ARTICLE III.1 - EFFECT OF THIS TERMS OF APPOINTMENT AND RULES OF PROCEDURE

III.1.1 This Terms of Appointment and Rules of Procedure shall take effect upon the Commencement Date. However, upon nomination of the Adjudicator by the Chairman of the Panel of Adjudicators, the nominated Adjudicator shall sign a declaration in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests). This shall equally apply to the Chairman of the Panel of Adjudicators if he is nominated to act as an Adjudicator in the Dispute referred to adjudication.

III.1.2 This Terms of Appointment and Rules of Procedure shall be complementary to the rules set out in the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to the Buildings Contract(s) (or in Schedule 4 (Adjudication Procedure) to the Interface Agreement, if applicable).

III.1.3 Whenever a reference is made to the panel of Adjudicators within this Terms of Appointment and Rules of Procedure, reference to an Adjudicator shall be understood as well, as the context requires, and vice-versa.

ARTICLE III.2 - PURPOSE OF ADJUDICATION, TASKS OF THE ADJUDICATORS

III.2.1 The purpose of the adjudication is to resolve Disputes between F4E and/or its Contractor(s) (or in the case of Disputes under the Interface Agreement, to resolve Disputes between the Contractors), or any other parties to the adjudication, which are within the scope of the adjudication, as rapidly and economically as is reasonably possible.

III.2.2 The tasks of the Adjudicator are to participate in the adjudication in a confidential, fair and equitable way according to the procedures set out in the Buildings Contract(s), the Interface Agreement, if applicable, this Terms of Appointment and Rules of Procedure and/or any other procedural rules agreed by the parties to the adjudication.

III.2.3 To the extent any Dispute involves more than two (2) parties (which may include F4E and/or its Contractor(s)) then the procedures set out in the Buildings Contract(s), the Interface Agreement, if applicable, this Terms of Appointment and Rules of Procedure shall be subject to such adjustments as the parties to such Dispute may agree, or which the Adjudicator may deem necessary to allow the multi-party Dispute to be resolved smoothly.

ARTICLE III.3 - SCOPE OF ADJUDICATION

III.3.1 The scope of the adjudication shall be the matters identified in the Notice of Referral to Adjudication or in the full submissions of the parties to the adjudication (where applicable), together with the following, subject to the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to the Buildings Contract(s) (or in Schedule 4 (Adjudication Procedure) to the Interface Agreement, if applicable):

- a) any further matters which F4E and any other parties to the adjudication agree should be within the scope of the adjudication;
- b) any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful; and
- c) any further matters which arise by virtue of any joinder pursuant to this Terms of Appointment and Rules of Procedure, the Buildings Contract(s) or the Interface Agreement, if applicable, that the Adjudicator has agreed to follow.

III.3.2 The panel of Adjudicators may consider the existence of their jurisdiction on their own motion and take a decision upon such jurisdiction, within the scope of the adjudication.

ARTICLE III.4 - NATURE OF ADJUDICATION

III.4.1 Subject to the terms and conditions of the Buildings Contract(s), the Chairman of the Panel of Adjudicators shall have the right to consider appropriate to refer any Dispute between F4E and its Contractor(s), or any other parties to the adjudication, to be resolved by one (1) Adjudicator (also by the Chairman of the Panel of Adjudicators) or by the panel of Adjudicators consisting of three (3) Adjudicators, out of which one (1) member may be the Chairman of the Panel of Adjudicators as well. In the case of adjudication under the Interface Agreement, the Dispute between the Contractors, or any other parties to the adjudication, may be resolved by one (1) Adjudicator (also by the Chairman of the Panel of Adjudicators) as agreed by the parties to the adjudication or as nominated by the Engineer (as defined in the Interface Agreement) in accordance with Schedule 4 (Adjudication Procedure) to the Interface Agreement.

III.4.2 The panel of Adjudicators shall have the power, where applicable, to open up, review and revise any decision, acceptance, approval, opinion, instruction, determination, certificate or valuation of F4E, the Engineer or the Contractor(s) related to the Dispute, provided that there shall be no such power so to do where the same is expressly provided in the Buildings Contract(s) to be at the sole discretion of F4E, the Engineer or its Contractor(s), or where the same has been made or given following failure by the Contractor(s) related to the Dispute to comply with any timetable or procedure set out in the Buildings Contract(s).

III.4.3 The Adjudicator shall in no circumstances (i) be appointed as an arbitrator in any arbitration or as mediator in a mediation in connection with any of the Buildings Contract(s) unless the parties to that procedure jointly agree otherwise in writing; (ii) be joined as a party to, nor called as a witness to give evidence concerning any Dispute before an arbitral tribunal or a court having jurisdiction over such Dispute according to the Buildings Contract(s) unless mandatory provision of the laws applicable to such procedure otherwise provides, or such arbitral tribunal or such courts so requires.

ARTICLE III.5 – NO CONFLICT OF INTERESTS, IMPARTIALITY AND INDEPENDENCE, WARRANTIES AND UNDERTAKINGS OF THE ADJUDICATOR

III.5.1 No conflict of interests

The Adjudicator shall take all necessary measures to avoid any conflict of interests that could compromise, or be seen to compromise, the impartial and objective performance of his tasks.

Conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest related to the tasks to be performed by the Adjudicator.

A disqualifying conflict of interests exists if the Adjudicator:

- a) was involved in the preparation of the proposal or tender relating to the Buildings Contract(s) (or the preparation of the Interface Agreement, if applicable) and/or the performance of the Buildings Contract(s) (or the Interface Agreement, if applicable);
- b) stands to benefit directly should any Dispute be decided by him in favour of any parties to the adjudication;
- c) has a close family/emotional relationship with any person representing an organization participating in the performance of the Buildings Contract(s) (or the Interface Agreement, if applicable);
- d) is a director, officer, trustee or business partner of an economic operator/organization under the Buildings Contract(s) (or the Interface Agreement, if applicable);
- e) is employed by one (1) of the economic operators/organisations participating in the performance of the Buildings Contract(s) (or the Interface Agreement, if applicable);

- f) is in any other situation that compromises his ability to participate in the adjudication in line with this Terms of Appointment and Rules of Procedure impartially.

