

**MODEL GRANT AGREEMENT FOR MULTIPLE BENEFICIARIES**  
(Reimbursement based on percentage of eligible cost and optional indirect cost flat rate)

**[TITLE OF ACTION]  
[ACRONYM OF ACTION]  
ACTION NO [\_\_\_\_\_]<sup>1</sup>**

THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ("Fusion for Energy") represented for the purposes of signature of this agreement by [forename, surname Fusion for Energy function]<sup>2</sup>,

of the one part,

and

[Full Official Name]  
[Acronym]  
[Official legal form]<sup>3</sup>  
[Official registration no.]<sup>4</sup>  
[Official address in full], [VAT number],

represented for the purposes of signature of the agreement by [name, forename and function], or his/her/their authorised representative, the beneficiary acting as coordinator of the consortium ("the coordinator"), ("beneficiary no. 1"),

[FULL OFFICIAL NAME]  
[Acronym]  
[Official legal form]  
[Official registration No]  
[Official address in full]  
[VAT number],

represented for the purposes of signature of this agreement by [forename, name, function], or his/her/their authorised representative ("beneficiary no. 2")

[idem for each beneficiary]

All the beneficiaries together form the consortium ("the consortium")

of the other part,

hereafter referred to as "the Parties",

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<sup>1</sup> The footnotes contained on this page and in the specific conditions are internal instructions only and should be deleted from the grant agreement before signature.  
<sup>2</sup> In accordance with F4E Delegation Policy.  
<sup>3</sup> Delete if the beneficiary is a natural person or a public body.  
<sup>4</sup> Delete if the beneficiary is a public body (for natural persons, also indicate the number of their identity card or, failing that, of their passport or equivalent.)

HAVE AGREED,

to the terms and conditions of the Specific Conditions, General Conditions and Annexes below:

- Annex I Description of Work ("Technical Specifications")
- Annex II Cost Breakdown ("Estimated Budget")
- Annex III Form A - Financial Statement
- Annex IV Form B - Terms of reference for the certificate on the financial statements and Form C - Terms of reference for the certificate on the methodology
- Annex V Declaration of Background
- Annex VI Form D - Declaration of Foreground
- Annex VII Management Specification (general Quality Assurance requirements)

which form an integral part of this grant agreement (the "grant agreement").

The terms set out in the Specific Conditions shall take precedence over those in the other parts of the grant agreement.

The terms of the General Conditions shall take precedence over those in the Annexes.

# I. Specific Conditions

## *Article I.1*

### ***Scope***

Fusion for Energy has decided to grant a financial contribution for the implementation of the action as specified in Annex I, called [*Action title (Acronym)*] (the "action") and under the conditions laid down in this grant agreement.

By signing the grant agreement, the beneficiaries accept the grant and agree to implement the action, acting on their own responsibility.

## *Article I.2*

### ***Duration and start date of the action***

The duration of the action shall be [*insert number*] months from [*the first day of the month after the entry into force of the grant agreement*] [*insert fixed start date*<sup>5</sup>] [*the effective starting date notified by the coordinator/beneficiary which shall be within* [*insert number*] months from the date the grant agreement enters into force] (hereinafter referred to as the "start date").

## *Article I.3*

### ***Reports, deliverables and time schedule***

The action is divided into the following reporting periods for which periodic reports and deliverables, set out in Annex I, shall be submitted to Fusion for Energy as follows:

P1 from month 1 to month X a [*periodic report*]

P2 from month X+1 to month Y a [*periodic report*]

P3 from month Y+1 to month Z a [*periodic report*]

PX [.....]

*Final* from month [*N+1*] to the last month of the action a final report.

Any other reports and deliverables shall be provided to Fusion for Energy in accordance with Annex I.

Any report and deliverable, when appropriate, required by this grant agreement shall be in English.

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<sup>5</sup> Note: in cases where the start date of the action is before the grant agreement is signed by both parties, i.e. before it has entered into force, according to Article 130 (1) of the Regulation (EU, EURATOM) No 966/2012 (Financial Regulation applicable to the general budget of the Union; hereinafter "General Financial Regulation" or "GFR"), it is required that the consortium can demonstrate to Fusion for Energy the need to start the action before the agreement is signed.

*Article I.4*  
***Fusion for Energy financial contribution***

1. The maximum Fusion for Energy financial contribution to the action shall be EUR [insert amount] ([insert amount in words] EURO). The actual Fusion for Energy financial contribution shall be calculated in accordance with the provisions of this grant agreement.
2. Details of the Fusion for Energy financial contribution are laid down in Annex II to this grant agreement which includes a table of the estimated breakdown of budget and the Fusion for Energy financial contribution per activity to be carried out by each of the beneficiaries under the action. Beneficiaries are allowed to transfer budget between different activities and between themselves in so far as the work is carried out as foreseen in Annex I.
3. The bank account of the coordinator to which all payments of the Fusion for Energy financial contribution shall be made is:

Name of account holder:

Name of bank:

Account reference: IBAN/sort code and number

*Article I.5*  
***Payment arrangements***

1. A pre-financing of EUR [insert amount] ([insert amount in words]<sup>6</sup>) EURO) shall be paid to the coordinator within 30 days following the date of entry into force of this grant agreement [or from when Fusion for Energy receives the financial guarantee, whichever is later].<sup>7</sup>
2. Interim payments shall be made to the coordinator following the procedures laid down in Articles II.5 to II.7.
3. A final payment shall be made to the coordinator following the procedures laid down in Articles II.5 to II.7.

*Article I.6*  
***Special clauses***

[No special clauses apply to this grant agreement.]

[The following special clauses apply to this grant agreement:]

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<sup>6</sup> Note: this amount is intended to provide the beneficiaries with a float in between periods and it would be agreed during negotiations.

<sup>7</sup> Provision to be amended in case pre-financing were to be broken down in installments in accordance with Art. 207(1) of Regulation (EU) No 1268/2012 (Rules of Application of the General Financial Regulation; hereinafter “Rules of Application” or “RAP”).

[I.6.[.] *The beneficiaries are deemed to have concluded a consortium agreement (the "consortium agreement") regarding the internal organisation of the consortium.]*<sup>8</sup>

[I.6.[.] *The provisions of Article II.17 concerning collective financial responsibility do not apply to this grant agreement.]*<sup>9</sup>

[I.6.[.] *A share of [x%] of] [An amount of €x of] the pre-financing referred to in Article I.5. shall be retained by Fusion for Energy until beneficiary [name] provides to Fusion for Energy a financial guarantee equivalent to that [share][amount].]*<sup>10</sup>

[I.6.[.] *The reimbursement rate for [name of beneficiary(ies)] regarding [research, technological development activities and demonstration activities],[and][other activities] may reach a maximum of [insert percentage % (< than the one mentioned in Article II.15)]*

[I.6.[.] *[Name of the department/institute etc.], which is an integral part of beneficiary or of affiliated entity [name of legal entity] has an analytical accounting system which allows it to identify its actual indirect costs. Therefore, and without prejudice to the provisions of Article II.14, [name of the department/institute etc.] may declare indirect costs in Fusion for Energy grant agreements based on its actual indirect costs, despite the fact that the beneficiary has opted for a flat rate.]*

[I.6.[.] *The percentage of indirect costs for beneficiary(ies) [name(s)] and affiliated entity(ies) [name(s)] is fixed at [x≤25%]<sup>11</sup> of the total direct eligible cost excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the beneficiary.]*

[I.6.[.] *Subcontracts concluded on the basis of framework contracts entered into between a beneficiary and a subcontractor, prior to the beginning of the action in accordance with the beneficiary's usual management principles may also be accepted.]*

[I.6.[.] 1. *The following entities are considered as affiliated entities for the purpose of the grant agreement:*

– *[name of the legal entity (VAT number)], affiliated to [name of the beneficiary];*

– *[name of the legal entity (VAT number)], affiliated to [name of the beneficiary];*

*[idem for further affiliated entities]*

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<sup>8</sup> Note: this sentence will not appear in the cases where the consortium agreement is not compulsory as foreseen in the Call for Proposals or the Work Programme.

<sup>9</sup> Exoneration of financial collective responsibility where duly justified and substituted by bank guarantees.

<sup>10</sup> In order to limit the financial risks connected with the payment of the pre-financing, the authorising officer responsible **may**, on the basis of a risk assessment require a financial guarantee in advance (usually to substitute collective responsibility or where the protection of Fusion for Energy's financial interests are not adequately covered; usually not for public bodies and international organisations) for up to the same amount as the pre-financing, except for low value grants (lower than or equal to EUR 60 000; cf. Art. 185 RAP). Cf. Art. 134(1) GFR and Art. 206 RAP.

<sup>11</sup> Subject to Commission authorisation.

2. *Beneficiaries may charge costs incurred by the above-mentioned affiliated entities in carrying out the action, if:*
  - (a) *They satisfy the same conditions which apply to the beneficiary under Articles II.13 and II.14; and*
  - (b) *The beneficiary the entity is affiliated to ensures that the conditions applicable to the beneficiary under Articles II.3.3 (k), (l), (n), II.4, II.5.5, II.8, II.10, II.11, II.12, II.19, II.20, Part C, II.40 and II.41 are also applicable to any affiliated entity.*
3. *The eligibility of the affiliated entities' costs charged by the beneficiary is subject to controls and audits of the affiliated entities, in accordance with Articles II.19 and II.20.*

*Article I.7*  
**Communication**

1. Any communication or request concerning the grant agreement shall identify the grant agreement number, the nature and details of the request or communication and be submitted to the following addresses:

For Fusion for Energy: *[insert name of contact person]*

Grant Agreement No. [ ... ]

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

c/Josep Pla 2

Torres Diagonal Litoral - Building B3

08019 Barcelona

Spain

For the coordinator: *[insert name of contact person]*

*[insert contact address]*

2. For information or documents to be transferred by electronic means, the following addresses shall be used:

For Fusion for Energy: *[insert functional email address]*

For the coordinator: *[insert email address]*

3. In case of refusal of the notification or absence of the recipient, the beneficiary or the consortium, as the case may be, is deemed to have been notified on the date of the latest delivery, if notification to the coordinator has been sent to one of the addresses mentioned in paragraphs 1 and 2 and to their legal representative. Other beneficiaries

are deemed to have been notified if notification has been sent to the address mentioned in this grant agreement.

4. Any communication or request relating to the processing of personal data (Article II.12) shall be submitted to the Fusion For Energy Head of Administration, using the addresses for Fusion for Energy identified in paragraphs 1.

#### *Article I.8*

#### ***Applicable law and competent court***

The grant is governed by the terms of the grant agreement, the Union law applicable, and, on a subsidiary basis, by the law of Spain.

The Court of First Instance, or on appeal, the Court of Justice of the European Communities, shall have sole jurisdiction to hear any dispute between Fusion for Energy and any beneficiary concerning the interpretation, application or validity of this grant agreement.

