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**MODEL CONTRACT  
FOR EXTERNAL EXPERTS\***

CONTRACT NUMBER – [complete]<sup>1</sup>

The European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter referred to as "Fusion for Energy"), represented by [*name in full, function, department*]<sup>2</sup>,

of the one part,

and

[*Name of the Expert*]  
[*Type of identity document*]  
[*Identity document number*]  
[*Address in full (place of residence)*]

(hereinafter referred to as "the Expert"),

of the other part,

Hereinafter referred to individually as the “Party” and collectively as the “Parties”,

**HAVE AGREED**

the **Special Conditions** below, the **General Conditions** attached and the following Annexes:

- Annex I: Terms of Reference for the Required External Expert**
- Annex II: Request for payment**
- Annex III: Code of conduct for External Experts**
- Annex IV: Declaration of confidentiality, independence, commitment and absence of conflict of interest**
- [Annex V: Declaration concerning absence of conflict of interest for experts assisting in the evaluation of proposals or tenders]<sup>3</sup>**
- Annex VI: Rules on the Processing of Personal Data**

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\* The footnotes/options are internal instructions for authorising officers only and must be deleted/completed before contracts are sent out.

<sup>1</sup> Options [*in italics*] to be completed or deleted by Fusion for Energy where not applicable.

<sup>2</sup> The Fusion for Energy official must be an authorising officer (by delegation or sub-delegation) designated in accordance with Fusion for Energy internal rules.

<sup>3</sup> Only applies for experts assisting evaluations.

which form an integral part of this contract (hereinafter referred to as “**the Contract**”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes.

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Fusion for Energy.

## **I. SPECIAL CONDITIONS**

### **Article I.1 – Subject**

**I.1.1.** The subject of the Contract is *[description of subject including the tasks Deliverables to be carried out and the title of the project to be assisted]*.

The tasks *[Deliverables, reviews, written reports required]* are detailed in Annex I.

### **Article I.2 – Duration and Planning**

**I.2.1.** The Contract shall enter into force on the date on which it is signed by the last Party.

**I.2.2.** The total duration of the tasks *and the time taken to achieve the Deliverable(s), as referred to in Article I, and detailed in Annex I*, shall not exceed *[working hours/days]*<sup>4</sup>. Execution of the tasks shall start from *[date of entry into force of the Contract]* *[and shall end no later than [the date]/ [number] months from the entry into force of the Contract]*. The period of execution of the tasks may only be extended with the express written agreement of the Parties before such period elapses. The Expert shall not be entitled to any payment for the tasks performed before the entry into force of the Contract and after the end of the period of execution.

The number of hours/days the Expert may be requested to perform at Fusion for Energy premises shall be *[maximum [complete]]* *[within the range of minimum [complete] to a maximum of [complete]]* hours/days.

*[The number of hours/days the Expert may be requested to perform the tasks specified in Article I remotely at [home] or [place of performance complete] shall be [maximum [complete] [within the range of minimum [complete] to a maximum of [complete] days].*

The number of separate trips within Europe shall be maximum *[complete]*.  
*[The number of separate trips outside Europe shall be maximum [complete]].*

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<sup>4</sup> For a given Expert, all his appointments by Fusion for Energy shall be for a duration not exceeding 100 days per calendar year and a maximum of 500 days within the entire 5 years duration of the validity of the list.

**I.2.3.** The provisional planning attached in Annex I stipulates:

- The dates by which deliverable(s) *and/or written report(s)* must be submitted to Fusion for Energy.
- *[The periods when tasks shall be carried out remotely at [home] or [place of performance complete].]*
- *[The dates of the execution of the tasks referred to in Article I.1 at Fusion for Energy premises in [address].]*

**I.2.4.** The point of origin for travel is [the place of residence as indicated in the address above or insert other address]<sup>5</sup>.