The Adjudicator subject to a disqualifying conflict of interests shall not be permitted to participate in the adjudication.

A potential conflict of interest may exist, even in cases not covered by the clear disqualifying conflicts indicated above, if an Adjudicator:

- a) was employed by one (1) of the economic operators/organisations participating in the performance of the Buildings Contract(s) (or the Interface Agreement, if applicable) within three (3) calendar years prior to the Commencement Date;
- b) was involved in a contract or research collaboration with an economic operator/organization participating in the performance of the Buildings Contract(s) (or the Interface Agreement, if applicable) within three (3) calendar years prior to the Commencement Date;
- c) is in any other situation that could cast doubt on his ability to participate in the adjudication impartially, or that could reasonably appear to do so in the eyes of an external third party.

The Adjudicator subject to a potential conflict of interests shall take necessary measures to eliminate the conflict of interests in agreement with F4E and its Contractor(s), or the parties to the adjudication, as the case may be.

III.5.2 Impartiality and independence

The Adjudicator shall be and remain impartial and independent from F4E and its Contractor(s) (or any other parties to the adjudication, as the case may be) and shall be under a continuing liability to disclose in writing without delay to F4E, its Contractor(s) (or any other parties to the adjudication, as the case may be) and to the other adjudicators in the Panel of Adjudicators any fact or circumstance that might be such as to call into question his impartiality or independence as between F4E and the respective Contractor(s).

Amongst others, the Adjudicator shall:

- a) have no interest financial or otherwise in F4E or its Contractor(s) or financial interest in the Buildings Contract(s) (or the Interface Agreement, if applicable) except for payments made in accordance with this Contract;
- b) have disclosed in writing to F4E and its Contractor(s) prior to the Commencement Date any professional or personal relationships with any

director, officer or employee of F4E or its Contractor(s), and any prior involvement in the ITER project;

- c) not previously have been employed as a consultant or otherwise by F4E or its Contractor(s) except in those circumstances which have been disclosed in writing to F4E and its Contractor(s) prior to the Commencement Date;
- d) not, while an adjudicator in the Panel of Adjudicators, be employed as a consultant or otherwise by F4E or its Contractor(s) unless F4E and its Contractor(s) otherwise agree in writing;
- e) not while an adjudicator in the Panel of Adjudicators enter into discussions or make any agreement with F4E or its Contractor(s) regarding employment by any of them whether as a consultant or otherwise after ceasing to be an adjudicator in the Panel of Adjudicators unless F4E and its Contractor(s) otherwise agree in writing;
- f) not seek employment by F4E or its Contractor(s) for one (1) calendar year after his appointment as an adjudicator in the Panel of Adjudicators ceased to exist for any reason unless F4E and its Contractor(s) otherwise agree in writing.

III.5.3 Warranties and undertakings

The Adjudicator warrants that he is (i) experienced in some or all of the types of tasks involved in the ITER project, (ii) familiar with the Buildings Contract(s), the Interface Agreement, their related documents and the interpretation thereof, and (iii) fluent in English.

The Adjudicator undertakes to:

- a) ensure his reasonable availability for all Visits and hearings/meetings, as the case may be, which he is required to attend and shall observe this Terms of Appointment and Rules of Procedure;
- b) ensure to be at the Commencement Date and remain impartial and independent from F4E and its Contractor(s) while performing his tasks under this Terms of Appointment and Rules of Procedure;
- c) ensure that he is not in a conflict of interests situation at the Commencement Date and while performing his tasks under this Terms of Appointment and Rules of Procedure;
- d) immediately take all necessary steps to resolve any conflict of interests and to cooperate with the parties involved;

- e) maintain all documents received in connection with the Buildings Contract(s), the Interface Agreement, if applicable, and the ITER project in a current working file;
- f) when required for the purposes of a meeting relating to the progress of the Buildings Contract(s), the Interface Agreement, if applicable, and the ITER project, study all documents received and maintain them in a current working file;
- g) treat the details of the Buildings Contract(s), the Interface Agreement, if applicable, and the ITER project, and all activities and hearings/meetings as private and confidential and shall not publish or disclose the same without the prior written consent of the parties to the adjudication or the parties to the respective Buildings Contract(s), or Interface Agreement, if applicable; and
- h) save as provided for in this Terms of Appointment and Rules of Procedure, not assign, delegate or subcontract any of the tasks under this Terms of Appointment and Rules of Procedure.

III.5.4 Common provisions

If the Adjudicator has been or will be brought into conflict with any of his undertakings and/or obligations in this Article III.5, he shall inform F4E, its Contractor(s) and the other adjudicators in the Panel of Adjudicators without delay, and shall recuse himself from the adjudication regarding the Buildings Contract(s) (or the Interface Agreement, if applicable). F4E and its Contractor(s) may waive the Adjudicator's conflict in writing. Such waiver shall be irrevocable.

Upon written request by F4E or its Contractor(s), the Adjudicator shall provide a recommendation as to whether an adjudicator in the Panel of Adjudicators (including the Chairman of the Panel of Adjudicators) has been or will be brought into conflict with any of his undertakings and/or obligations in this Article III.5 by virtue of the Buildings Contract(s), the Interface Agreement, if applicable, or other circumstances not yet in existence at the Commencement Date (including any Buildings Contract(s) not yet in existence at the Commencement Date), and whether such Adjudicator should be recused temporarily or permanently from any adjudication regarding the Buildings Contract(s) or the Interface Agreement, if applicable.