#### *Article I.9*

#### ***Entry into force of the grant agreement***

This grant agreement shall enter into force on the date when the last Party signs<sup>12</sup>.

Done in [*minimum two*] originals in English.

For the coordinator (beneficiary no. 1) done at [*insert place*]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

For beneficiary no. 2 done at [*insert place*]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

[*Idem for each beneficiary*]

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<sup>12</sup> The recommended practice is for Fusion for Energy to sign last.

For Fusion for Energy done at Barcelona:

Name of legal representative:

Stamp of the organisation:

Signature of legal representative:

Date:



## II. General Conditions

### *Article II.1* *Definitions*

1. "Third country" for the purposes of this grant agreement means a State that is not a Member of Fusion for Energy.
2. "Irregularity" means any infringement of a provision of Union law or any breach of obligation resulting from an act or omission by a beneficiary which has, or would have, the effect of prejudicing the budget of Fusion for Energy through unjustified expenditure.
3. "Public body" means any legal entity established as such by national law, and international organizations.
4. A legal entity is qualified as "non-profit" when considered as such by national or international law.
5. "Research organisation" means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main activities.
6. "Beneficiary" shall mean a natural or legal entity contributing to the action as defined in the present grant agreement. Third parties such as subcontractors shall not be regarded as beneficiaries
7. "Information" shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property.
8. "Intellectual Property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on July 14, 1967. For the purposes of the present grant agreement, Intellectual Property may include business confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and
  - (a) have been held in confidence by their owner;
  - (b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents;
  - (c) have not been made available by their owner to other parties without an obligation concerning confidentiality; and
  - (d) are not available to the receiving party without an obligation concerning confidentiality.

9. "Background" shall mean Intellectual Property or Information which is held by the beneficiary(ies) prior to its (their) signature of the present grant agreement or outside its scope and which is needed for carrying out the action or for using the foreground.
10. "Foreground" shall mean Information and Intellectual Property whether or not protectable generated in the course of the execution of the present grant agreement including through subcontracting.
11. "Dissemination" shall mean the disclosure of the foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of these results in any medium.
12. "Nuclear applications" shall mean applications involving the production or use of nuclear energy or intended, either directly or indirectly, for the production or use of such energy, including nuclear energy research.
13. "Fair and reasonable conditions" shall mean appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged.
14. "Improvements" shall mean any technological advancement of the foreground, including derivative works.
15. "Tasks and activities of Fusion for Energy" shall mean tasks and activities of Fusion for Energy defined in the Council decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (Council Decision No. 2007/198/Euratom).
16. "Affiliated entity" shall mean entities forming the beneficiary in accordance with Article 122 of Regulation No 966/2012 and entities which have a link with the beneficiary, in particular a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation and which does not fall within one of the situations referred to in Article 131(4) of Regulation No 966/2012.
17. "Fraud" shall mean any intentional act or omission affecting the Fusion for Energy' financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents, to non-disclosure of information in violation of a specific obligation;
18. "Substantial error" shall mean any infringement of a provision of an agreement resulting from an act or omission, which causes or might cause a loss to Fusion for Energy's budget.

# **Part A**

## **Implementation of the Action**

### **SECTION 1**

#### **GENERAL PRINCIPLES**

##### *Article II.2*

##### ***Organisation of the consortium and role of the coordinator***

1. All the beneficiaries together form the consortium, whether or not they enter into a separate written consortium agreement. Beneficiaries are represented towards Fusion for Energy by the coordinator, who shall be the intermediary for any communication between Fusion for Energy and any beneficiary, with the exceptions foreseen in this grant agreement.
2. The Fusion for Energy financial contribution to the action shall be paid to the coordinator who receives it on behalf of the beneficiaries. The payment of the Fusion for Energy financial contribution to the coordinator discharges Fusion for Energy from its obligation on payments.

##### *Article II.3*

##### ***Performance obligations***

1. The coordinator shall:
  - (a) supervise the overall technical implementation of the grant action as laid down in Annex I;
  - (b) administer and distribute the Fusion for Energy financial contribution regarding its allocation between beneficiaries and activities, in accordance with this grant agreement and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
  - (c) keep the records and financial accounts making it possible to determine at any time what portion of the Fusion for Energy financial contribution has been paid to each beneficiary for the purposes of the action;
  - (d) inform Fusion for Energy of the distribution of the Fusion for Energy financial contribution and the date of transfers to the beneficiaries, when required by this grant agreement or by Fusion for Energy;
  - (e) review the reports and deliverables to verify their consistency with the action tasks before transmitting them to Fusion for Energy;
  - (f) make the appropriate arrangements for providing the financial guarantee or the joint guarantee of the beneficiaries participating in the action, when requested under Art. [I.6.]; and

- (g) act on behalf of all beneficiaries when signing a request, an acceptance or rejection letter concerning an amendment or termination of this grant agreement.

The coordinator may not subcontract the above-mentioned tasks.

2. The consortium shall:

- (a) carry out the action collectively vis-à-vis Fusion for Energy taking all necessary measures to ensure that the action is carried out in accordance with the terms and conditions of this grant agreement;
- (b) provide all detailed data requested by Fusion for Energy for the purposes of the proper administration of this action;
- (c) allow Fusion for Energy to take part in meetings concerning the action;
- (d) make, prior to the signature of this grant agreement, appropriate internal arrangements consistent with the provisions of this grant agreement to ensure the efficient implementation of the action. When provided for in Article I.6 these internal arrangements shall take the form of a written consortium agreement (the "consortium agreement"). The consortium agreement governs *inter alia* the following:
  - (i) the internal organisation of the consortium including the decision making procedures;
  - (ii) rules on dissemination and use, and access rights;
  - (iii) the distribution of the Fusion for Energy financial contribution;
  - (iv) the settlement of internal disputes, including cases of abuse of power;
  - (v) liability, indemnification and confidentiality arrangements between the beneficiaries.

3. Each beneficiary shall:

- (a) carry out the work identified in Annex I, in accordance with the terms and conditions of this grant agreement. However, where it is necessary for the implementation of the action it may call upon affiliated entities or subcontractors to carry out certain elements identified in Annex I;
- (b) ensure that any contract or arrangement related to the action, entered into between the beneficiary and any subcontractor or affiliated entity contain provisions that this subcontractor or affiliated entity, shall have no rights vis-à-vis Fusion for Energy under this grant agreement;
- (c) ensure that the rights of Fusion for Energy and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any affiliated entity and subcontractors whose costs are reimbursed in full or in part by the Fusion for Energy financial contribution, on the same terms and conditions as those indicated in this grant agreement;
- (d) ensure that the conditions applicable to it under k), l) and n) of this Article; Articles II.4, II.5.5, II.8, II.10, II.11, II.12, II.13, II.14, II.19, II.20, Part C, II.40

and II.41 are also applicable to any affiliated entity whose costs are claimed under the action according to the provisions of this grant agreement;

- (e) ensure that the tasks assigned to it, including its affiliated entities, are correctly and timely performed;
- (f) inform the other beneficiaries and Fusion for Energy through the coordinator in due time of:
  - (i) the names of the person(s) who shall manage and monitor its, including its affiliated entities', work, and its contact details as well as any changes to that information;
  - (ii) any event which might affect the implementation of the action and the rights of Fusion for Energy;
  - (iii) any change in its or an affiliated entity's legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control;
  - (iv) any circumstance affecting the conditions of participation referred to in the work programme or in the call for proposals or of any requirements of this grant agreement, especially if and when any eligibility criteria cease(s) to be met during the duration of the action.
- (g) provide Fusion for Energy, the Commission, the European Anti-Fraud Office (OLAF) and Court of Auditors directly with all information requested in the framework of controls and audits;
- (h) take part in meetings concerning the supervision, monitoring and evaluation of the action which are relevant to it;
- (i) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this grant agreement and inform the other beneficiaries and Fusion for Energy of any unavoidable obligations which may arise during the duration of the grant agreement which may have implications for any of its obligations under the grant agreement;
- (j) ensure that it complies with the provisions of the state aid framework;
- (k) ensure that it complies with the Annex on Information and Intellectual Property of the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>13</sup>;
- (l) carry out the action in accordance with fundamental ethical principles;
- (m) have regard to the general principles of the Commission's Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers, if any, recruited for the action;

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<sup>13</sup> OJ. L 358 of 16.12.2006, p.73.

- (n) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the action.

## **SECTION 2**

### **MONITORING, REPORTING AND PAYMENTS**

#### *Article II.4*

#### *Action monitoring and review*

1. Fusion for Energy or experts acting on its behalf shall have the right to monitor at the place of work the progress and status of the work forming the subject matter of the action and to make any observations or suggestions which it may deem appropriate.
2. The beneficiaries and affiliated entities shall hold at the disposal of Fusion for Energy and make available to it or experts acting on its behalf such documents as are necessary to determine the status of progress of the work.
3. The purpose of an action review shall be to assess the work carried out under the action over a certain period by evaluating the action reports, achievement of milestones and deliverables relevant to the period in question.
4. One or more action reviews shall be carried out as set out in Annex I. Additional reviews may be performed within a reasonable time period by Fusion for Energy on its own initiative or that of the coordinator.

Such action reviews may involve review meetings. The consortium undertakes to attend such meetings. Costs incurred by the consortium in relation to these meetings shall be eligible under the activity referred to in Article II.15.4.

5. With respect to the Description of Work (Annex I), the action review shall objectively assess the following:
  - (a) the degree of fulfilment of the action work plan for the relevant period and of the related milestones and deliverables;
  - (b) the continued relevance of the objectives to Fusion for Energy;
  - (c) the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness;
  - (d) the management procedures and methods of the action;
  - (e) the beneficiaries' plan for the use and dissemination of foreground, including the status of the protection of rights, creation of foreground, requests for access, licensing and any other related activities or issues that concern the proper execution of Part C of this grant agreement (hereinafter “the plan for the use and dissemination of foreground”).

6. Fusion for Energy may be assisted in action reviews by external experts. Prior to the review, Fusion for Energy shall communicate to the beneficiaries the identity of the appointed experts. The beneficiary(ies) shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.
7. A report on the outcome of the action review shall be drawn up. It shall be sent by Fusion for Energy to the beneficiary concerned, who may make observations thereon within one month of receiving it. The coordinator shall be informed.
8. On the basis of the outcome of the action review, Fusion for Energy will take all appropriate measures which it considers necessary, including:
  - (a) to accept or reject the deliverables;
  - (b) to allow the action to continue without modification of Annex I or with minor modifications;
  - (c) to consider that the action can only continue with major modifications;
  - (d) to suspend the action in accordance with Article II.9;
  - (e) to initiate the termination of the grant agreement or of the participation of any beneficiary in accordance with Article II. 37;
  - (f) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.

