II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

II.1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with all legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permits, visas, copyrights or licenses required for performance of the Contract under the laws and regulations in force at the place(s) where the tasks assigned to him are to be executed.

II.1.3. Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.1.4. The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.

II.1.5. The Contractor shall neither represent the ITER Organization nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the ITER Organization.

II.1.6. The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders directly by the ITER Organization;

- the ITER Organization may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the ITER Organization any right arising from the contractual relationship between the ITER Organization and the Contractor.

II.1.7. In the event of disruption resulting from the action of a member of the Contractor's staff working on ITER Organization premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The ITER Organization shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the ITER Organization. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the ITER Organization may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure

ARTICLE II.2 – LIABILITY

II.2.1. The ITER Organization shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the ITER Organization.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The ITER Organization shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the ITER Organization by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the ITER Organization in connection with performance of the Contract, the Contractor shall assist the ITER Organization. Expenditure incurred by the Contractor to this end may be borne by the ITER Organization.

II.2.5 The Contractor shall respect and abide by all laws and regulations in force in France and shall ensure that his personnel, experts and subcontractors' personnel also respect and abide by all such laws and regulations. The Contractor shall indemnify the ITER Organization against claims and proceedings arising from any infringement by the Contractor, his personnel, experts and subcontractors' of such laws and regulations.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the ITER Organization in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The ITER Organization reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the ITER Organization, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the ITER Organization should it so request.

ARTICLE II.4 – PAYMENT

At the end of each of the periods indicated in Annex I, the Contractor shall submit to the ITER Organization a formal request for payment accompanied by the following documents:

- a (technical) report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;

If the report is a condition for payment, on receipt the ITER Organization shall have such a period of time agreed upon the parties in which:

- to approve it, with or without comments or reservations
- to suspend such period and request additional information; or
- to reject it and request a new report.

If the ITER Organization does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the ITER Organization requests a new report because the one previously submitted has been rejected, this shall be submitted within two weeks. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the ITER Organization's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the ITER Organization at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the ITER Organization may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The ITER Organization shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment, excepting the provisions of Article II.5.2 above, the Contractor may claim interest within two 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 1.5 percentage points (*"the margin"*). The reference rate in force on the first day of the 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 day of payment. Suspension of payment by the ITER Organization may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

II.6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in Euro on receipt of the debit note, in the manner and within the time limits set by the ITER Organization.

II.6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3. The ITER Organization may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the ITER Organization that is certain, of a fixed amount and due. The ITER Organization may also claim against a bank guarantee, where provided for by the Contractor.

ARTICLE II.7 – PROPERTY OF THE ITER ORGANIZATION AND PROPERTY OF THE CONTRACTOR

II.7.1 Where for the purpose of the Contract the ITER Organization provides to the Contractor access to drawings, files, technical data, computer programs, source codes, and any other item of property, the ITER Organization remains the sole owner of any item provided.

II.7.2 These items may only be used by the Contractor for the purposes of the Contract. The distribution, reproduction or use by a third party without prior written approval by the ITER Organization is strictly forbidden.

II.7.3 All property of the Contractor while at the ITER Organization premises shall be at risk of the Contractor and the ITER Organization shall accept no liability for any loss or damage to that property or caused by that property except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee of the ITER Organization acting in the course of his employment. The ITER Organization shall accept liability only to the extent to which such loss or damage is so caused or contributed to.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the ITER Organization, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the ITER Organization to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports.

II.10.2. Unless otherwise provided by the Special Conditions, the ITER Organization shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the ITER Organization.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the ITER Organization. It shall state that the opinions expressed are those of the Contractor only and do not represent the ITER Organization's official position.

II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the ITER Organization has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the ITER Organization is, as a rule, exempt from all taxes and duties, including value added tax (VAT).

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.11.4 Only if the direct exemption of taxes and duties at the source is legally not possible, the Contractor shall invoice them.

II.11.5. In cases of Article II.11.4 above, invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

II.12.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.12.2. Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the ITER Organization nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the ITER Organization authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the ITER Organization under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the ITER Organization is entitled by virtue of the Contract.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorization from the ITER Organization.

II.14.2. In the absence of the authorization referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the ITER Organization.

ARTICLE II.15 – TERMINATION BY THE ITER ORGANIZATION

II.15.1. The ITER Organization may terminate the Contract in the following circumstances:

(a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

(c) where the Contractor has been guilty of grave professional misconduct proven by any means which the ITER Organization can justify;

(d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

(e) where the ITER Organization seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the ITER Organization's financial interest;

(f) where the Contractor is in breach of his obligations under Article II.3;

(g) where the Contractor was guilty of misrepresentation in supplying the information required by the ITER Organization as a condition of participation in the Contract procedure or failed to supply this information;

(h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the ITER Organization's opinion, have a significant effect on the performance of the Contract;

(i) where execution of the tasks has not actually commenced within two weeks of the date foreseen, and the new date proposed, if any, is considered unacceptable by the ITER Organization;

(j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;

(k) where the Contractor fails to fulfil its contractual obligations, 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 serious breach of his contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

II.15.4. Consequences of termination:

In the event of the ITER Organization terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Contract for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The ITER Organization may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the ITER Organization may engage any other contractor to complete the services. The ITER Organization shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.16 – TERMINATION BY NOTICE

The ITER Organization may, of its own volition and without being required to pay compensation, terminate the Contract by serving a 15 days formal prior notice. Should the ITER Organization terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services delivered before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE II.17 – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the ITER Organization may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE II.18 – JOINT AND SEVERAL LIABILITY IN CASE OF JOINT VENTURES/ CONSORTIA ETC.)

When the Contractor is a joint venture or consortium, all partners of such an undertaking agree hereby to ITER Organization that they shall exercise and will continue to exercise, in the performance of the Services and their other duties, obligations and liabilities pursuant to this Contract, all such reasonable skill, care and diligence as may be expected of a properly qualified and competent company experienced in carrying out work of a similar size, scope and complexity to the services, and the other duties, obligations and liabilities of the Contractor pursuant to this Contract in respect of the Services, and shall be jointly and severally liable to ITER Organization for any failure.

ARTICLE II.19 – INSURANCES

The Contractor shall take out insurance against risks and damage relating to performance of the Contract as required in the Contract and those required by the relevant applicable legislation. He shall also take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to ITER Organization should it so request.

ARTICLE II.20 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the ITER Organization's right to terminate the Contract, the ITER Organization may decide to impose liquidated damages of a percentage of the amount specified in Article I.3.1 per calendar day of delay. This percentage will be specified in the Special Conditions. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the ITER Organization within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. The ITER Organization and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.21 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.22 – SUSPENSION OF THE CONTRACT

Without prejudice to the ITER Organization's right to terminate the Contract, the ITER Organization may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The ITER Organization may at any time following suspension give notice to the Contractor to resume the work suspended.

ARTICLE II.23 – GOVERNING LAW AND SETTLEMENT OF DISPUTES

II.23.1 The ITER Organization is governed by the international agreement ("ITER Agreement") and its annexes establishing the ITER Organization. The applicable law for contract interpretation is French law.

II.23.2 In the event of any dispute arising out of or in connection with the present Contract, the Parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce in Paris dispute settlement mediation ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the Parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

II.23.3 The arbitration proceedings in English shall take place in Paris, unless otherwise agreed by the parties.