Notwithstanding the foregoing, where the Adjudicator becomes aware of any such situation without having been requested to provide a recommendation, he shall promptly bring it to F4E's and its Contractors' attention and to the attention of the Chairman of the Panel of Adjudicators and the other adjudicators in the Panel of Adjudicators.

ARTICLE III.6 – PROCEDURAL RULES

III.6.1 General provisions

If any Dispute is referred to adjudication under the Buildings Contract(s) (or the Interface Agreement, if applicable), the Chairman of the Panel of Adjudicators and then the nominated Adjudicator(s) shall proceed in accordance with the Buildings Contract(s) (or the Adjudicator, in accordance with the Interface Agreement, if applicable) falling within the scope of adjudication pursuant to this Terms of Appointment and Rules of Procedure.

Subject to the Buildings Contract(s), the Interface Agreement, if applicable, and any other relevant factors, the Adjudicator shall afford to any of the parties to the adjudication reasonable opportunity to present its case in relation to the Dispute referred to the Adjudicator for decision.

When applying this Terms of Appointment and Rules of Procedure, due respect shall be paid to the principles of equal rights and treatment of the parties to the adjudication and to the right of each party to the adjudication to familiarize itself with the documents of the adjudication, the documents filed and evidence submitted by other parties to the adjudication, and the actions taken by the Adjudicator, and to the right of each party to the adjudication to set forth its standpoint orally or in writing in the course of the procedure within the limits set forth in the Buildings Contract(s) under the respective provisions on adjudication and the respective annex on the procedural rules for adjudication (or Schedule 4 (Adjudication Procedure) to the Interface Agreement, if applicable).

The Adjudicator shall act fairly and impartially but shall not be obliged or empowered to act as though he were an arbitrator, and shall have full authority to conduct any hearing/meeting as he thinks fit, not being bound by any rules or procedures other than those appearing in the Buildings Contract(s), the Interface Agreement, if applicable, this Contract and those set out herein.

Without limiting the foregoing the Adjudicator may, if he thinks fit:

- a) require any party to the adjudication to produce any document both to the Adjudicator and to the other parties to the adjudication, whether helpful or otherwise to that party's case, and to draw such inference as may seem proper from any failure by any such party to the adjudication to produce such documents, provided that the parties to the adjudication shall not be required to produce documents protected by legal privilege and its equivalent principles under French law "protection du secret professionnel de l'avocat et de la confidentialité des échanges entre avocats";
- b) limit the length of any written or oral submission;

- c) require the attendance before him for questioning of any party to the adjudication or employee or agent of any such party, provided that he gives all parties to the adjudication reasonable notice of such required attendance;
- d) make any further Visits or inspect any property or thing relevant to the Dispute, as the case may be;
- e) make use of his own specialist knowledge;
- f) make directions for the conduct of the adjudication in writing;
- g) review and revise any of his own directions;
- h) conduct the adjudication inquisitorially and take the initiative in ascertaining the facts and the laws;
- i) submit a list of questions to the parties to the adjudication which he wishes the parties or the parties' witnesses to consider and answer;
- j) reach his decision with or without holding a hearing/meeting, and with or without having endeavoured to facilitate agreement between the parties to the adjudication;
- k) refuse admission to hearings/meetings or audience at hearings/meetings to any persons other than the parties to the adjudication and/or their authorised representatives;
- l) proceed in the absence of any party to the adjudication who the Adjudicator is satisfied received notice of the hearing/meeting;
- m) take minutes on the hearings/meetings held;
- n) award interest to any of the parties to the adjudication at such rate as is provided for in the Buildings Contract(s) (or the Interface Agreement, if applicable), or if no rate is provided, at a reasonable commercial rate; or
- o) adopt any procedures suitable to the circumstances of the adjudication which will avoid unnecessary delay or expense.

The Adjudicator shall not:

- a) express any conclusive opinions during any hearing/meeting concerning the merits of any arguments advanced by the parties to the adjudication;
- b) give advice to F4E or its Contractor(s) or concerning the conduct of the ITER project other than within the scope of the adjudication;

- c) discuss any Disputes under the Buildings Contract(s) (or the Interface Agreement, if applicable) with third parties, except with the express prior agreement of the parties to the adjudication;
- d) require any advance of or security for his Daily Fees and Expenses;
- e) reject, or fail to consider, any written submissions that are submitted in accordance with this Terms of Appointment and Rules of Procedure or the Buildings Contract(s) (or the Interface Agreement, if applicable);
- f) receive any written submissions from a party to the adjudication that are not also made available to the other parties to the adjudication;
- g) refuse any party to the adjudication the right at any hearing/meeting to be represented by any representative of that party's choosing who is present; or
- h) act or continue to act in the face of conflict of interests.

The adjudication and all matters arising in the course thereof shall be kept confidential by the parties to the adjudication except insofar as necessary to implement or enforce the Adjudicator's decision and the award of the costs, as necessary for any other Dispute arising from or in connection with the ITER project, or as may be required for the purpose of subsequent proceedings between the parties to the adjudication or by F4E's status as a Euratom joint undertaking.

III.6.2 Visits

The agenda for the Visits may require the attendance, for all or part of the Visits, of F4E, its Contractor(s) and other parties to the adjudication, as the case may be. The Visits shall be coordinated in the case of Visits instructed by F4E under this Contract and adjudication under the Buildings Contract(s) by F4E, and in the case of adjudication under the Interface Agreement by the Contractors in consultation with the Engineer. F4E or its Contractors, as the case may be, shall ensure the provision of appropriate conference facilities and secretarial and copying services.