### **Article I.3 – Contact Price and Reimbursements of Expenses**

- I.3.1.** For each full day of work spent assisting Fusion for Energy under this Contract, the Expert is entitled to a set daily fee of €450.00 (four hundred and fifty Euro). The maximum amount due to the Expert shall not exceed € \_\_\_\_\_ (*in words*), i.e. an amount corresponding to the daily fee multiplied by the maximum number of days of performance of this Contract stipulated in Article I.2.2<sup>6</sup> (hereinafter referred as the “**Maximum Amount**”). The amount due shall be calculated to the nearest half day and payment shall be made in Euros.
- I.3.2.** In addition to the Amount Due, travel and subsistence expenses directly connected with execution of the tasks (hereinafter referred to as the “**Expenses**”) shall be calculated in accordance with the General Conditions of this contract. The Expenses to be paid under this Contract shall not exceed € \_\_\_\_\_ (*in words*) (hereinafter referred as the “**Maximum Expenses**”).
- I.3.3.** A number of 8 (eight) hours carrying out the performance of this Contract are agreed to be equivalent to 1 (one) day’s performance of this Contract. 4 (four) hours carrying out the performance of this Contract is considered half a day spent performing this Contract.
- I.3.4.** The Expert shall not be entitled to be paid for any time spent travelling, save in case the expert performs duties for the performance of this Contract while travelling as defined in Article I in which case the expert shall declare this in the timesheet (Annex II) as time spent carrying out the execution of the Contractual task(s) at home.
- I.3.5.** The Total Price to be paid under this Contract shall not exceed € \_\_\_\_\_ (*in words*), which corresponds to the sum of the Maximum Amount and the Maximum Expenses.

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<sup>5</sup> To be agreed prior to the signature of the Contract with Fusion for Energy.

<sup>6</sup> The Expert may decide to renounce payment of any sums due to him/her, especially if receipt of such sums were inconsistent with contractual obligations with any third parties or any other legal obligations.

## Article I.4 – Payment Formalities

### I.4.1. *[Pre-financing*<sup>7</sup>:

*Following entry into force of the Contract<sup>8</sup>, within 30 (Thirty) days of the receipt by Fusion for Energy of a duly signed request from the Expert for pre-financing of [up to 30%] of the Maximum Amount, a pre-financing payment of €\_\_\_\_\_ (in words)<sup>9</sup> shall be made.*

### I.4.2. *[Interim payment: [applicable to the contracts with a duration of the tasks [and Deliverables] equal or more than 100 days and/or duration of the contract equal or more than 6 (six) months and shall not exceed 80% of the Maximum Amount]*

*Within 60 (sixty) calendar days of completion of each of the following tasks [and Deliverables]:*

*Task/Deliverable [1];*

*Task/Deliverable [2]...*

*referred to in Article I in conjunction with Annex I*

*and the provision by the Expert of Interim reports on each of the tasks [and Deliverables] [if requested by Fusion for Energy according to Annex I]<sup>10</sup>*

*the Expert shall submit the request for payment of the performed days and the reimbursement of the expenses with the duly completed and signed forms (Annex II) and with all required supporting documents, quoting the reference number of the Contract to which they relate.*

*Fusion for Energy shall approve the relevant deliverable(s) or report(s) and disburse the corresponding payments after deduction of the pre-financing payment –if any– within 60(sixty) calendar days of receiving the request for interim payment, unless the time-limit has been suspended or the payment is refused by Fusion for Energy as stipulated in the General Conditions.]*

### I.4.3. *Payment [of the balance]*

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<sup>7</sup> Only in duly justified cases.

<sup>8</sup> Where the Contractor is the last to sign, this clause should be worded as follows: “the date on which the signed Contract was received by Fusion for Energy”.

<sup>9</sup> Complete amount in figures and in words; the pre-financing amount shall not exceed 30% of the Maximum Amount.

<sup>10</sup> Where Annex I indicates that certain Deliverables (e.g. reviews) are “optional as requested by F4E”.

Within 60 (sixty) calendar days of the completion of all tasks *[last task] [and Deliverables] [last Deliverable]* as referred to in Article I in accordance with Annex I, the Expert shall submit its (Final) Report and the request for payment *[of the balance]* of the performed days and the reimbursement of the expenses with the duly completed and signed forms (Annex II) and with all required supporting documents, quoting the reference number of the Contract to which it relates.

Fusion for Energy shall approve the Report(s) and disburse the corresponding payment after full deduction of the pre-financing payment –if any- within 60 calendar days of receipt of the request for payment, unless the time-limit has been suspended or the payment is refused by Fusion for Energy as stipulated in the General Conditions.