#### *Article II.5*

##### ***Requests for payment, supporting documents, reports and deliverables***

1. The consortium shall submit a periodic report to Fusion for Energy for each reporting period, set out in Article I.3, within 30 days after the end of each respective period. The reporting shall comprise:
  - (a) an activity report, including a short publishable summary, of the progress of the work made towards the objectives of the action, including the attainment of milestones and deliverables. This report shall describe the differences between the work actually carried out and the work foreseen in Annex I as well as propose, if necessary, any modifications to the action;
  - (b) an explanation of the use of the resources, including by affiliated entities and subcontractors;
  - (c) a request for payment in the form of a financial statement (Form A; Annex III) from each beneficiary including a consolidated statement as well as a breakdown of the amounts claimed by each beneficiary and its affiliated entities;
  - (d) a summary financial statement including a consolidated financial statement and a breakdown of the amounts claimed by each beneficiary and its affiliated entities, aggregating the financial statements already submitted previously; and

- (e) a report on implementation of the plan for the use and dissemination of foreground.
2. The consortium shall submit any other reports or deliverables required by any Annex to this grant agreement within the period specified therein.
3. The consortium shall submit a final report to Fusion for Energy within 60 days after the end date of the action. The report shall comprise:
  - (a) a final activity report, including a short publishable summary, covering all the work, objectives, results and conclusions of the action and
  - (b) a final financial statement (Form A; Annex III), from each beneficiary, including a consolidated statement as well as breakdown of the amounts claimed by each beneficiary and its affiliated entities;
  - (c) a summary financial statement including a consolidated financial statement and a breakdown of the amounts claimed by each beneficiary and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts for each beneficiary and its affiliated entities.
4. The coordinator shall submit a report on the distribution of the Fusion for Energy financial contribution between beneficiaries. This report shall be submitted 30 days after receipt of the final payment.
5. A certificate on the financial statements shall be submitted for each beneficiary and for each affiliated entity for claims of interim payments and final payments if:
  - (a) the cumulative amount of payments the beneficiary requests as reimbursement of actual costs (and for which no certificate has yet been submitted) is EUR 325 000 or more; and
  - (b) the maximum grant amount indicated for that beneficiary and its affiliated entities in the estimated budget as reimbursement of actual costs is EUR 750 000 or more.

This certificate must be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex IV (Form B).

The certificate must certify that the costs declared by the beneficiary concerned and its affiliated entities for the categories of costs to be reimbursed are real, accurately recorded and eligible in accordance with the Agreement and that all receipts have been declared.

[As an exception, the following beneficiaries and affiliated entities must not submit a certificate on the financial statements: [insert beneficiaries or affiliated entities]<sup>14</sup>]

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<sup>14</sup> To be added where the authorising officer responsible decides to waive the obligation to provide a certificate on the financial statements and underlying accounts (see Article 207(3) RAP), notably:

- for beneficiaries which are public bodies or international organisations;
- for beneficiaries of multiple grants which have provided independent certification offering equivalent guarantees on the control system and methodology used to prepare their claims;
- where an audit has been or will be directly done by the Commission's own staff or by a body authorised to do so on its behalf.



6. Each beneficiary must certify on his honour that the information provided in the requests for payment and the supporting documents is full, reliable and true.

Each beneficiary must also certify that the costs incurred can be considered eligible in accordance with the grant agreement and that the request for payment is substantiated by adequate supporting documents that can be checked in the context of the checks or audits described in Article II.19.

In addition, each beneficiary must certify that all the receipts have been declared.

7. The consortium shall transmit the requests for payment, supporting documents, reports and deliverables through the coordinator to Fusion for Energy. In addition, Form A, shall be signed by the authorised person(s) within the beneficiary's organisation, and the certificates on the financial statements and on the methodology shall be signed by an authorised person of the auditing entity, and the originals shall be sent to Fusion for Energy.
8. The layout and content of the reports shall conform to the instructions and guidance notes established by Fusion for Energy.
9. Deliverables identified in Annex I shall be submitted as foreseen therein.
10. Fusion for Energy may be assisted by external experts in the analysis and evaluation of the reports and deliverables.

#### *Article II.6*

##### ***Evaluation and approval of reports and deliverables, time limit for payments***

1. At the end of each reporting period, referred to in Article I.3, Fusion for Energy shall evaluate periodic reports and deliverables required by the provisions of Annex I and disburse the corresponding payments within 90<sup>15</sup> days of their receipt unless the time-limit, the payment or the action has been suspended.
2. Payments shall be made after Fusion for Energy's approval of periodic reports and/or deliverables. The absence of a response from Fusion for Energy within this time-limit shall not imply its approval. However, Fusion for Energy should send a written reply to the consortium in accordance with paragraph 3. Fusion for Energy may reject reports and deliverables even after the time-limit for payment. Approval of the reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and do not imply exemption from any audit or review.
3. After reception of the request for payment and supporting documents Fusion for Energy may:
  - (a) approve the reports and deliverables, in whole or in part or make the approval subject to certain conditions.
  - (b) reject the reports and deliverables by giving an appropriate justification and, if appropriate, start the procedure for termination of the grant agreement in whole or in part.

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<sup>15</sup> 60 days where the grant does not involve complex actions.

- (c) suspend the time limit for payment if it does not comply with the provisions of the grant agreement, one or more of the reports or appropriate deliverables have not been supplied, or are not complete or if some clarification or additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted.

Fusion for Energy shall notify the coordinator of the suspension and the reasons for the suspension. The suspension takes effect on the day the notification is sent by Fusion for Energy.

If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted and the remaining period will resume.

If the suspension exceeds two months, the coordinator may request Fusion for Energy if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the reports, deliverables or financial statements with the grant agreement and the revised report, deliverable or financial statement is not submitted or was submitted but is also rejected, Fusion for Energy may terminate the grant agreement or the participation of the beneficiary and reduce the grant.

- (d) suspend the payment at any time, in whole or in part for the amount intended for the beneficiary(ies) concerned:
  - (i) if the work carried out does not comply with the provisions of the grant agreement;
  - (ii) if a beneficiary has to reimburse to its national state an amount unduly received as state aid;
  - (iii) if Fusion for Energy has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or while implementing the grant agreement or if a beneficiary fails to comply with its obligations under the grant agreement;
  - (iv) if Fusion for Energy suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred;
  - (v) if Fusion for Energy has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations in other grants funded by Fusion for Energy, the Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and such errors, irregularities, fraud or breach have a material impact on this grant;

Before suspending payments, Fusion for Energy shall notify the coordinator of its intention to suspend payments, the reasons for suspension, in the cases referred to in points (iii) and (v) the necessary conditions for resuming payments, and shall invite the coordinator to submit observations within 30 calendar days of receiving the notification.

If Fusion for Energy does not receive observations or decides to pursue the procedure despite the observations it has received, it shall notify the coordinator of the suspension of payments, the reasons for suspension, in the cases referred to in points (iii) and (v), of the final conditions for resuming implementation, and in the case of point (iv), of the indicative date of completion of the necessary verification. The coordinator shall immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day the notification of suspension is sent by Fusion for Energy.

Otherwise, Fusion for Energy shall notify the coordinator that the suspension procedure is not continued.

4. Fusion for Energy may proceed with an interim payment in part if some periodic reports or deliverables are not submitted as required, or only partially or conditionally approved. The periodic reports and deliverables due for one reporting period which are submitted late will be evaluated together with the reports and deliverables of the next reporting period.
5. On expiry of the time-limit for approval of the period reports and payments, and without prejudice to suspension by Fusion for Energy of this time-limit, Fusion for Energy shall pay interest on the late payment, at the rate applied by the European Central Bank for its main refinancing operations in euros (“the reference rate”), plus three and a half points. The reference rate to which the increase applies shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the European Union.

Late-payment interest is not due if all beneficiaries are Member States of the Union (including regional and local government authorities and other public bodies acting in the name of and on behalf of the Member State for the purpose of the grant agreement).

Late-payment interest covers the period running from the day following the due date for payment, up to and including the date of actual payment.

As an exception to the first subparagraph, if the calculated interest is lower than or equal to EUR 200, it must be paid to the coordinator only if the coordinator requests it within two months of receiving late payment.

6. The suspension of the time-limit, of payment or of the action by Fusion for Energy may not be considered as late payment.
7. Fusion for Energy may reduce the maximum amount of the grant if the action has not been implemented properly as described in Annex I, notably if it has not been implemented or has been implemented poorly, partially or late, or if another obligation under the grant agreement has been breached.

The amount of the reduction will be proportionate to the improper implementation of the action or to the seriousness of the breach.

Before reduction of the grant, Fusion for Energy notify the coordinator of its intention to reduce the maximum amount of the grant, the amount it intends to reduce, the reasons for reduction and shall invite the coordinator to submit observations within 30 calendar days of receiving the notification.

If Fusion for Energy does not receive any observations or decides to pursue reduction despite the observations it has received, it shall notify the coordinator of its decision.

*Article II.7*  
***Payment modalities***

1. Fusion for Energy shall make the following payments:
  - (a) a pre-financing in accordance with Article I.5;
  - (b) for actions with more than one reporting period, Fusion for Energy shall make interim payments of Fusion for Energy's financial contribution corresponding to the amount accepted for each reporting period;
  - (c) a final payment of Fusion for Energy's financial contribution corresponding to the amount accepted for the last reporting period plus any adjustment needed.

Where the amount of the corresponding Fusion for Energy's financial contribution is less than any amount already paid to the consortium, Fusion for Energy shall recover the difference.

Where the amount of the corresponding Fusion for Energy's financial contribution is more than any amount already paid to the consortium, Fusion for Energy shall pay the difference as the final payment within the limit of Articles I.4.1 and II.16.

2. The total amount of the pre-financing and interim payments shall not exceed 90% of the maximum Fusion for Energy's financial contribution defined in Article I.4.1.
3. Payments by Fusion for Energy shall be made in Euro.
4. Costs shall be reported in Euro. Beneficiaries with accounts in currencies other than the Euro shall report costs by using, either the conversion rate published by the European Central Bank that would have applied on the date that the actual costs were incurred, or its rate applicable on the first day of the month following the end of the reporting period. Beneficiaries with accounts in Euro shall convert costs incurred in other currencies according to their usual accounting practices.
5. The bank account mentioned in Article I.4.3 shall allow Fusion for Energy's financial contribution to be identified. Otherwise, the accounting methods of the beneficiaries or intermediaries shall make it possible to identify Fusion for Energy's financial contribution.
6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.
7. Payments by Fusion for Energy shall be deemed to be effected on the date when they are debited from Fusion for Energy's account.

## **SECTION 3 IMPLEMENTATION**

### *Article II.8 Subcontracting and implementation contracts*

1. A subcontractor is a third party which has entered into an agreement on business conditions with one or more beneficiaries, in order to carry out part of the tasks related to the action. Beneficiary(ies) and subcontractor shall not establish a relationship with regard to the work to be undertaken that would undermine competition in the European market.
2. Where the beneficiary enters into a subcontract to carry out some parts of the tasks related to the action, the beneficiary remains bound by its obligations towards Fusion for Energy and the other beneficiaries under the grant agreement and retains sole responsibility for carrying out the action and for compliance with the provisions of the grant agreement.