On each Visit that is not related to the referral of any Dispute to adjudication, the ITER Site shall be inspected at those points where significant work is being carried out, and following such inspection a meeting shall be held with any parties on the ITER Site (at which those present may express any concerns they have). Immediately after such ITER Site visit and meeting, the Chairman of the Panel of Adjudicators shall produce a written report recording in broad terms what was seen and what matters of concern were raised at such meeting. If and in so far as the Chairman of the Panel of Adjudicators considers that action should be taken by any of the parties on the ITER Site in order to address the concerns arisen, then he may suggest this informally in the report. When producing his written report, the

Chairman of the Panel of Adjudicators may consult with the other adjudicators in the Panel of Adjudicators.

The written report to be drawn up following a Visit shall include, amongst others, the facts relating to such Visit, the data, information available at the time of such Visit, the progress of the implementation of the Buildings Contract(s) (and the Interface Agreement, if applicable), any possible future Dispute(s) the Adjudicator may foresee, the related point(s) of view of F4E and/or its Contractor(s), if applicable, and its opinion/recommendations.

If, during the course of the Visit that is not related to the referral of any Dispute to adjudication, whether while inspecting the works or during the course of a meeting, any party indicates a wish to discuss matters privately with the adjudicators in the Panel of Adjudicators (in the absence of the other parties attending), then before any such private meeting is held the Chairman of the Panel of Adjudicators shall specifically ask all those whom it is suggested should not attend the private meeting whether they agree to this procedure. If there are any objections, then no such private meeting shall be held.

Following the referral of any Dispute to adjudication:

- a) the Adjudicator may visit the ITER Site upon giving reasonable notice and F4E and its Contractor(s) shall cooperate with the Adjudicator's reasonable requests in relation to any such Visit;
- b) F4E may require the Adjudicator to attend a Visit upon giving reasonable notice; or
- c) the Contractor(s) may instruct F4E to require the Adjudicator to attend a Visit upon reasonable notice.

III.6.3 Joinder

In the event that any Dispute arises between a party to the adjudication and a third party or parties under a separate Buildings Contract which is substantially the same as or connected with issues in any existing Dispute, then F4E may require that such third party or parties shall be joined as a party to the adjudication and the parties to the adjudication and Adjudicator shall co-operate in such joinder. Following any such joinder, references to parties in this Terms of Appointment and Rules of Procedure are interpreted as including the joined party or parties and references to the Buildings Contract(s) shall be interpreted as including the separate Buildings Contract when relevant.

III.6.4 Decision

To reach a decision and to take the award of the costs in line with the respective

provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s) and in the form as attached hereto in Annex IV (Award of the Costs Form) consensus is required. However, if no consensus can be reached between the Adjudicators in the panel of Adjudicators, the chairman of the panel of Adjudicators shall decide the respective Dispute, including the decision on the award of the costs. If the Adjudicator's decision requires a payment by the Contractor(s) to F4E, the Adjudicator's decision may require the Contractor(s) to provide an appropriate security in respect of such payment.

The Adjudicator shall submit his reasoned decision using the form as attached hereto in Annex V (Decision Form) in writing by registered post, facsimile or courier and by e-mail to the parties to the adjudication in accordance with the Buildings Contract(s) (or the Interface Agreement, if applicable). The award of the costs taken in line with the respective provisions on adjudication of, and the annex on procedural rules for adjudication to, the Buildings Contract(s), which is to reflect the relative success or failure of the parties to the adjudication in the decision or adjudication, shall be included in the decision.

A decision of the panel of Adjudicators shall become immediately binding in accordance with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), and shall remain binding on the parties to the adjudication unless and until the subject matter of the decision is decided by the Court of Justice of the European Union in accordance with the respective provisions on adjudication of the Buildings Contract(s). This shall apply also to the award of the costs taken in line with the respective provisions on adjudication of the Buildings Contract(s).

In the case of adjudication under the Interface Agreement, the decision of the Adjudicator shall become immediately final and binding on the parties to the adjudication.

The award of costs may rule that each party to the adjudication shall bear its own costs incurred in relation to the adjudication.

Any payment according to the award of the costs shall not be unreasonably suspended, withheld or refused, and shall be made without undue delay to the Adjudicator as set out in such award of the costs. If the Contractor(s) fail(s) to make such payment to the Adjudicator according to the award of the costs within 45 (forty-five) calendar days as from the date when the payment becomes due according to such award of the costs, F4E may decide, by informing simultaneously the Contractor(s) thereof, to make such payment directly to the Adjudicator on behalf of the Contractor(s), in which case F4E shall be entitled to recover such payment from the Contractor under the Buildings Contract(s) in accordance with the Buildings Contract(s).

The above provisions shall mutatis mutandis apply to the decision and the award of

costs taken in relation to a Dispute under the Interface Agreement, unless the separate arrangements of the parties to such Dispute made directly with the Adjudicator provides otherwise. Annex V (Decision Form) may be customized to the requirements of the Interface Agreement in this respect.

III.6.5 Notices

The Chairman of the Panel of Adjudicators and/or the Adjudicator(s) shall immediately acknowledge and confirm receipt of the respective Notice of Referral to Adjudication (or in the case of adjudication under the Interface Agreement, the full submission of the referring party) to the parties to the adjudication.

All communications between any of the parties to the adjudication and the Adjudicator and all Visits and hearings/meetings shall be in English. All such communications shall be sent by registered post, via facsimiles or e-mails, unless the Buildings Contract(s) (or the Interface Agreement, if applicable) provides or the Adjudicator decides otherwise, in accordance with the Buildings Contract(s) (or the Interface Agreement, if applicable) and all other parties to the adjudication shall be copied in all such communications.

To adjudication under the Buildings Contract(s) the following provisions shall apply:

Documents sent by registered post or courier shall be deemed to have been received as evidenced by the record of receipt. Notwithstanding the foregoing, documents sent by first-class or registered post shall be deemed to have been received by F4E on the date on which it is registered by F4E internal mailing service.

Facsimiles shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where within the period set out below there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form. The periods are:

- a) two (2) hours after sending if sent on a Business Day and between the hours of 09:00 and 16:00;
- b) 11:00 on the following Business Day if sent after 16:00 on a Business Day but before 09:00 on that following Business Day.