#### **Article I.5 – Bank Account**

Payments shall be made to the Expert’s bank account denominated in euros<sup>11</sup>:

Name of bank: *[complete]*  
Branch Address in full: *[complete]*  
Exact designation of account holder: *[complete]*  
Full account number including codes: *[complete]*  
*[IBAN<sup>12</sup> code: [complete]]*

#### **Article I.6 – General Administrative Provisions**

**I.6.1.** Any and all communication relating to the Contract shall be made in written English only and shall bear the Contract number. They shall be made by mail, DACC or, electronic mail, save as otherwise provided in the Contract. Ordinary mail shall be deemed to have been received by Fusion for Energy on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses<sup>13</sup>:

Fusion for Energy:

The European Joint Undertaking for ITER and the Development of Fusion Energy  
(‘Fusion for Energy’)  
Department [to be completed]  
Attn.: *[complete]*  
c/Josep Pla 2  
Torres Diagonal Litoral  
Building B3  
08019 Barcelona  
Spain

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<sup>11</sup> By a document issued or certified by the bank.

<sup>12</sup> BIC code for countries with no IBAN code.

<sup>13</sup> Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

Expert:

Mr/Mrs/Ms [*complete*]

Address: [*complete*]

Email: [*complete*]

- I.6.2.** The Expert shall inform Fusion for Energy in writing of any changes which may have an impact on the clauses of this Contract or implementation of it, at least 2 weeks before the effective change.
- I.6.3.** DACC (Deviations. Amendment and Contract Change) refers to an Electronic platform developed by F4E for managing deviations, amendments and Contract changes with contractors and to process commercial operations in accordance with the Contract. Any communication or document sent, notified or approved through DACC is considered as equivalent to a paper document with a handwritten signature. It is legally binding and shall be admissible as evidence in legal proceedings.

#### **Article I.7 – Applicable Law and Settlement of Disputes**

- I.7.1.** The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Spain.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be exclusively decided by the Court of Justice of the European Union in Luxembourg in accordance with its own rules of procedure. The language of the proceedings shall be English.

#### **Article I.8 – Processing of Personal Data**

Both parties shall comply with the requirements set out in the Rules on Processing of Personal Data (Annex VI).

##### **I.8.1.** Processing of Personal Data by Fusion for Energy

For the purpose of Annex VI point I.,

- (a) the data controller is [insert F4E responsible “organizational entity”, i.e. unit/function (fmb.....@f4e.europa.eu).]
- (b) the data protection Privacy Notice is available at: [*insert the respective PN(s) on procurement / contract implementation / claims etc.*]

##### **I.8.2.** Processing of Personal Data by the Expert

For the purpose of Annex VI point II.,

- (a) the subject matter and purpose of the processing of personal data by the Expert are [*provide a short and concise description of the subject matter and purpose*];

- (b) The localisation of and access to the personal data processed by the Expert shall comply with the following :
- i. the personal data shall only be processed within the territory of the European Union and Switzerland and will not leave that territory;
  - ii. the data shall only be stored (incl. back-up storage) in data centers or similar premises, located within the territory mentioned above under (i). Every additional data storage and/or treatment location within the European Union Member States or within the territory of a Member of the Joint Undertaking envisaged during the period of implementation of the Contract, must be communicated in advance to Fusion for Energy;
  - iii. the Expert may not change the location of data processing without the prior written authorisation of Fusion for Energy;
  - iv. any transfer of personal data under this Contract to third countries or International Organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.

### **Article I.9 – Other Special Conditions**

- I.9.1.** The Expert shall comply with the Code of Conduct for Experts (Annex III) and shall sign a declaration of confidentiality, independence, commitment and absence of conflict of interest (Annex IV) to this effect that become an integral part of the Contract.
- I.9.2.** *[In addition to the requirements set out in Article I.8.1, the Expert assisting in the evaluation of proposals or tenders shall sign a declaration concerning absence of conflict of interest for experts assisting in the evaluation of proposals or tenders (Annex V) that becomes an integral part of the Contract.]<sup>14</sup>*

### **SIGNATURES**

For the Expert,

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

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

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

Done at [ ], [date]

Done at [Barcelona], [date]

In duplicate and in English.