Provisions of this grant agreement applying to subcontractors shall also apply to external auditors who certify financial statements or a methodology.

3. Where, as laid down in Annex I, it is necessary for the beneficiaries to subcontract certain elements of the work to be carried out, the following conditions shall be fulfilled:
  - (a) subcontractors may only cover the execution of a limited part of the action and may not cover core tasks;
  - (b) recourse to the award of subcontracts shall be duly justified in Annex I having regard to the nature of the action and what is necessary for its implementation;
  - (c) recourse to the award of subcontracts by a beneficiary may not affect the rights and obligations of the beneficiaries and Fusion for Energy laid down in Part C of this grant agreement regarding background and foreground;
  - (d) an estimation of the costs shall be indicated in Annex II;
  - (e) Any change, removal or addition of a subcontractor during the action shall be agreed in writing by Fusion for Energy.
4. If the implementation of the action requires the beneficiaries to procure goods, works or services, they must award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they must avoid any conflict of interests.

The beneficiaries must ensure that Fusion for Energy, the Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.19 and II.20 also towards the beneficiaries' contractors.

Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2014/24/EU<sup>16</sup> or ‘contracting entities’ within the meaning of Directive 2014/25/EU<sup>17</sup> must comply with the applicable national public procurement rules.

The beneficiaries must ensure that the conditions applicable to them regarding liability, confidentiality, visibility of funding and intellectual property rights are also applicable to the contractors.

If the beneficiaries breach their obligations under paragraph 3 the costs related to the contract concerned may be considered ineligible.

5. Beneficiaries may use external support services for assistance with minor tasks that do not represent per se action tasks as identified in Annex I.

#### *Article II.9*

#### ***Suspension of the action***

1. The coordinator shall immediately inform Fusion for Energy of any event affecting or delaying the implementation of the action.
2. The coordinator can propose to suspend the whole or part of the action if force majeure or exceptional circumstances render its execution excessively difficult or uneconomic. The coordinator shall inform Fusion for Energy without delay of such circumstances, including full justification and information related to the event, as well as an estimation of the date when the work on the action will begin again.
3. Fusion for Energy may suspend the implementation of the action or any part thereof:
  - (a) if Fusion for Energy has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or while implementing the grant agreement or if a beneficiary fails to comply with its obligations under the grant agreement;
  - (b) if Fusion for Energy has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations in other grants funded by Fusion for Energy, the Union or the European Atomic Energy Community (‘Euratom’) awarded to the beneficiary under similar conditions and the errors, irregularities, fraud or breach have a material impact on this grant; or
  - (c) if Fusion for Energy suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

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<sup>16</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

<sup>17</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

4. Before suspending, Fusion for Energy shall notify the coordinator of its intention to suspend the implementation, the reasons for suspension, in the cases referred to in points (a) and (b) of paragraph 3, the necessary conditions for resuming the implementation, and invite the coordinator to submit observations within 30 calendar days of receiving the formal notification.

If Fusion for Energy does not receive observations or decides to pursue the procedure despite the observations it has received, it shall notify the coordinator of the suspension of the implementation, the reasons for suspension and, in the cases referred to in points (a) and (b) of paragraph 3, the final conditions for resuming the implementation, or, in the case referred to in point (c) of paragraph 3, the indicative date of completion of the necessary verification.

The coordinator must immediately inform the other beneficiaries of the suspension. The suspension takes effect five calendar days after the notification is received by the coordinator or on a later date specified in the notification.

Otherwise, Fusion for Energy must send a notification to the coordinator informing it that the suspension procedure is not continued.

5. During the period of suspension, no costs may be charged to the action for carrying out any part of the action that has been suspended.
6. The suspension of the whole or part of the action may be lifted once the Parties to the grant agreement have agreed on the continuation of the action and, as appropriate, any necessary modification, including extension of the duration of the action, has been identified by means of a written amendment.

#### *Article II.10* **Confidentiality**

1. During the action and after its completion the Parties undertake to preserve the confidentiality of any data, documents or other material that is identified by them as confidential in relation to the execution of the action (“confidential information”).

Where confidential information was communicated orally, its confidential character shall be confirmed by the disclosing party in writing within 15 days after disclosure.

2. Paragraph 1 no longer applies where:
  - (a) the confidential information becomes publicly available by means other than a breach of confidentiality obligations;
  - (b) the disclosing Party subsequently informs the recipient that the confidential information is no longer confidential;
  - (c) the confidential information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
  - (d) the disclosure or communication of the confidential information is foreseen by other provisions of this grant agreement or as agreed by the Parties.

3. Without prejudice to the preceding paragraphs, the treatment of data, documents or other material which are classified (“classified information”) or subject to security restrictions or export- or transfer- control, shall follow the applicable rules established by the relevant national and Union legislation for such information, including Fusion for Energy's internal rules for handling classified information.<sup>18</sup>
4. Confidential information shall be treated by the Parties with a due regard to the obligations concerning the protection of Intellectual Property and subject to the provisions laid down in Part C of this grant agreement.

*Article II.11*  
***Information and communication***

1. Without prejudice to Article II.33, the beneficiaries shall, throughout the duration of the action, take appropriate measures to raise awareness about the action and to highlight Fusion for Energy's financial support, except in duly justified cases, where public display is not possible or appropriate. Any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), shall specify that the action has received Fusion for Energy's research funding and display the “F4E” logo. This obligation to use the “F4E” logo in respect of actions to which Fusion for Energy contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the logo, or of any similar trademark, whether by registration or by any other means. Under these conditions, beneficiaries are exempted from the obligation to obtain prior permission from Fusion for Energy to use the logo. Further detailed information and downloadable files of the “F4E” logo can be found on Fusion for Energy's web page.

Any publicity made by the beneficiaries in respect of the action, in whatever form and on or by whatever medium, shall specify that it reflects only the author's views and that Fusion for Energy is not liable for any use that may be made of the information contained therein.

2. Fusion for Energy shall be authorised to publish, in whatever form and on or by whatever medium, the following information:
  - (a) the name of the beneficiaries;
  - (b) contact addresses of beneficiaries;
  - (c) the general purpose of the action in the form of the summary provided by the consortium;
  - (d) the amount and rate of Fusion for Energy's financial contribution granted to the action;
  - (e) the geographic location of the activities carried out;
  - (f) the list of patent (applications) relating to foreground;

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<sup>18</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, OJ L 72, 19.3.2015, p. 53.



- (g) the details/references and the abstracts of scientific publications relating to foreground and the published version or the final manuscript accepted for publication;
- (h) the publishable reports submitted to it;
- (i) any picture or any audiovisual or web material provided to Fusion for Energy in the framework of the action.

The consortium shall ensure that all necessary authorisations for such publication have been obtained and that the publication of the information by Fusion for Energy does not infringe upon any rights of third parties.

Upon a duly substantiated request by a beneficiary, Fusion for Energy may agree to forego such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security, academic or commercial interests.

*Article II.12*  
***Processing of personal data***

1. All personal data contained in the grant agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data.<sup>19</sup> Such data shall be processed by Fusion for Energy solely in connection with the implementation and follow-up of the grant agreement and the evaluation and impact assessment of Fusion for Energy's activities, including the use and dissemination of foreground, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with Union legislation, Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>20</sup> and this grant agreement.
2. Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to Fusion for Energy. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.
3. For the purposes of this grant agreement, the person identified in Article I.7 shall be the contact person for Fusion for Energy in matters relating to the processing of personal data.

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<sup>19</sup> OJ L 8, 12.1.2001, p.1.

<sup>20</sup> OJ. L 90 , 30.03.2007, p. 58, as last amended by Council Decision (Euratom) 2015/224 of 10 February 2015.

## **Part B**

### **Financial Provisions**

#### **SECTION 1**

#### **GENERAL FINANCIAL PROVISIONS**

##### *Article II.13*

##### *Eligible costs of the action*

1. Costs incurred for the implementation of the action shall meet the following conditions in order to be considered eligible:
  - (a) they shall be actual;
  - (b) they shall be incurred by the beneficiary in connection with the action as described in Annex I and shall be necessary for its implementation;
  - (c) they shall be incurred during the duration of the action, with the exception of costs incurred in relation to final activity reports and activity reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the action or the date of termination whichever is earlier;
  - (d) they shall be determined in accordance with the usual accounting and management principles and practices of the beneficiary. The accounting procedures used in the recording of costs shall respect the accounting rules of the State in which the beneficiary is established. The beneficiary's internal accounting and auditing procedures shall permit direct reconciliation of the costs declared in respect of the action with the corresponding financial statements and supporting documents;
  - (e) they shall be reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency;
  - (f) they shall be identifiable and verifiable, in particular they shall be recorded in the accounts of the beneficiary;
  - (g) they shall be indicated in the estimated overall budget in Annex II.
  - (h) they shall comply with the requirements of applicable tax and social legislation;Notwithstanding point a) of the first subparagraph, beneficiaries may opt to declare average personnel costs if the following cumulative criteria are fulfilled:
  - (a) The average personnel cost methodology shall be the one declared by the beneficiaries as its usual cost accounting practice; as such it shall be consistently applied to all the participations of the beneficiaries.

- (b) The methodology shall be based on the actual personnel costs of the beneficiary(ies) as registered in its statutory accounts, without estimated or budgeted elements;
- (c) The methodology shall exclude from the average personnel rates any ineligible cost item as referred to in paragraph 2 and any costs claimed under other costs categories in order to avoid double funding of the same costs;
- (d) The number of productive hours used to calculate the average hourly rates shall correspond to the usual management practice of the beneficiaries provided that it reflects the actual working standards of the beneficiaries, in compliance with applicable national legislation, collective labour agreements and contracts and that it is based on auditable data.

A beneficiary may submit a certified methodology for approval by the Fusion for Energy on the basis of the criteria referred to in points (a) to (d) of the second subparagraph.

Average personnel costs charged on the basis of methodologies which comply with the criteria referred to point (a) to (d) shall be deemed not to differ significantly from actual costs.

Such a certificate shall be issued in accordance with the provisions laid down in Article II.5.4 and the relevant part of Form C in Annex IV, unless it has already been submitted for a previous grant agreement with Fusion for Energy and the methodology certified has not changed.

2. The following costs shall be considered as non-eligible and may not be charged to the action:
  - (a) return on capital and dividends paid by a beneficiary;
  - (b) debt and debt service charges;
  - (c) provisions for losses or debts;
  - (d) interest owed;
  - (e) doubtful debts;
  - (f) exchange losses;
  - (g) costs of transfers from Fusion for Energy charged by the bank of a beneficiary;
  - (h) costs declared by the beneficiary under another action receiving a grant financed from the Fusion for Energy or Union budget. Such grants include grants awarded by a Member State and financed from the Union budget and grants awarded by bodies other than the Commission for the purpose of implementing the Union budget.
  - (i) contributions in kind free of charge from third parties;
  - (j) excessive or reckless expenditure;

- (k) deductible VAT.