E-mails shall be deemed to have been received when sent to the recipient's e-mail address, with the sender having received no e-mail notifying a delivery failure in relation to the sent e-mail.

By-hand deliveries shall be deemed to have been received at the time of delivery to the address stated on their face.

Notices shall be effective from the time of receipt. Periods of time measured with reference to the giving, sending or serving of a document shall be measured with reference to the time that document is received.

Unless otherwise instructed by the Adjudicator or agreed between the parties to the adjudication, all notices and other documents received on a calendar day which is not a Business Day or after 18:00 on any Business Day shall be deemed to have been received on the following Business Day.

Any references to times herein shall be considered to refer to the then current time in Paris (France) and all Business Days shall refer to F4E's working days on the ITER Site in Cadarache (France). A calendar of such working days for each calendar year shall be provided to the Appointee prior to the first day of each calendar year.

To adjudication under the Interface Agreement the following provisions shall apply:

Clause 8 (Notices and other communications) of the Interface Agreement applies.

ANNEX II
ACCEPTANCE OF NOMINATION AND DECLARATION OF INDEPENDENCE,
COMMITMENT AND CONFLICT OF INTERESTS

To Fusion for Energy (“**F4E**”) and/or its Contractor(s)

Via the Chairman of the Panel of Adjudicators (or via the Engineer in respect of adjudication under the Interface Agreement)

Name of the Adjudicator: [*]

Dear Sirs,

Reference is made to the Contract for Adjudication Expert F4E-[*] entered into by [*] as adjudicator and F4E on [*] (the “**Contract**”) regarding the provision of adjudication expertise in connection with Disputes (as defined in the Contract) under the Buildings Contract(s) (as defined in the Contract) (or the Interface Agreement (as defined in the Contract), where applicable). Unless otherwise defined herein, the expressions defined in the Contract shall have the same meanings as in the Contract.

I hereby accept the personal nomination as an Adjudicator for the Dispute presented to me in the respective Notice of Referral to Adjudication (or in the full submission of the referring party in respect of adjudication under the Interface Agreement), and agree to be bound by the terms and conditions of the Contract and to follow the relevant provisions of the Buildings Contract(s) (or the Interface Agreement, where applicable). In addition, I hereby acknowledge and confirm receipt of the respective Notice of Referral to Adjudication (or the full submission of the referring party in respect of adjudication under the Interface Agreement).

I hereby undertake to abide by the terms and conditions of the Contract, and in particular, by the Terms of Appointment and Rules of Procedure as attached to the Contract, and to fully respect the legitimate business interests of F4E and/or its Contractor(s) regarding the confidentiality of the Buildings Contract(s) (or the Interface Agreement, where applicable).

I hereby undertake not to be bound by any instructions and shall be completely independent in the performance of my tasks. I shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of my tasks.

I hereby undertake to abstain from any contact with third parties that could compromise, or appear to compromise, my independence as an Adjudicator under the Contract. I declare that I cannot derive any kind of advantage from the performance of the tasks set out in the Contract.

I hereby declare that I have not submitted, or neither plan to submit, nor I am involved in a proposal, tender or contract related to the tasks set out in the Buildings Contract(s) (or the Interface Agreement, where applicable).

I hereby declare that I have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have 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 performance of the Buildings Contract(s) (or the Interface Agreement, where applicable) and/or the Contract.

This declaration shall form an integral part of the Contract.

Yours sincerely,

For the Adjudicator,

[*]

Signature: _____

Done at [*], [*]

ANNEX III
REQUEST FOR PAYMENT, TIMESHEET AND COST DECLARATION FORM



Annex III

REQUEST FOR *INTERIM / FINAL* PAYMENT

Adjudicator's name:
Address:

Email:

Bank account: See article 1.7. of contract

Date:

To: Fusion for Energy
C/ Josep Pla 2
Torres Diagonal Litoral
Building B3
08019 Barcelona
Spain

Attn: Name of F4E Responsible Officer

Contract No.

Tasks summary:


Amount requested

1. Fees	Sum of half and full days under this contract (supported by Timesheet)	#days	€
2. Travel and subsistence expenses (if applicable):			
	Total amount requested for travel:		€
	Total amount requested for subsistence expenses:		€
TOTAL:			€

Adjudicator's signature:

Documents to be annexed: Timesheet, Cost Declaration Form, if applicable

ANNEX IV AWARD OF THE COSTS FORM

Annex IV																												
	AWARD OF COSTS related to the Buildings Contract(s) F4E-OPE-___ (SB-PS)																											
Chairman of the panel of Adjudicators: _____																												
Names of the Adjudicators: _____																												
Contract reference numbers: _____																												
Dispute reference and starting/end date of the Dispute: _____																												
Number of days of the Dispute: _____																												
Bank account: <u>See Article I.7 of the Adjudicator's contracts</u>																												
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">Name of the chairman:</td> <td style="width: 33%; border-bottom: 1px solid black;">Name of the Adjudicator 1:</td> <td style="width: 33%; border-bottom: 1px solid black;">Name of the Adjudicator 2:</td> </tr> <tr> <td colspan="3"> <ul style="list-style-type: none"> • <u>Daily Fees:</u> </td> </tr> <tr> <td>1) Fees related to work at home*: _____ €</td> <td>1) Fees related to work at home: _____ €</td> <td>1) Fees related to work at home: _____ €</td> </tr> <tr> <td>2) Fees related to work on meetings: _____ €</td> <td>2) Fees related to work on meeting: _____ €</td> <td>2) Fees related to work on meeting: _____ €</td> </tr> <tr> <td colspan="3"> <ul style="list-style-type: none"> • <u>Corresponding lump sum of Expenses:</u> </td> </tr> <tr> <td>_____ €</td> <td>_____ €</td> <td>_____ €</td> </tr> <tr> <td>Percentage to be paid by F4E: _____ %</td> <td>Percentage to be paid by F4E: _____ %</td> <td>Percentage to be paid by F4E: _____ %</td> </tr> <tr> <td>Total costs due by F4E: _____ €</td> <td>Total costs due by F4E: _____ €</td> <td>Total costs due by F4E: _____ €</td> </tr> <tr> <td>Total costs due by the Contractor(s): _____ €</td> <td>Total costs due by the Contractor(s): _____ €</td> <td>Total costs due by the Contractor(s): _____ €</td> </tr> </table>		Name of the chairman:	Name of the Adjudicator 1:	Name of the Adjudicator 2:	<ul style="list-style-type: none"> • <u>Daily Fees:</u> 			1) Fees related to work at home*: _____ €	1) Fees related to work at home: _____ €	1) Fees related to work at home: _____ €	2) Fees related to work on meetings: _____ €	2) Fees related to work on meeting: _____ €	2) Fees related to work on meeting: _____ €	<ul style="list-style-type: none"> • <u>Corresponding lump sum of Expenses:</u> 			_____ €	_____ €	_____ €	Percentage to be paid by F4E: _____ %	Percentage to be paid by F4E: _____ %	Percentage to be paid by F4E: _____ %	Total costs due by F4E: _____ €	Total costs due by F4E: _____ €	Total costs due by F4E: _____ €	Total costs due by the Contractor(s): _____ €	Total costs due by the Contractor(s): _____ €	Total costs due by the Contractor(s): _____ €
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Date: _____																												
Signature of the chairman of the panel of Adjudicators: _____																												
<small>*See Article I.5.1 a) of the Adjudicator's contracts</small>																												
<small>**See Article I.5.1 b) of the Adjudicator's contracts. Enclosure: proof of attendance of hearings/meetings (see Article I.6.5 of the Adjudicator's contracts)</small>																												
<small>To be paid within 45 (forty-five) calendar days of receipt of the original of request for payment (see Article I.6 of the Adjudicator's contracts)</small>																												

**ANNEX V
DECISION FORM¹
FORM OF DECISION
IN THE MATTER OF ADJUDICATION**

between

[*] as referring Party

and

[*] as responding Party

in connection with

the ITER Project and the Buildings Contract No. F4E-OPE-[*] (SB-PS)

DECISION

made by

Name: [*]

Adjudicator

Name: [*]

Adjudicator

acting as chairman

of

the panel of Adjudicators

Name: [*]

Adjudicator

on [*]

under Sub-Clause 20.3 [Adjudication] of the Buildings Contract

¹ It is understood that the chairman of the panel of Adjudicators will draw up the decision that will have to be signed by the other Adjudicators in the panel of Adjudicators. This form of decision will have to be filled in and customised to the Dispute referred to adjudication.

DECISION IN THE MATTER OF ADJUDICATION

1. Introduction and background

- 1.1. On or about [date] the referring Party, [name] of [address] who are referred to in the Decision as [*], as [Contractor/Employer], and the responding Party, [name] of [address], who are referred to in the Decision as [*], as [Employer/Contractor], entered into a contract for works comprising [describe scope], which was a part of the project known as the ITER Project, with reference number F4E-OPE-[*] (SB-PS), which is referred to in the Decision as the “Buildings Contract”.
- 1.2. The Buildings Contract was, following a competitive procurement procedure, entered into on [*] between the Employer and the Contractor. The documents listed in the Buildings Contract are integral part thereof. The agreed total Contract Price was stated as EUR [*] ([*] euro), or such other sum as may become payable under the Buildings Contract, at the times and in the manner prescribed in the Buildings Contract.
- 1.3. *[On or about [*] the Parties entered into Amendment No. 1 to the Buildings Contract. This Amendment [describe content] included an amended Contract Price of EUR [*] ([*] euro).] [Repeat for each Amendment to the Buildings Contract.]*
- 1.4. References to Sub-Clauses in the Decision are to the Sub-Clauses in the Buildings Contract. Capitalised terms in the Decision have the same respective meaning as defined in the Buildings Contract (unless the context otherwise require).
- 1.5. Sub-Clause 20.3 [Adjudication] of the Buildings Contract provides for adjudication and accordingly, Disputes that are referred to adjudication by the Parties according to the Buildings Contract shall be adjudicated in accordance with Sub-Clause 20.3 [Adjudication] of, and Annex D [Procedural Rules for Adjudication] to, the Buildings Contract. The decision of the Adjudicator(s), which shall include an award of the costs on the fees and expenses of the Adjudicator(s) incurred in relation to the adjudication, shall be binding on the Parties and the Parties shall comply with such decision.
- 1.6. *[The following guide chronology of key events has been taken from the submissions of the Parties:*
 - i. *Date of Contract entry into force: [*],*
 - ii. *Commencement Date: [*],*
 - iii. *Access Date: [*],*
 - iv. *Completion Date according to the Buildings Contract: [*],*
 - v. *Date of request for the Parties’ Senior Representatives to meet: [*],*
 - vi. *Date of meeting of the Parties’ Senior Representatives: [*],*
 - vii. *Date of request for the Engineer’s determination: [*],*
 - viii. *Date of issue of the Engineer’s determination: [*],]*
 - ix. *[Add any other significant events].*

2. Nomination of the Adjudicator(s)

- 2.1. *[Refer to the setting-up of the Panel of Adjudicators (role of the Chairman of the Panel of Adjudicators, appointment of the adjudicators and nomination of the chairman of the Panel of Adjudicators and the other Adjudicators, if applicable).]*
- 2.2. *[Describe nomination procedure of the Adjudicator(s) in relation to the Dispute. The Notice of Referral to Adjudication was received by the Chairman of the Panel of Adjudicators on [*].]*
- 2.3. *[Date of signing the nomination and the related undertakings by the Adjudicator(s).]*
- 2.4. *[Brief description of any relevant actions taken by the Chairman of the Panel of Adjudicators and/or Adjudicator(s) before the Dispute was referred.]*