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<sup>14</sup> Only applies for experts assisting in evaluations.





## **II. GENERAL CONDITIONS**

### **Article II.1 – Performance of the Contract**

**II.1.1.** The Expert shall perform the Contract to the highest professional standards. He/she shall follow any general indications and/or guidelines given by Fusion for Energy and deliver constant and high quality work.

**II.1.2.** The Expert shall have sole responsibility for the performance of the Contract and compliance with any legal obligations incumbent on him, notably those resulting from employment, labour, tax, social security and health and safety legislation.

If required by Fusion for Energy, the Expert shall promptly submit copies of the forms evidencing payment of the tax, social security and/or the health and safety obligations which apply to the Expert under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

**II.1.3.** The Expert shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

**II.1.4.** The Expert shall have the professional qualifications and experience and language skills required for the execution of the tasks assigned to him/her. He/she is deemed to work in a personal capacity.

**II.1.5.** The Expert shall not represent Fusion for Energy by any way or manner whatsoever and he/she shall not behave in any way that would give an impression that he/she has any right to represent Fusion for Energy in any capacity.

**II.1.6.** The Expert shall not represent or present himself/herself as a Fusion for Energy staff member by any ways or means, and/or, behave in any way that creates such an impression.

**II.1.7.** The Expert shall perform the Contract himself. The Expert shall not subcontract nor cause the Contract to be performed in fact by third parties. The Expert shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.

**II.1.8.** The Expert must comply with the obligations set out in the Code of Conduct (Annex III).

**II.1.9.** Should the Expert fail to perform his obligations under the Contract in accordance with the provisions laid down therein, Fusion for Energy may without prejudice to its right to terminate the Contract, reduce or recover payments in proportion to the scale of the failure. Fusion for Energy must formally notify the Expert of its intention,

include the reasons why, and invite him/her to submit any observations within 30 days of receiving notification. If Fusion for Energy does not accept these observations for objective reasons it will formally notify confirmation of the rejection or reduction.

### **Article II.2 – Liability**

- II.2.1.** Fusion for Energy shall not be liable for damage caused or sustained by the Expert or a third party during or as a consequence of performing the Contract except in the event of wilful misconduct or gross negligence on the part of Fusion for Energy.
- II.2.2.** The Expert shall be responsible for any loss or damage that Fusion for Energy may sustain due to the Expert's acts or omissions in relation to the performance of the Contract up to the Maximum Amount as defined in Article I.3.

### **Article II.3 – Conflicts of Interest**

- II.3.1.** The Expert shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest or any other situation referred to in the Special Conditions. Any conflict of interest which arises during performance of the Contract must be notified immediately to Fusion for Energy in writing without delay. In the event of such conflict, the Expert shall immediately take all necessary steps to remedy the conflict

Fusion for Energy reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set.

Fusion for Energy shall have a right to terminate, immediately and without compensation, the Contract of the Expert exposed to a conflict of interest in accordance with article II.12 and to replace it.

### **Article II.4 – Provisions concerning Payments and Reimbursements**

- II.4.1.** Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.
- II.4.2.** Any requests for payment and reimbursement of expenses by the Expert shall be made by submitting the Request for Payment, Timesheet and, if applicable, Cost Declaration Form (Annex II). The Request for Payment must be signed and dated by

the Expert(s), who by signing this form declare on their honour that the travel and/or subsistence expenses claimed will not be met by another European Union's institution or another organisation or person for the same journey or the same period.

**II.4.3.** Payments are subject to Fusion for Energy's approval of deliverable(s), report(s) and of the payment request(s). Approval does not mean recognition of compliance, authenticity, completeness or correctness of content

**II.4.4.** Where a Request for Payment does not comply with the Contract or some clarification and additional information be required or where the requested amount is not due, Fusion for Energy may suspend the time limit of 60 (sixty) calendar days for payment.

The same shall apply without prejudice to Fusion for Energy's right to terminate the Contract or the right to reduce or recover payments in proportion to the scale of the failure in case the Expert fails to perform his obligations under the Contract or where Fusion for Energy requested the Expert to submit observations.