#### *Article II.14*

#### *Identification of direct and indirect costs*

1. Direct costs are all those eligible costs which can be attributed directly to the action and are identified by the beneficiary as such, in accordance with its accounting principles and its usual internal rules.

In particular, the following categories of costs are eligible direct costs, provided that they satisfy the conditions of eligibility set out in Article II.13 as well as the following conditions:

- (a) the costs of personnel working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the action, provided that these costs are in line with the beneficiary's usual policy on remuneration.

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration. They may also comprise additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used.

The costs of natural persons working under a contract with the beneficiary other than an employment contract or seconded to the beneficiary by a third party against payment may be assimilated to such costs of personnel, provided that the following conditions are fulfilled:

- (i) the natural person works under the instructions of the beneficiary and, unless otherwise agreed with the beneficiary, in the premises of the beneficiary;
  - (ii) the result of the work belongs to the beneficiary; and
  - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the beneficiary's usual practices on travel;
  - (c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the accounting statements of the beneficiary, provided that the asset:
    - (i) is written off in accordance with the international accounting standards and the usual accounting practices of the beneficiary and
    - (ii) has been purchased in accordance with Article II.8.4 if the purchase occurred within the implementation period;

The costs of rental or lease of equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the implementation period and the rate of actual use for the purposes of the action may be taken into account. By way of exception, the Special clauses in Article I.6 may provide for the eligibility of the full cost of purchase of equipment, where justified by the nature of the action and the context of the use of the equipment or assets;

- (d) costs of consumables and supplies, provided that they:
    - (i) are purchased in accordance with Article II.8.4 and
    - (ii) are directly assigned to the action;
  - (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.8.4;
  - (f) costs entailed by subcontracts within the meaning of Article II.8.1, provided that the conditions laid down in Article II.11.1 to II.11.3 are met;
  - (g) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT) which cannot be refunded to the beneficiary according to the applicable national legislation, provided that they are included in eligible direct costs;
  - (h) costs relating to a pre-financing guarantee lodged by the beneficiary where that guarantee is required by Fusion for Energy;
  - (i) costs relating to external audits where such audits are required in support of the requests for payments by Fusion for Energy.
2. Indirect costs are all those eligible costs which cannot be identified by the beneficiary as being directly attributed to the action but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the action. They may not include any eligible direct costs.

Indirect costs shall represent a fair apportionment of the overall overheads of the organisation. They may be identified according to one of the following methods:

- (a) Based on actual indirect costs for those beneficiaries which have an analytical accounting system to identify their indirect costs as indicated above.

For this purpose, a beneficiary is allowed to use a simplified method of calculation of its full indirect eligible costs at the level of its legal entity if this is in accordance with its usual accounting and management principles and practices. Use of such a method is only acceptable where the lack of analytical accounting or the legal requirement to use a form of cash-based accounting prevents detailed cost allocation. The simplified approach shall be based on actual costs derived from the financial accounts of the last closed accounting year.

- (b) A beneficiary may opt for a flat rate of [ $x \leq 25\%$ ] of its total direct eligible costs, excluding its direct eligible costs for subcontracting.
3. The beneficiary shall apply the option chosen in paragraph 2 to all grant agreements concluded with Fusion for Energy.

However, any beneficiary that has opted for the possibility described in paragraph 2(b) in a previous grant agreement may opt in this grant agreement for one of the methods described in paragraph 2(a). However, it shall then use that method in subsequent grant agreements.

*Article II.15*  
***Upper funding limits***

1. For research, technological development and demonstration activities, Fusion for Energy's financial contribution may reach a maximum of [xx]<sup>21</sup>% of the total eligible costs.
2. For the purchase of durable equipment or assets and of ancillary services approved by the Joint Undertaking as necessary to carry out such activities, Fusion for Energy's financial contribution may reach a maximum of [xx]<sup>22</sup>% of the total eligible costs.
3. For coordination and support actions, Fusion for Energy's financial contribution may reach a maximum of [xx]<sup>23</sup>% of the total eligible costs. Those activities shall be described in Annex I together with an indication of the associated costs.
4. For management and other specific activities, Fusion for Energy's financial contribution may reach a maximum of [xx]<sup>24</sup>% of the total eligible costs. Those management activities include:
  - (a) management of the consortium agreement, if it is requested in the call for proposals or the Work Programme of Fusion for Energy;
  - (b) the legal, financial and administrative management including obtaining certificates on the financial statements and on the methodology and costs relating to financial and technical audits.

*Article II.16*  
***Fusion for Energy's financial contribution***

1. Fusion for Energy's financial contribution to the action ("Fusion for Energy's financial contribution") shall be determined by applying the upper funding limits laid down in Article II.15, per activity and per beneficiary to the actual eligible costs and/or to the flat rates accepted by Fusion for Energy.

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<sup>21</sup> Insert percentage as contained in relevant annual work programme.

<sup>22</sup> Insert percentage as contained in relevant annual work programme.

<sup>23</sup> Insert percentage as contained in relevant annual work programme.

<sup>24</sup> Insert percentage as contained in relevant annual work programme.

2. Fusion for Energy's financial contribution shall be calculated by reference to the cost of the action as a whole and its reimbursement shall be based on the accepted costs of each beneficiary.
3. Fusion for Energy's financial contribution cannot give rise to any profit for any beneficiary.

'Profit' means the surplus of the total receipts of the action over the total eligible costs of the action, when the request is made for payment of the balance.

The total eligible costs of the action are the consolidated total eligible costs approved by Fusion for Energy.

The total receipts of the action are the consolidated total receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the coordinator. The receipts shall be limited to the income generated by the action, as well as financial contributions given by third parties to a beneficiary or to an affiliated entity, if they are specifically assigned by the third parties to the financing of the eligible costs of the action.

Where a profit is made, Fusion for Energy shall be entitled to deduct the percentage of the profit corresponding to the Fusion for Energy contribution to the eligible costs actually incurred by the beneficiaries to carry out the action.

4. The total amount of payments by Fusion for Energy shall not exceed the maximum amount referred to in Article I.4.1.
5. Without prejudice to the right to terminate the grant agreement under Article II.37, Fusion for Energy may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this grant agreement.

## **SECTION 2**

### **FINANCIAL COLLECTIVE RESPONSIBILITY AND RECOVERIES**

#### *Article II.17*

#### ***Financial collective responsibility***

1. Should the grant agreement be terminated or the participation of a beneficiary be terminated in accordance with Article II.37, and any beneficiary does not honour the reimbursement of the amount due by that beneficiary, the consortium shall reimburse the amount due to Fusion for Energy.

The amount due to Fusion for Energy may not exceed the value of the contribution due to the consortium in accordance with Article I.4.1.

2. The amount to be recovered shall be allocated between the remaining beneficiaries other than those referred to in paragraph 3 in accordance with their *pro rata* share in the overall action.

This allocation shall be based on the relative weight of all those beneficiaries not excluded by paragraph 3, taking into account their share of the provisional costs as indicated in Annex II when pre-financing is to be recovered and their share of accepted certified costs when payment is to be recovered.

Any amount claimed from a beneficiary shall not exceed the contribution it is entitled to receive according to applicable reimbursement rates. The amount a beneficiary is entitled to receive is based on its provisional costs as indicated in Annex II when pre-financing is to be recovered and is based on its certified costs accepted by Fusion for Energy when a settled payment is to be recovered.

3. Paragraphs 1 and 2 do not apply where the defaulting beneficiary is a public body, an international organisation or a beneficiary whose participation to the action is guaranteed by a Member of Fusion for Energy.
4. The consortium is not collectively responsible for:
  - (a) any amount owed by a defaulting beneficiary for any breach discovered after the final implementation date;
  - (b) liquidated damages due by a beneficiary in accordance with Article II.21.

#### *Article II.18*

#### **Recovery**

1. If any amount is unduly paid to a beneficiary or if recovery is justified under the terms of this grant agreement, the beneficiary undertakes to repay Fusion for Energy the sum in question. Each beneficiary is responsible for the repayment of any amount unduly paid by Fusion for Energy as a contribution towards the costs incurred by its affiliated entities.

Before recovery, Fusion for Energy shall notify the beneficiary concerned of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and shall invite the beneficiary to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, Fusion for Energy decides to pursue the recovery procedure, Fusion for Energy may confirm recovery by sending to the beneficiary a debit note, specifying the terms and the date for payment.

2. If payment has not been made by the due date, sums owed to Fusion for Energy may be recovered by offsetting them against any sums it owes to the beneficiary concerned, after informing the latter accordingly. In exceptional circumstances, justified by the necessity to safeguard the financial interests of Fusion for Energy and the Union, Fusion for Energy may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.
3. If the obligation to pay the amount due is not honoured by the date set by Fusion for Energy, the sum due shall bear interest at the rate indicated in paragraph 5 of Article II.6. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which Fusion for Energy receives full payment of the amount



owed is reimbursed in full, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

### **SECTION 3 CONTROLS**

#### *Article II.19*

#### ***Financial audits and controls***

1. Fusion for Energy may, at any time during the implementation of the action and up to five years after the end of the action, arrange for financial audits to be carried out, by external auditors, by Fusion for Energy or Commission services, including the European Anti-Fraud Office (OLAF). The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by Fusion for Energy. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the grant agreement. They shall be carried out on a confidential basis. If the audit is carried out on an affiliated entity, the beneficiary concerned must inform that affiliated entity.
2. The beneficiary shall make available directly to Fusion for Energy all detailed information and data that may be requested by Fusion for Energy or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data shall be precise and complete. In case the beneficiary does not comply with this obligation, Fusion for Energy may consider any cost insufficiently substantiated by information provided by the beneficiary as ineligible.
3. The beneficiary must keep all original documents, records, supporting documents, statistical documents and other records pertaining to the grant, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, during a period of five years starting from the date of payment of the balance.

The period during which documents must be kept is limited to three years if the *maximum amount of the grant* is not more than EUR 60 000.

4. The periods set out in the third subparagraph are longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant. In such cases, the beneficiary or affiliated entity must keep the documents until such audits, appeals, litigation or pursuit of claims have been closed.
5. In order to carry out these audits, the beneficiaries shall ensure that Fusion for Energy's staff and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the sites and premises where the action is or was carried out, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the action. They shall ensure that the information is readily available in an appropriate form. In case the beneficiary concerned refuses to provide access to the

sites, premises or information, Fusion for Energy may consider any cost insufficiently substantiated by information provided by the beneficiary as ineligible.

6. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by Fusion for Energy or its authorised representative to the beneficiary concerned, which may make observations thereon in writing to Fusion for Energy or its authorised representative within one month of receiving it. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforementioned deadline.
7. On the basis of the conclusions of the audit, Fusion for Energy shall take all appropriate measures which it considers necessary, including:
  - (a) to initiate the termination of the grant agreement or of the participation of any beneficiary according to Article II.37;
  - (b) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.
8. The Commission, the European Court of Auditors and OLAF shall have the same rights as Fusion for Energy, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.
9. In addition, OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>25</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>26</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with the grant agreement.
10. Fusion for Energy may extend audit findings from other grants to this grant if the beneficiary concerned is found to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations in other Fusion for Energy, EU or Euratom grants awarded under similar conditions and such errors, irregularities, fraud or breach have a material impact on this grant. Fusion for Energy shall send the final audit findings to the beneficiary concerned and notify it of the systemic or recurrent errors and of its intention to extend the audit findings together with the list of grants affected by the findings. The extension of findings may lead to rejection of costs as ineligible, reduction of the grant, recovery of undue amounts, suspension of payments, suspension of the action or termination.
11. If the findings concern eligibility of costs, the notification shall include an invitation to submit observations on the list of grants affected by the findings, a request to submit revised financial statements for all grants affected, and where possible the correction rate for extrapolation established by Fusion for Energy to calculate the amounts to be

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<sup>25</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 248, 18.9.2013, p.1.

<sup>26</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292, 15.11.1996, p.2.

rejected on the basis of the systemic or recurrent errors, irregularities, fraud or breach of obligations, if the beneficiary concerned would consider that the submission of revised financial statements is not possible or practicable or would not submit revised financial statements.

The beneficiary concerned has 60 calendar days from receiving the notification to submit observations and revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by Fusion for Energy in justified cases.

If the beneficiary concerned submits revised financial statements taking account of the findings Fusion for Energy will define the amount to be corrected on the basis of those revised statements.

If the beneficiary proposes an alternative correction method and Fusion for Energy accepts it, Fusion for Energy shall notify the beneficiary concerned of the acceptability of the alternative method and the revised eligible costs determined by applying this method.

Otherwise Fusion for Energy shall notify the beneficiary concerned of the non-acceptability of the observations or the alternative method proposed and the revised eligible costs determined by applying the extrapolation method initially notified to the beneficiary.

If the systemic or recurrent errors, irregularities, fraud or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant, determined on the basis of the revised eligible costs declared by the beneficiary and approved by Fusion for Energy or on the basis of the revised eligible costs after extrapolation, and the total amount paid to the beneficiaries under the grant agreement for the implementation of the action.

12. If the findings concern improper implementation or a breach of another obligation, the notification shall include an invitation to submit observations on the list of grants affected by the findings and the correction flat-rate Fusion for Energy intends to apply to the maximum amount of the grant or to part of it according to the principle of proportionality.

The beneficiary concerned has 60 calendar days from receiving the notification to submit observations or to propose a duly substantiated alternative flat-rate.

If Fusion for Energy accepts the alternative flat rate proposed by the beneficiary, it must notify the beneficiary concerned of the acceptability of the alternative flat-rate and the corrected grant amount by applying this flat rate.

Otherwise Fusion for Energy shall notify the beneficiary concerned of the non-acceptability of the observations or the alternative flat rate proposed and the corrected grant amount by applying the flat rate initially notified to the beneficiary.

If the systemic or recurrent errors, irregularities, fraud or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant after flat-rate correction and the total amount paid to the beneficiaries under the grant agreement for the implementation of the action.

*Article II.20*  
***Technical audits***

1. Fusion for Energy may initiate a technical audit at any time during the implementation of the action and up to five years after the end of the action. The aim of a technical audit shall be to examine scientific, technological and other aspects relating to the proper execution of the action and the grant agreement.
2. Audits shall be deemed to be initiated on the date of receipt by the beneficiary(ies) of the relevant letter sent by Fusion for Energy. If the audit is carried out on an affiliated entity, the beneficiary concerned must inform that affiliated entity.
3. Any such audit shall be carried out on a confidential basis.
4. Fusion for Energy may be assisted in technical audits by external experts. Prior to the audit, Fusion for Energy shall communicate to the beneficiaries the identity of the appointed experts. The beneficiary(ies) shall have the right to refuse the participation of a particular expert on grounds of commercial confidentiality.
5. Audits may be carried out at the place of work or involve sessions with action representatives either at Fusion for Energy's premises or at the premises of beneficiaries. Fusion for Energy or the expert shall have access to the locations and premises where the work is being carried out, and to any document concerning the work.
6. The beneficiaries shall make available to Fusion for Energy all detailed information and data that may be requested by it or the expert with a view to verifying that the action is being/has been implemented in accordance with the provisions of this grant agreement.
7. A report on the outcome of the audits shall be drawn up. It shall be sent by Fusion for Energy to the beneficiary concerned, who may make written observations to Fusion for Energy thereon within one month of receiving it. The coordinator shall be informed.
8. On the basis of the findings of the audit, Fusion for Energy will take all appropriate measures which it considers necessary, including:
  - (a) to initiate the termination of the grant agreement or of the participation of any beneficiary according to Article II.37;
  - (b) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.

*Article II.21*  
***Liquidated damages***

1. A beneficiary that is found to have overstated any claimed amount and which has therefore received an unjustified financial contribution from Fusion for Energy shall, without prejudice to any other measures provided for in this grant agreement, be liable to pay liquidated damages. Liquidated damages are due in addition to the recovery of the unjustified Fusion for Energy's financial contribution from the beneficiary. In exceptional cases Fusion for Energy may refrain from claiming liquidated damages.

2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of Fusion for Energy's financial contribution. The following formula shall be used to calculate liquidated damages:

Liquidated damages = unjustified Fusion for Energy's financial contribution x (overstated amount/total Fusion for Energy's financial contribution claimed)

The calculation of any liquidated damages shall only take into consideration the reporting period(s) relating to the beneficiary's claim for Fusion for Energy's financial contribution for that period. It shall not be calculated in relation to the entire Fusion for Energy's financial contribution.

3. Fusion for Energy shall inform the beneficiary which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The beneficiary shall have a period of 30 days to answer Fusion for Energy's claim.
4. The procedure for repayment of unjustified Fusion for Energy's financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.18. Liquidated damages will be deducted from any further payment or will be subject to recovery by Fusion for Energy.
5. Fusion for Energy shall be entitled to liquidated damages in respect of any overstated amount which comes to light after the end of the action, in accordance with the provisions of paragraphs 1 to 4.

## **Part C**

### **Information and Intellectual Property**

#### **SECTION 1**

#### **BACKGROUND**

##### *Article II.22*

##### ***Ownership of the background***

1. Without prejudice to Paragraph 4, each beneficiary shall remain the exclusive owner of its background.
2. Each beneficiary shall remain free to license, assign or otherwise dispose of its ownership rights in background, subject to any rights and obligations under the present grant agreement.
3. Where a beneficiary transfers ownership of background, it shall pass on its obligations regarding that background, as defined in the present grant agreement, to the assignee including the obligation to pass those obligations on to any subsequent assignee.
4. In accordance with Article 20 of the Statutes of Fusion for Energy, a beneficiary who is a national fusion organisation of a Member of Fusion for Energy shall offer free of charge to Fusion for Energy any title, rights and obligations arising under the contracts and orders placed by or with the support of Euratom in relation to the activities of Fusion for Energy prior to his establishment.

##### *Article II.23*

##### ***Identification of the background***

1. Beneficiaries shall contribute to the action by making available the background. In case the background belongs to a third party and its use was granted to the beneficiary under a license agreement, the beneficiary shall obtain from that third party all the rights allowing use of the background in conformity with this grant agreement.
2. The background referred to in paragraph 1 shall be identified by the beneficiary prior to the signature of this grant agreement together with information about its origin, ownership and a detailed description as well as any legal restrictions relating to the use of such background of which the beneficiary is aware. A list summarising the identified background shall form part of this grant agreement as Annex V.
3. Any other background identified after the signature of this grant agreement by a beneficiary, shall be added to the list referred to in paragraph 2. The beneficiary shall justify why the existence of such background could not be invoked prior to his signature of this grant agreement.
4. If the background is confidential, it must be marked so and special measures shall be agreed between the beneficiaries and Fusion for Energy to preserve its confidentiality.

## **SECTION 2 FOREGROUND**

### *Article II.24 Ownership of the foreground*

1. Foreground shall be the property of the beneficiary carrying out the work generating that foreground.
2. If employees or other personnel working for the beneficiary are entitled to claim rights to foreground, the beneficiary shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this grant agreement.
3. Foreground shall be the property of Fusion for Energy in case other specific activities as referred to in Article II.15 consist in the supply of goods or the provision of services subject to the EU rules on public procurement.

### *Article II.25 Joint ownership of the foreground*

1. Where several beneficiaries have jointly carried out the work generating foreground and where their respective share of the work cannot be ascertained and no individual beneficiary can be identified as the owner of the foreground, such beneficiaries shall have joint ownership of the foreground, unless the beneficiaries agree otherwise.
2. The beneficiaries shall establish an agreement regarding the allocation and terms of exercising the joint ownership and in accordance with the terms of this grant agreement.
3. Where no joint ownership agreement has yet been concluded, the joint owners shall not be entitled to use such foreground for nuclear applications.
4. Where no joint ownership agreement has yet been concluded, and only for non nuclear applications, each of the joint owners shall be entitled to use and to grant non-exclusive licenses to third parties, without any right to sublicense, provided that prior notice has been given to the other joint owners and that a fair and reasonable compensation is provided to them.

### *Article II.26 Notification and protection of the foreground*

1. The beneficiary(ies) shall systematically and in due time notify to Fusion for Energy any creation of foreground. Such notification is due in particular for the foreground that may be patentable or require formalities to be protected; this notification shall include a statement of intentions of the beneficiary regarding its protection as well as reference to the particular background used for its creation or needed for its use.
2. In case the foreground consists of business confidential information the beneficiary(ies) shall properly describe and document such business confidential information and shall

make available to Fusion for Energy any additional document or information that allows Fusion for Energy to assess its value.

Unless otherwise agreed between that beneficiary and Fusion for Energy the beneficiary shall keep secret such business confidential information in conformity with Article II. 10.

3. Where foreground is capable of industrial or commercial application or has economic or strategic value for Euratom's fusion programme, its owner shall provide for its adequate and effective protection in his own name, or in the common name of the other beneficiaries.

Extensions of initial patent applications shall only take place upon agreement between Fusion for Energy and the owner taking into account inter alia the costs of such additional protection.

4. Patent applications relating to foreground, filed by or on behalf of a beneficiary shall include the following statement to indicate that said foreground was generated with the assistance of financial support from Fusion for Energy:

“The work leading to this invention has received funding from the European Joint Undertaking for ITER and the Development of Fusion Energy under grant agreement n<sup>o</sup> [xxxxxxx].”