3. The Dispute

- 3.1. *[Details of how the Dispute arose.]*
- 3.2. *[Details of how the Dispute was referred to the Adjudicator(s) (claim submitted, Engineer's determination issued, Parties' Senior Representatives met to amicably agree on the Dispute, etc.).]*
- 3.3. *[Submission of the responding Party was received by the chairman of the panel of Adjudicators on [*] so the final date for the issue of the decision was [*] in line with Sub-Clause 20.3 [Adjudication] of the Buildings Contract.]*
- 3.4. *[Description of the Dispute. List of the issues which were referred and the redress sought.]*
- 3.5. *[Names of the Parties' representatives. Describe the cooperation of the Parties and the Adjudicator(s).]*

4. The adjudication procedure

- 4.1. *[Describe the applicable rules for the procedure (Annex D [Procedural Rules for Adjudication] to the Buildings Contract, the terms of appointment and nomination, rules of procedure and any direction taken by the Adjudicator(s).]*
- 4.2. *[Describe the issue by the Adjudicator(s) of a preliminary programme for the Dispute period, further revised programmes, any extensions and the final date for issue of the decision and the award of the costs of the Adjudicator(s).]*
- 4.3. *[List submissions and documents received by the Adjudicator(s). If lengthy, include as an Appendix.]*
- 4.4. *[Detail any preliminary meetings with the Parties, after the referral, to discuss the Dispute.]*
- 4.5. *[Brief description of any Visit before the hearing/meeting, if any. List of attendees included as an Appendix.]*
- 4.6. *[Brief description of any hearing/meeting. List of attendees included as an Appendix.]*
- 4.7. *[Describe anything significant which happened after the hearing/meeting.]*
- 4.8. *[Confirm that the adjudication procedure was in line with the Buildings Contract and the applicable rules for the procedure, and the decision is a result of a fair procedure.]*

5. The jurisdiction of the Adjudicator(s)

- 5.1. *[Confirm the jurisdiction of the Adjudicator(s) with respect to the Dispute (all issues and preliminary issues included) and that preconditions for adjudication are fulfilled. Refer to Sub-Clause 20.3 [Adjudication] of the Buildings Contract.]*
- 5.2. *[Describe any problems and the actions taken by the Adjudicator(s) concerning the jurisdiction of the Adjudicator(s), if any.]*

6. The issues to be determined

- 6.1. *[The issues which the Adjudicator(s) has (have) been asked to determine are listed in the above Sections and are considered at the below Sections.]*
- 6.2. *[In order to determine these issues it was necessary for the Adjudicator(s) to consider the following preliminary issues:]*
 - 6.2.1. *[Description of the preliminary issue,]*
 - 6.2.2. *[Description of the preliminary issue.]*
- 6.3. *[These preliminary issues are considered at the below Sections.]*

7. Preliminary Issue No. 1

- 7.1. *[Brief description of the issue, the Parties' positions and determination of the Engineer (if any) and the Adjudicator(s).]*

8. Preliminary Issue No. 2 (and add as many other Sections as necessary)

- 8.1. *[Repeat for each of the preliminary issues.]*

9. Issue No. 1

- 9.1. *[Brief description of the issue, the Parties' positions and the decision of the Adjudicator, including reasons, for issue no. 1 (give reference to Sub-Clauses of the Buildings Contract or any applicable documents listed in Annex U [List of Applicable Documents] to the Buildings Contract). If the issue is complex, or requires a lengthy description, then the Parties' positions may be included as separate Sub-Sections.]*
- 9.2. *[Summary table showing figures for the claim, any valuation by the responding Party and the decision of the Adjudicator(s). This summary table may include interest at a reasonable commercial rate as per Annex D [Procedural Rules for Adjudication] to the Buildings Contract.]*

10. Issue No. 2

- 10.1. *[Repeat as the above Section.]*

11. Issue No. 3 (and add as many other Sections as necessary)

- 11.1. *[Repeat as the above Section.]*

12. The Decision of the Adjudicator(s)

- 12.1. Having been properly and lawfully appointed by the Parties and nominated by the Chairman to determine and give decisions on the Dispute arose between the Parties to the Buildings Contract and having given full consideration to all matters, oral and in writing, which have been put before the Adjudicator(s) and for the reasons stated in the narrative above, the Adjudicator(s) decide(s) on the Dispute, in accordance with Annex D [Procedural Rules for Adjudication] to the Buildings Contract, as follows:

12.1.1. Issue No. 1:

The Adjudicator(s) decide(s) that *[give decision, refer to the reasoning provided under the above Section relating to Issue no. 1 and indicate the % of success/failure of the referring Party and the responding Party.]*

12.1.2. Issue No. 2:

The Adjudicator(s) decide(s) that *[give decision, refer to the reasoning provided under the above Section relating to Issue no. 2 and indicate the % of success/failure of the referring Party and the responding Party.]*

13. Directions of the Adjudicator(s)

- 13.1. Accordingly, the Adjudicator(s), in accordance with Annex D [Procedural Rules for Adjudication] to the Buildings Contract, decide(s) and direct(s) that:

13.1.1. *[[*] shall pay to [*] the sum of EUR [*] ([*] euro) within 45 (forty-five) calendar days of the receipt of the [invoice]/[debit note] of [the winning Party];]*

13.1.2. *[[the winning Party] shall send [an invoice]/[debit note] to [the losing Party] reflecting the decision within 15 (fifteen) calendar days of the receipt of the decision sent by registered post;]*

13.1.3. *[in the case of delay in payment of the above amount, such amount shall bear late payment interest calculated in accordance with Sub-Clause 14.7 [Delayed Payment] of the Buildings Contract from the due date of such payment until the amount together with the interest calculated has been fully paid by the defaulting Party;]*