Fusion for Energy shall notify the Expert accordingly and set out the reasons for the suspension and the conditions to be met for lifting the suspension in written with acknowledgment of receipt. Suspension shall take effect from the date the written communication is sent. The remainder of the period shall begin to run again once the suspension has been lifted. Where the suspension of payment exceeds two months, the Contractor may request F4E's decision on whether the suspension must be continued.

**II.4.5.** Without prejudice to its right to terminate the Contract, Fusion for Energy reserves the right either (1) to refuse all or part of the payment or (2) to apply liquidated damages for delay of 200 EUR per working day of delay for any Deliverable required by the Contract that is submitted beyond the date for submission indicated in the Annex I.

**II.4.6.** Should a request for payment not be submitted within the period indicated in article I.4 of the Special Conditions, Fusion for Energy reserves the right to refuse the payment. In that case, Fusion for Energy shall duly inform the Expert who shall be given the opportunity to submit a valid Request for Payment within 30 (thirty) calendar days from the end of the above period.

**II.4.7.** Arrangements as regards payment are between the Expert and Fusion for Energy, even if the Expert is employed by an organisation. It will be for the Expert and his/her employer to come to any particular agreement concerning the final destination of any payments; Fusion for Energy will not intervene in this agreement.

**II.4.8.** Upon request by any competent national authorities, Fusion for Energy may inform them about any payment made to the Expert for the performance of the tasks.

**II.4.9.** In the event of late payment by Fusion for Energy, the Expert shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus three and a half percentage points ("*the margin*"). The reference rate in force on the first day of the month in

which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by Fusion for Energy may not be deemed to constitute late payment. When the calculated interest is lower or equal to EUR 200, it must be paid only if the Contractor requests it within two months of receiving late payment.

## **Article II.5 – *Specific Provisions for Travel***

### **II.5.1. Control and Liabilities**

Fusion for Energy shall have the right to scrutinise particularly closely any requests for reimbursement involving abnormally expensive travel costs and shall have the right to carry out any checks that might be needed and to request any proof from the Expert required for this purpose. Fusion for Energy shall also have the right, where it appears to be justified, to restrict reimbursement to the rates normally applied to the usual journey from the Expert's point of origin (cited in article I.2.4 of the Special Conditions) to the meeting/work place.

Fusion for Energy shall not be liable for any material; non-material or physical damage suffered by invited Expert(s) or those responsible for accompanying a disabled Expert in the course of their journey to or stay in the place where the meeting is held, unless such harm is directly caused by Fusion for Energy.

In particular, invited Expert(s) who use their own means of transport for travelling to such meetings shall be entirely liable for any damages resulting from any accidents that they might be involved in.

### **II.5.2. Rules regarding travel expenses**

- (a) All Experts shall be entitled to the reimbursement of their travel expenses from the point of origin cited in article I.2.4 to the place of the meeting, by the most appropriate means of transport given the distance involved. Any deviation from this itinerary must be duly justified.
- (b) For journeys of less than 400 km (one way) this shall be first-class rail travel, and for distances of more than 400 km economy class air travel. If the journey by air involves a flight of 4 hours or more without stopovers the cost of a business class ticket shall be reimbursed.
- (c) The cost of travel by private car shall be reimbursed at the rate of EUR 0.28 per km. This rate covers parking, motorway tolls and fuel.
- (d) Taxi fares shall not be reimbursed.

- (e) Car rental services expenses shall not be reimbursed except when travelling to Cadarache, subject to the below condition:
- Reimbursement shall be made on the basis of real costs incurred up to EUR 100 per working day (including insurance and any associated costs). The expert shall produce full supporting documentation, notably a copy of the rental contract, the rental invoice, proof of payment, plus fuel, tolls and parking receipts if applicable.
  - Car rental expenses shall not be reimbursed if the expert is able to travel with Fusion for Energy officials who have rented out a car to reach Cadarache or have their own means of transport.
- (f) In the case of an Expert combining this travel with other travel arrangements, the maximum expenses paid shall be the cost incurred based on the original supporting documents. This amount will be paid up to a ceiling amount of 250 Euro (two-hundred-fifty euro) per journey (one-way), except in duly justified cases, with Fusion for Energy's prior agreement in writing.