5. Where the owner does not protect the foreground or does not transfer it to another beneficiary along with the associated obligations it shall immediately inform Fusion for Energy. Fusion for Energy may assume the ownership of that foreground and shall adopt measures for its adequate and effective protection. Fusion for Energy shall take on the obligations regarding the granting of access rights in the place of the beneficiary.

The beneficiary shall fully cooperate with Fusion for Energy in view of the adoption of the adequate protection measures.

6. Where the owner decides to abandon protected foreground, it shall immediately inform Fusion for Energy. Fusion for Energy may assume the ownership of that foreground and shall take on the obligations regarding the granting of access rights to the foreground.

The beneficiary shall fully cooperate with Fusion for Energy in view of the adoption of the adequate protection measures.

7. Costs of the protection and maintenance shall be shared between the beneficiary(ies) and Fusion for Energy in a proportion equal to the financial contribution of Fusion for Energy in the action under this grant agreement. Where Fusion for Energy owns the foreground, Fusion for Energy shall bear the full costs of protecting the foreground.

8. In case a beneficiary files patent applications related to the subject matter of this grant agreement within a period of twenty-four months after the agreement completion, these inventions are considered as foreground unless the beneficiary demonstrates that they have been created independently and outside the scope of this grant agreement.

Any such filing arising after the completion of this grant agreement shall be notified to Fusion for Energy including the sufficient references to enable Fusion for Energy to trace the origin of the patent application.



*Article II.27*  
***Use of the foreground***

1. The beneficiary that owns the foreground shall have the right to use such foreground subject to the relevant provisions of this grant agreement.
2. In the case of nuclear applications, the beneficiary that owns the foreground may only grant non-exclusive licenses or sub-licenses:
  - (a) to third parties established in the territory of the members of Fusion for Energy provided that it informs Fusion for Energy prior to such intended use;
  - (b) to third parties established outside the territories of the members of Fusion for Energy, provided that Fusion for Energy, following a consultation with the Commission, does not object in writing within 45 days from the receipt of a written request.
3. In the case of non-nuclear applications, the beneficiary that owns the foreground shall inform Fusion for Energy prior to the use of that foreground including the grant of licenses inside or outside the territories of the members of Fusion for Energy.
4. Fusion for Energy may object to the granting of a license regarding the foreground to third parties established in the territory of the Members of Fusion for Energy or in a third country if it considers that this is not in accordance with tasks and activities of Fusion for Energy or where the European Commission considers that such use is not in accordance with the interests of developing the competitiveness of the European economy, with ethical principles, with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty or with the implementation of the Euratom Treaty including international agreements concluded by Euratom.

In such cases, the transfer of ownership or grant of licence shall not take place unless appropriate safeguards are agreed upon by the Parties.

*Article II.28*  
***Transfer of the foreground***

1. The owner of the foreground may transfer the ownership of such foreground to any legal entity, subject to prior written consent of Fusion for Energy.
2. Fusion for Energy may object to the transfer of the foreground as stipulated in paragraph 4 of Article II.27.
3. Subject to its obligations concerning confidentiality, where a beneficiary intends to transfer the ownership, it shall give prior notice to the other beneficiaries, together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights under this grant agreement.
4. Where the beneficiary transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with this grant agreement.

## **SECTION 3**

### **ACCESS RIGHTS**

#### *Article II.29*

##### ***Principles***

1. All requests for access rights by any Party to this agreement shall be made in writing.
2. Any agreement providing access rights to foreground or background shall be such as to ensure that potential access rights for other beneficiaries are maintained.
3. Beneficiaries shall inform without delay each other and Fusion for Energy of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.
4. The termination of its participation by a beneficiary shall in no way affect the obligation of that beneficiary to grant access rights to the remaining beneficiaries and Fusion for Energy under the terms and conditions established by this grant agreement.
5. Improvements of the foreground licensed or sub-licensed by the beneficiary to third parties that are communicated by the licensees to the beneficiary(ies) shall further be communicated to Fusion for Energy for free use in furtherance of tasks and activities of Fusion for Energy.
6. In case that Fusion for Energy assumes ownership, it shall take on the obligations regarding granting of access rights under this section.

#### *Article II.30*

##### ***Access rights of Fusion for Energy***

1. Fusion for Energy shall enjoy, during the project and after its completion, access rights to the foreground and the background.
2. Access rights to foreground shall take the form of a worldwide, non-exclusive, irrevocable, royalty-free license with the right to further sub-license and use it for any purpose.
3. Access rights to background shall take the form of a worldwide, non-exclusive, irrevocable license, with the right to further sub-license and use it for any purpose under the following conditions:
  - (a) royalty free where the background has been generated or acquired by the beneficiary within the scope referred to in paragraph 4 of Article II.22 or after the establishment of Fusion for Energy under contracts placed with the support of Euratom in the framework of the Euratom fusion programme; or
  - (b) under fair and reasonable conditions or royalty free where the background is not falling under letter a) above. As long as these conditions are met, access to Fusion for Energy to the background shall not be denied.

4. Fusion for Energy shall have automatic access rights to use the foreground and the background for any purpose in case a joint ownership agreement has not yet been concluded between the co-owners as referred to in paragraphs 3 and 4 of Article II.25.
5. Beneficiaries acknowledge that, within the limits of paragraphs 2 and 3, Fusion for Energy may grant to the Communities the necessary access rights to allow the Communities to exercise its rights and obligations under Title II, Chapter 2 of the Euratom Treaty as provided for in Article 10 of the Council decision No 2007/198/Euratom.
6. In case the foreground is used by Fusion for Energy in its call for proposals or tenders, the owner shall undertake to provide to applicants or candidates established in the territory of the members of Fusion for Energy and upon their request, access to the above foreground and background as well as a necessary assistance in order to allow them to participate as candidates or applicants in the call for proposals or tenders. Such assistance shall be provided on a fair and non-discriminatory basis and on terms and conditions agreed between the beneficiary and the applicant or candidate.

#### *Article II.31*

#### ***Access rights to other beneficiaries***

1. Beneficiaries shall enjoy the access rights to background of the other beneficiaries, if it is needed to enable them to carry out their own work under the action.  
  
Such access rights shall be granted on a royalty-free basis and shall confer no entitlements to grant sub-licences unless otherwise agreed between the beneficiaries.
2. Beneficiaries shall enjoy the access rights to foreground of the other beneficiaries, if it is needed to enable them to carry out their own work under the action.  
  
Such access rights shall be granted on a royalty-free basis.
3. Beneficiaries shall enjoy access rights to background, if it is needed to use their own foreground provided that the beneficiary concerned is entitled to grant them such access rights.  
  
Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.
4. Beneficiaries shall enjoy access rights to foreground, if it is needed to use their own foreground.  
  
Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.
5. Access rights of beneficiaries to foreground and background of other beneficiaries for other use than referred to in this Article, shall be agreed by the beneficiaries.

## **SECTION 4**

### **MANAGEMENT OF INTELLECTUAL PROPERTY**

#### *Article II.32*

##### **Royalties**

The royalties from the licenses referred to in the previous section shall be shared by the beneficiary(ies) and Fusion for Energy in a proportion equal to the level of the financial contribution granted to the beneficiary(ies) under this grant agreement.

#### *Article II.33*

##### **Dissemination**

1. Without prejudice of the need to secure the legal protection of Intellectual Property the beneficiary(ies) shall ensure that the foreground which they own is published or otherwise made publicly available as soon as reasonably practicable.
2. In agreement with Fusion for Energy, beneficiary(ies) shall establish appropriate procedures to ensure that publication and dissemination activities are compatible with the tasks and activities of Fusion for Energy, the protection of Intellectual Property, confidentiality obligations, and legitimate interests of the owner of background and foreground.

Dissemination activities shall also be compatible with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.

3. At least 45 days prior notice of any dissemination activity shall be given to the other beneficiaries concerned and Fusion for Energy, including sufficient information on the planned dissemination activity and the data envisaged to be disseminated.

Following notification, Fusion for Energy or any of other beneficiaries may object within 30 days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its foreground or background could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

No dissemination activities may take place before the above procedure is completed.

4. The beneficiaries and Fusion for Energy may agree in writing on different time-limits than those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken.
5. Any publication by the beneficiary shall mention Fusion for Energy's collaboration and financial support and, if the case may be, of a cooperating third party provided that the cooperating third party has contributed to the Information.
6. The rights and obligations of the beneficiary arising from this section shall subsist after the termination of this grant agreement until such time as the information acquired falls into the public domain.

*Article II.34*  
***Survival of rights and obligations***

The rights and obligations of the beneficiaries and Fusion for Energy arising out of the applications of Part C of this grant agreement shall subsist after the completion or termination of this grant agreement until such time as the relevant Intellectual Property expires, irrespective of whether the protection of foreground was actually granted at the moment of expiry of the contract, or whether it is still pending application.

# Final Provisions

## *Article II.35*

### *Requests for amendments and termination at the initiative of the consortium*

1. Amendments and termination to this grant agreement may be requested by any of the beneficiaries. Such requests shall be signed by the legal representative of the beneficiaries and submitted in writing in accordance with Article I.7.

Any request or acceptance by the consortium or a beneficiary(ies) shall be submitted by the coordinator. The coordinator is deemed to act on behalf of all beneficiaries when signing a request, an acceptance or rejection letter concerning an amendment as well as when requesting a termination. The coordinator shall ensure that adequate proof of the consortium's agreement to such an amendment or termination exists and is made available in the event of an audit or upon request of Fusion for Energy.

In the case of change of coordinator without its agreement, the request shall be submitted by all other beneficiaries or by one of them representing the others.

2. The coordinator shall send the request to Fusion for Energy in good time before it is due to take effect and in any event one month before the end of the action, except in cases duly justified and accepted by Fusion for Energy.

A request for amendment including more than one modification to the agreement shall be considered a package that cannot be separated into several requests and shall be approved or rejected by the other party as a whole, except where the request explicitly states that it contains separate requests that can be approved independently.

The request for the addition of a new beneficiary shall be effected through an amendment to the grant agreement. The new beneficiary shall assume the rights and obligations of beneficiaries as established by this grant agreement with effect from the date of the conclusion of the amendment.

The amendments may not have the purpose or the effect of making changes to the agreement which would call into question the grant award decision, might make the grant redundant for objectives of Fusion for Energy or result in unequal treatment of the beneficiaries.

3. Requests for termination of the participation of one or more beneficiaries at the initiative of the consortium shall include:
  - (a) the consortium's proposal for reallocation of the tasks and budget of that beneficiary;
  - (b) the reasons for requesting the termination;
  - (c) the proposed date on which the termination shall take effect;
  - (d) a letter containing the opinion of the beneficiary whose participation is requested to be terminated; and

- (e) the reports and deliverables referred to in Article II.5, relating to the work carried out by this beneficiary up to the date on which the termination takes effect, together with a comment of the coordinator on behalf of the consortium on these reports and deliverables and a declaration on distribution of payments to this beneficiary by the coordinator.