13.1.4. *[[*] is entitled to an extension of the time for the completion of the works of [*] calendar days representing the period between [*] and [*] and will not be subject to delay damages according to Sub-Clause 8.8 [Delay Damages] of the Buildings Contract during that period; thus, the extended Time for Completion of the [Works/Section [reference number]/Milestone [reference number]] will expire on [*];]*

13.1.5. *[add any other directions, e.g. provision of financial securities in favour of the Employer in the case of non-compliance with the decision by the Contractor;]*

13.1.6. *the fees and expenses of the Adjudicator(s) shall be borne and paid by the Parties according to the award of the costs.*

- 13.2. The decision and the award of the costs shall be binding on the Parties upon receipt thereof via e-mail, notwithstanding any referral to the Court of Justice of the European Union pursuant to Sub-Clause 20.5 [Reference to the ECJ] of the Buildings Contract, who shall give

immediate effect to, and shall comply with, the decision and the award of the costs, in accordance with Sub-Clause 20.3 [Adjudication] of the Buildings Contract.

- 13.3. If [the losing Party] fails to make payment to [the winning Party] according to, or otherwise comply with, the decision, as from the date when the decision becomes binding or the payment becomes due, as the case may be, according to the decision, [the winning Party] shall be entitled to any contractual means that are available in the Buildings Contract to enforce the decision within the implementation of the Buildings Contract.
- 13.4. If the Contractor fails to make payment to the Adjudicator(s) according to the award of the costs within 45 (forty-five) calendar days, as from the date when the payment becomes due according to the award of the costs, the Employer shall be entitled, by informing simultaneously the Contractor thereof, to make such payment, upon receipt of the invoice of the Adjudicator(s), directly to the Adjudicator(s) on behalf of the Contractor, in which case the Employer shall be entitled to recover such payment from the Contractor under the Buildings Contract.

Appendices:

1. Award of the costs
2. [\[Submissions\]](#)
3. [\[Minutes of meeting\(s\)/hearing\(s\) and list of attendees on the Visits and/or hearing\(s\)/meeting\(s\)\]](#)

Name: [*]

Adjudicator

Date: [*]

Issued in [*] originals

Name: [*]

**Adjudicator
acting as chairman
of
the panel of Adjudicators**

Date: [*]

Name: [*]

Adjudicator

Date: [*]

Sent via e-mail and registered post to the Parties on [*]

ANNEX VI
LIST OF BUILDINGS CONTRACTS

(as at March 2015)

TENDER BATCH	CONTRACT	TITLE	CONTRACTOR
	F4E-OPE-025-01 (SB-PS)	Contract for the Provision of Health and Safety Protection Coordination and Legal Inspection Services for the Construction of the ITER Buildings	CETEN APAVE INTERNATIONAL
	F4E-OPE-058-01 (SB-PS)	Contract for the provision of Civil Engineering and Construction Consultancy Services in connection with the ITER Project (Architect Engineer)	ENGAGE SNC
	F4E-OPE-065 (SB-PS)	Contract for the Supply and Installation of Anti-Seismic Bearings for the Tokamak Complex	NUVIA TRAVAUX SPÉCIAUX
	F4E-OPE-090 (SB-PS)	Contract for the provision of Civil Engineering and Construction Consultancy Services in connection with the ITER Project (Consultant)	THE ENERGHIA CONSORTIUM
TB00	F4E-OPE-095 (SB-PS)	Contract for the Construction of the Tokamak Complex Seismic Isolation Pit	GTM SUD SAS
TB01	F4E-OPE-251 (SB-PS)	Contract for the Site Adaptation Works	COMSA S.A.U.
TBA	F4E-OPE-406 (SB-PS)	Contract for Galleries and Drainage Works	COMSA S.A.U.
TB08	F4E-OPE-374 (SB-PS)	Contract for the Design and Construction of the Site Infrastructure Works	COMSA S.A.U.
TB03	F4E-OPE-286 (SB-PS)	Contract for the Construction of the Tokamak Complex, Assembly Hall and Surrounding Buildings and the Design, Manufacture and Installation of Heavy Nuclear Doors on the ITER Facilities at Cadarache, France	VFR CONSORTIUM
TB02	F4E-OPE-285 (SB-PS)	Contract for the Design, Certification, Manufacturing, Testing, Installation and Commissioning of a Tokamak Cargo Lift and Tokamak/Assembly Hall Cranes and the Design and Construction of Associated Infrastructure on the ITER Facilities	NKM NOELL SPECIAL CRANES, REEL SAS
TB04	F4E-OPE-301 (SB-PS)	Contract for the Design, Construction and Maintenance of the HVAC, Electrical, I&C Handling Equipment and Gas and Liquid Networks for the Tokamak Complex and Surrounding Buildings	OMEGA CONSORTIUM
TB05	F4E-OPE-378 (SB-PS)	Contract for the Design and Construction of the Magnet Power Conversion Buildings and the Reactive Power Control Building	FERROVIAL AGROMAN S.A.
TB07	F4E-OPE-429 (SB-PS)	Contract for the Design and Construction of the Structures for the Cold and Hot Basin and Cooling Towers (67), Water Cooling Pumping Station (68), Heat Exchangers (69) and Water Treatment Facility (64)	FERROVIAL AGROMAN S.A.
TB06	F4E-OPE-428 (SB-PS)	Contract for the Design, Supply, Installation, Commissioning, Testing and Maintenance of the Electrical Equipment (PBS43 and PBS 41.PP) on the Design, Construction, Commissioning, Testing and Maintenance of the Associated	FERROVIAL AGROMAN S.A.

		Buildings and Infrastructures	
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ANNEX VII
FORM OF INTERFACE AGREEMENT

[to be attached as a separate document upon signature of this Contract]