### **II.5.3. Rules regarding subsistence expenses**

In any assignment where the Expert may be requested to execute this Contract at Fusion for Energy premises or other locations, the Expert is entitled to the reimbursement of his/her subsistence expenses covering all expenditure at the place where the meeting is held, including for example accommodation, meals, local transport (bus, tram, metro, taxi), parking, motorway tolls fuel, etc., as well as any insurance, in accordance with the following rules:

- (a) The subsistence allowance for missions requiring an overnight stay is paid according to the number of nights spent outside the point of origin of the expert (cited in article I.2.4 of the Special Conditions). The number of nights may not exceed the number of mission days + 1.
- (b) The subsistence allowance corresponds to the per diem rates published on the Europe aid website at the following link:  
[http://ec.europa.eu/europeaid/work/procedures/implementation/per\\_diems/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm)
- (c) Where the expert's point of origin cited above is 100 km or less from the place where the mission is held, and/or where the mission of the expert does not involve an overnight stay in accommodation against payment, the subsistence allowance shall be reduced to 30% (thirty percent) of the applicable per diem rate.

### **II.5.4 Procedure for payments**

- (a) Travel expenses shall only be reimbursed on presentation of original supporting documents attached in Annex II: original tickets and invoices or, in the case of online bookings, the printout of the electronic reservation and boarding cards

for the outward journey, including original receipts for transport to/from the airport/train station.

The documents supplied must show the expert's name, the journey, the travel class, the travel times, the amount paid and the currency.

(b) Subsistence expenses shall only be reimbursed on presentation of supporting documents: copy of hotel invoice or any proof of payment linked to the accommodation.

(c) Travel and subsistence expenses detailed in Article II.5.1, II.5.2 and II.5.3 of this Contract shall be reimbursed in Euro, where appropriate at the rate of exchange applying on the month of the meeting/work in accordance with the official exchange rate published on [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm).

(d) All reimbursements of travel and expenses shall be made to the bank account mentioned in article I.5.

(e) Fusion for Energy may, by reasoned decision, and upon presentation of,  
i. original supporting documents, and,  
ii. a written explanation of special conditions pre-authorized by Fusion for Energy on an exceptional basis,  
provide reimbursement for previously unforeseen expenses which the Expert(s) have had to incur as a result of the performance of this Contract.

#### **Article II.6 – Recovery**

**II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Expert shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.

**II.6.2.** Fusion for Energy may, after informing the Expert, recover amounts established as certain, of a fixed amount and due by offsetting them against any amount owed to the Contractor by Fusion for Energy that is certain, of a fixed amount and due.

#### **Article II.7 – Ownership of the Results – Intellectual and Industrial Property**

##### **II.7.1. Definitions**

In this Contract the following definitions apply:

- (a) 'Results' means any intended outcome of the performance of the Contract which is delivered and finally accepted by the Fusion for Energy;
- (b) 'Creator' means any natural person who contributed to the production of the Result and includes personnel of the Fusion for Energy or a third party;
- (c) 'Pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to Fusion for Energy or the Expert ordering them for the purpose of the Contract execution and include rights

of ownership and use by the Expert, the Creator, Fusion for Energy and any third parties.

### **II.7.2. Ownership of the Results**

The ownership of the Results shall be fully and irrevocably acquired by Fusion for Energy under this Contract. Those rights in the Results may include any rights in any of the Results listed in this Contract, including copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the Contract. Fusion for Energy may exploit them as stipulated in this Contract. All the rights shall be acquired by Fusion for Energy from the moment the Results are delivered by the Expert and accepted by Fusion for Energy. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the Expert to Fusion for Energy.

The payment of the price under the Contract is deemed to include any fees payable to the Expert in relation to the acquisition of rights by Fusion for Energy including all forms of use of the Results.

The acquisition of rights by Fusion for Energy under this Contract covers all territories worldwide.

Any intermediary sub-Result, raw data, intermediary analysis made available by the Expert cannot be used by the Fusion for Energy without the written consent of the Expert, unless the Contract explicitly provides for it to be treated as a self-contained Result.