In the absence of receipt of such documents, the request shall not be considered as a valid request.

The letter containing the opinion of the beneficiary concerned can be substituted by proof that this beneficiary has been requested in writing to express its opinion on the proposed termination of its participation and to send the reports and deliverables but failed to do so within the time-limit established by that notification. This time-limit shall not be inferior to one month. In this case, if no reports have been submitted with the request for termination, Fusion for Energy shall not take into account any further cost claims of that beneficiary and shall not make any further reimbursement for it.

Unless otherwise agreed with Fusion for Energy, all the tasks of the beneficiary whose participation is terminated shall be reallocated within the consortium.

4. Requests for termination of this grant agreement at the initiative of the consortium shall provide the justification for termination and the reports and deliverables referred to in Article II.5 relating to the work carried out up to the date on which the termination takes effect.

#### *Article II. 36*

#### ***Approval of amendments and termination***

1. Without prejudice to Article II.37, any amendment or termination of this grant agreement shall be agreed by the Parties in writing.

The Parties undertake to approve or reject any valid request for an amendment or termination within 45 days of its receipt.

2. Fusion for Energy's approval of the requested amendment or termination shall be notified to the coordinator, which receives it on behalf of the consortium. In case of termination of the participation of one or more beneficiaries, Fusion for Energy shall send a copy to the beneficiary concerned.
3. Amendments and terminations shall take effect on the date agreed by the Parties; where there is no date specified they shall take effect on the date of Fusion for Energy's approval.

#### *Article II.37*

#### ***Termination of the grant agreement or of the participation of one or more beneficiaries at Fusion for Energy's initiative***

1. Fusion for Energy may terminate this grant agreement or the participation of a beneficiary, without any indemnity and at any time, in the following cases:

- (a) in case of non-performance or poor performance of the work that is not remedied following a written request to the consortium to rectify the situation within a time limit specified by Fusion for Energy;
- (b) in case of a breach of any substantial obligation imposed by this grant agreement that is not remedied following a written request to the consortium to rectify the situation within a time limit specified by Fusion for Energy;
- (c) for major technical or economic reasons substantially adversely affecting the completion of the action;
- (d) where the required reports or deliverables are not submitted or Fusion for Energy does not approve the reports or deliverables submitted;
- (e) if the potential use of the foreground, as laid down in Part C of this grant agreement diminishes to a considerable extent;
- (f) where a legal, financial, organisational or technical change or change of control of a beneficiary calls into question the decision of Fusion for Energy to accept its participation;
- (g) where any such change identified in (f) above or termination of the participation of the beneficiary or affiliated entity concerned substantially affects the implementation of the action, or the interests of Fusion for Energy, or calls into question the decision to grant Fusion for Energy's contribution;
- (h) in case of *force majeure* or exceptional circumstances notified in conformity with Article II.39, where any reactivation of the action after suspension is impossible or the necessary changes to the grant agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;
- (i) where a beneficiary or affiliated entity is found guilty of an offence involving its professional conduct by a judgment having the force of *res judicata* or if it is guilty of grave professional misconduct proven by any justified means;
- (j) where further to the termination of the participation of one or more beneficiaries or affiliated entities, the consortium does not propose to Fusion for Energy an amendment to the grant agreement with the necessary modifications for the continuation of the action, including the reallocation of task of the beneficiary or affiliated entity whose participation is terminated, within the time-limit determined by Fusion for Energy, or where Fusion for Energy does not accept the proposed modifications or where such modifications would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (k) where a beneficiary is declared bankrupt or is being wound up;
- (l) a beneficiary or any related person is subject to any of the situations provided for in points (c), (d), (e) or (f) of Article 106 (1) or comes under Article 106 (2) of Regulation (EU, Euratom) No 966/2012;
- (m) Fusion for Energy has evidence that a beneficiary or any related person has committed substantial errors, irregularities or fraud in the award procedure or



while implementing the grant agreement, including if that beneficiary or related person has submitted false information or failed to provide required information;

- (n) Fusion for Energy has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations in other Fusion for Energy, Union or Euratom grants awarded to it under similar conditions and such errors, irregularities, fraud or breach have a material impact on this grant; or
  - (o) Fusion for Energy has sent a beneficiary, through the coordinator, a notification asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (l), (m) or (n) and that beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.
2. Before terminating the grant agreement or the participation of one or more beneficiaries, Fusion for Energy shall notify the coordinator of its intention to terminate, the reasons for termination and invite the coordinator, within 45 calendar days of receiving the notification to submit observations on behalf of all beneficiaries and, in case of point (a) of paragraph 1, to inform Fusion for Energy of the measures to ensure compliance with the obligations under the grant agreement.

If Fusion for Energy does not receive observations or decides to pursue the procedure despite the observations it has received, it will notify the coordinator of the termination and the date on which it takes effect. The coordinator shall immediately inform the other beneficiaries of the termination.

Otherwise, Fusion for Energy shall notify the coordinator that the termination procedure is not continued.

3. Within 45 days after the effective date of termination, the beneficiary(ies) whose participation is terminated shall submit (through the coordinator) all required reports and deliverables referred to in Article II.5 relating to the work carried out up to that date. In the absence of receipt of such documents within the above time-limits, Fusion for Energy may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any pre-financing due by the beneficiary(ies).
4. The consortium has up to 30 days after the effective date of termination of the beneficiary's participation to provide Fusion for Energy with information on the share of Fusion for Energy's contribution that has been effectively transferred to such beneficiary since the beginning of the action.
5. In the absence of receipt of such information within the time-limits, Fusion for Energy shall consider that the beneficiary whose participation is terminated owes no money to Fusion for Energy and that Fusion for Energy's contribution already paid is still at the disposal of the consortium and under its responsibility.
6. Based on documents and information referred to in the paragraphs above, Fusion for Energy shall establish the debt owed by the beneficiary whose participation is terminated.

7. Where the participation of one or more beneficiaries is terminated, the beneficiary(ies) whose participation is terminated shall reimburse the amount due to Fusion for Energy or transfer it to the coordinator as requested by Fusion for Energy, within 30 days. Fusion for Energy shall send a copy of such a request to the coordinator. In the latter case, the coordinator shall inform Fusion for Energy at the latest 10 days after the end of this time-limit whether the amount has been transferred to it.
8. Where the grant agreement is terminated, Fusion for Energy shall establish the debt owed by the consortium and notify it to the coordinator.

*Article II.38*  
***Effects of termination***

1. In the event of termination, any financial contribution from Fusion for Energy is limited to those eligible costs incurred and accepted up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.
2. By derogation to the above paragraph, in the case of Article II.37.1.a) and b) any financial contribution from Fusion for Energy is limited to those eligible costs incurred up to the date of receipt of the written request to take corrective measures or rectify the breach.
3. In addition, in the cases of Article II.37.1.a), b), c), e), i), j), k), l), m), n) and o) Fusion for Energy may require reimbursement of all or part of Fusion for Energy's financial contribution. In the case of Article II.37.1.a), b) and k), Fusion for Energy shall take into account the nature and results of the work carried out and its usefulness to Fusion for Energy in the context of its Work Programme.
4. Reports and deliverables submitted in the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.
5. Where Fusion for Energy makes a payment after the termination of the participation of a beneficiary or after termination of the grant agreement, this payment shall be considered as a final payment in relation to such beneficiary(ies) or the action, respectively and in any case shall be done through the coordinator.

Without prejudice to the termination of the grant agreement or the participation of one or more beneficiaries, the provisions identified in Articles II.10, II.11, II.18 to 21, II.35, II.37, II.40, and II.41 continue to apply after the termination of the grant agreement or the termination of the participation of such beneficiary(ies).

*Article II.39*  
***Force majeure***

1. *Force majeure* shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under this grant agreement by the Parties, which is beyond their control and cannot be overcome despite taking all necessary measures. Any default of a product or service or delays in making them available for the purpose of performing this grant agreement and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute force majeure.

2. If any of the beneficiaries is subject to *force majeure* liable to affect the fulfilment of its obligations under this grant agreement, the coordinator shall notify Fusion for Energy without delay, stating the nature, likely duration and foreseeable effects.
3. If Fusion for Energy is subject to *force majeure* liable to affect the fulfilment of its obligations under this grant agreement, it shall notify the coordinator without delay, stating the nature, likely duration and foreseeable effects.
4. No party shall be considered to be in breach of its obligation to execute the action if it has been prevented from complying by force majeure. Where beneficiaries cannot fulfil their obligations to execute the action due to force majeure, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken to limit damage to the minimum.

*Article II.40*  
**Assignment**

The beneficiaries shall not assign any of the rights and obligations arising from the grant agreement without the prior and written authorisation of Fusion for Energy and the other beneficiaries.

*Article II.41*  
**Liability**

1. Fusion for Energy shall not be liable for any acts or omissions of the beneficiary(ies) in performance of this grant agreement.
2. The beneficiary(ies) shall not be liable for any damage caused to Fusion for Energy:
  - (a) by the use of the results of the action by Fusion for Energy, or
  - (b) in case of any action, complaint or proceeding brought against Fusion for Energy by a third party to whom Fusion for Energy provided the results of the action and who suffered damage by the use of the results,

provided the beneficiary(ies) has (have) fulfilled his(their) obligations under this grant agreement.

In any case, the beneficiaries' total liability to Fusion for Energy under this paragraph shall not exceed the financial contribution of Fusion for Energy, unless the damage was caused by gross negligence or willful misconduct or in case of personal injuries or death or a in case of infringement of intellectual property rights of third parties attributable to the beneficiaries.

3. Each beneficiary shall indemnify Fusion for Energy in case of any action, complaint or proceeding brought by a third party against Fusion for Energy:
  - (a) as a result of damage caused by the beneficiary(ies) to a third party in performance of this grant agreement, or

- (b) as a result of a damage caused due to the use of the results of the action by the beneficiary or by any third party to whom beneficiary(ies) made the results of the action available, or
  - (c) as a result of a damage caused by any products, processes or services separately or subsequently developed by the beneficiary(ies) on the basis of foreground resulting from the action.
4. In the event of any action brought by a third party against a beneficiary(ies) in connection with the performance of this grant agreement, Fusion for Energy may assist the latter upon written request. The costs incurred by Fusion for Energy in this connection shall be borne by the beneficiary(ies) concerned.
- In the event of any action brought by a third party against a Fusion for Energy in connection with the performance of this grant agreement, Fusion for Energy may request in writing the beneficiary to assist Fusion for Energy. The costs incurred by the beneficiary(ies) in this connection shall be borne by Fusion for Energy.
5. Each beneficiary shall bear sole responsibility for ensuring that its acts within the framework of this action do not infringe third parties rights.
6. Fusion for Energy shall not be held liable for any consequences arising from the proper exercise of its rights under this grant agreement and its rights and obligations under the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>27</sup> or any other applicable law.

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<sup>27</sup> OJ L 358 of 16.12.2006, p.73.