### **II.7.3. Licensing of Pre-existing rights**

Fusion for Energy shall not acquire ownership of the Pre-existing rights. The Expert shall license the Pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to Fusion for Energy. Fusion for Energy may use them for its own purposes, for distribution to the public or for any modification including by third parties in the name of the Fusion for Energy. All the Pre-existing rights shall be licensed to Fusion for Energy from the moment the Results were delivered and accepted by Fusion for Energy. The licensing of Pre-existing rights to Fusion for Energy under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

### **II.7.4. Modes of exploitation**

Fusion for Energy shall acquire ownership of each of the Results produced as an outcome of this Contract.



### **II.7.5. Identification and evidence of granting of Pre-existing rights and rights of third parties**

When delivering the Results, the Expert shall warrant that they are free of rights or claims from Creators and third parties including in relation to Pre-existing rights, for any use envisaged by Fusion for Energy. This does not concern the moral rights of natural persons. The Expert shall establish to that effect a list of all Pre-existing rights and rights of Creators and third parties on the Results of this Contract or parts thereof. This list shall be provided no later than the date of delivery of the final Results. In the Result the Expert shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified. Upon request by the Fusion for Energy, the Expert shall provide evidence of ownership of or rights to use all the listed Pre-existing rights and rights of third parties except for the rights owned by Fusion for Energy.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- a) the name and version number of a software product;
- b) the full identification of the work and its author, developer, Creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- c) a copy of the licence to use the product or of the agreement granting the relevant rights to the Expert or a reference to this licence;
- d) a copy of the agreement or extract from the employment Contract granting the relevant rights to the Expert where parts of the Results were created by its personnel;
- e) the text of the disclaimer notice if any.

Provision of evidence does not release the Expert from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The Expert also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Results.

### **II.7.6. Creators**

By delivering the Results the Expert warrants that the Creators undertake not to oppose that their names be recalled when the Results are presented to the public and confirms that the Results can be divulged. Names of authors shall be recalled on request in the manner communicated by the Expert to the Fusion for Energy. The Expert shall obtain the consent of Creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

#### **Article II.8 – Use, Distribution and Publication of Information**

- II.8.1.** The Expert shall authorise Fusion for Energy to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Expert, the subject matter, the duration, and the amount paid.
- II.8.2.** Unless otherwise provided, Fusion for Energy shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Expert may not have them distributed or published elsewhere without prior written authorisation from the Fusion for Energy.
- II.8.3.** Any distribution or publication of information relating to the Contract by the Expert shall require prior written authorisation from Fusion for Energy. It shall state that the opinions expressed are those of the Expert only and do not represent Fusion for Energy's official position.
- II.8.4.** The use of information obtained by the Expert in the course of the Contract for purposes other than its performance shall be forbidden, unless Fusion for Energy has specifically given prior written authorisation to the contrary.
- II.8.5.** Article II.8.1 shall not apply if such use risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interest of the Expert.

#### **Article II.9 – Confidentiality**

The Expert undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. In particular, he/she undertakes not to reveal any detail of the evaluation process and its outcomes or of any proposal or tender submitted for evaluation. The Expert shall be responsible for maintaining the confidentiality of any documents or electronic files sent and for returning, erasing or destroying all confidential documents or files upon completing his/her tasks, unless otherwise instructed. The Expert shall continue to be bound by this undertaking after completion of the tasks for five years.

### **Article II.10 – Taxation**

- II.10.1.** Failure to comply with the tax laws shall make the relevant requests for payment invalid.
- II.10.2.** The Expert acknowledges that Fusion for Energy is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

### **Article II.11 – Force Majeure**

- II.11.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.11.2.** If either party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.11.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Expert is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed. Either Party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the Contract. The Parties shall take the necessary measures to reduce damage to a minimum.
- II.11.4.** Should any unforeseen event hamper the execution of the tasks, either partially or totally, the Expert shall immediately report it to Fusion for Energy. The report shall include a description of the problem, an indication of the date on which it started and of the remedial action taken to ensure full compliance with his obligations under the Contract. The Expert shall give priority to solving the problem rather than determining liability.

### **Article II.12 – Termination**

- II.12.1.** Fusion for Energy may terminate the Contract in the following circumstances:

- (a) the Expert is in one of the situations of exclusion provided for in articles 136(1) or 136(2) of the Financial Regulation<sup>15</sup> ;
- (b) the procedure for awarding the Contract or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- (c) the Expert does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (d) where the Expert is in a conflict of interest situation or in a situation in which a conflict of interest may exist;
- (e) the Expert is unable, through its own fault, to obtain any permit or licence required for performance of the Contract
- (f) where performance of the tasks has not actually commenced within delivery or performance period set in the Contract, and the new date proposed, if any, is considered unacceptable by Fusion for Energy;
- (g) the Expert is not performing the tasks in accordance with the requirements set out in article II.1 of the Contract, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in a breach of his contractual obligations.
- (h) the expertise of the Expert fails to correspond to the profile required by the Contract, stating its reasons for so doing.
- (i) in case of breach of any substantial obligation of the Contract including the obligation defined in the Code of conduct for External Experts.

**II.12.2.** Prior to termination, the Expert shall be given the opportunity to submit his observations.

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

**II.12.3.** Consequences of termination:

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

In the event of termination in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Expert shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Expert shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding 30 (thirty) calendar days from that date.

The Expert shall be responsible for any delay in the performance of the tasks originally assigned to him/her. Fusion for Energy may claim compensation for any damage suffered and recover any sums paid to the Expert under the Contract.

On termination Fusion for Energy may engage any other Expert to complete the tasks. Fusion for Energy shall be entitled to claim from the Expert all extra costs incurred in making good and completing the tasks, without prejudice to any other rights it has under the Contract.

#### **Article II.13** – *Substantial errors, Irregularities and Fraud attributable to the Expert*

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Expert, Fusion for Energy may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Expert on the basis of article II.12, in proportion to the seriousness of the errors, irregularities or fraud.

#### **Article II.14** – *Checks and Audits*

- II.14.1.** In accordance with Article 5a of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over natural or legal persons receiving payments from the budget of Fusion for Energy from Commencement Date of the Contract up to five (5) years after payment of the balance.
- II.14.2.** Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits on performance of the Contract from Commencement Date of the Contract up to five (5) years after payment of the balance.
- II.14.3.** In with Article 5a of Fusion for Energy Council Decision, the European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections in

accordance with Parliament and Council Regulation (EURATOM, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996 from Commencement Date of the Contract up to five (5) years after payment of the balance.

#### **Article II.15 – Transparency**

For transparency reasons and without prejudice to the rules on processing of personal data referred to in Annex VI, Fusion for Energy may publish the name (first name and family name), gender, nationality and the technical area of the Expert under the Contract on its public website at regular intervals.

Fusion for Energy may, under certain conditions, need to disclose personal data in accordance with Regulation 1049/2001 regarding public access to documents.

#### **Article II.16 – Amendments**

Any amendment to the Contract shall be subject to a written agreement concluded by the Parties. An amendment processed and signed in DACC (Fusion for Energy's platform for Deviation Amendment and Contract Change) is valid and binding for the purpose of this Article. An oral agreement shall not be binding on the Parties.

#### **Article II.17 – Suspension of the Contract**

Without prejudice to Fusion for Energy's right to terminate the Contract, Fusion for Energy may at any time and for any reason suspend performance of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Expert receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Fusion for Energy may at any time following suspension give notice to the Expert to resume the work suspended. The Expert shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

#### **Article II.18 – Rules Relating to Access and Presence of Experts on Fusion for Energy's Premises**

- II.18.1.** The Expert may only have access to Fusion for Energy premises with a personal permit delivered by Fusion for Energy. This permit shall be constantly visible in order for the Expert being capable of being identified. The Expert shall make sure that the permit is returned to Fusion for Energy at the end of the services.
- II.18.2.** The Expert performing the Contract on the premises of Fusion for Energy shall conform to the working hours and to any internal security and information technology rules of Fusion for Energy, including the Information Systems Security Policy of

Fusion for Energy that is made available to the Expert before commencing any tasks on the premises of Fusion for Energy.

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