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**MODEL CONTRACT
FOR EXTERNAL EXPERTS***

CONTRACT NUMBER – [complete]¹

The European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter referred to as "Fusion for Energy" or "F4E"), represented by [*name in full, function, department*]²,

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

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. Notwithstanding the foregoing, if a conflict arises between this Contract and the Buildings Contract(s), the Buildings Contract(s) prevails in the case of a dispute where F4E is party to the dispute and if a conflict arises between this Contract and the Interface Agreement, the Interface Agreement prevails where F4E is not a party to the dispute.

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. However, in the case of a conflict between different Buildings Contracts arisen in relation to adjudication only, the Adjudicator shall attempt in good faith to resolve such conflict in the spirit of the principles set for adjudication in Annex I (Terms of Appointment and Rules of Procedure).

Unless the context otherwise requires or unless otherwise defined herein, the expressions defined in the Buildings Contract(s) shall have the same meanings as in this Contract.

This Contract implements the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), to the extent that is necessary and is not in contradiction with any separate arrangements of the parties to the Dispute made directly with the Adjudicator.

DEFINITIONS

“Dispute-related activities” means activities that are related to the participation of the expert in the adjudication process as an appointed adjudicator in accordance with the relevant Operational Contract of Fusion for Energy.

“Non-dispute related activities” means activities that fall outside the adjudication process of the Operational Contracts of Fusion for Energy and have the purpose of early detection of any potential disagreement with Contractors, or prevention of disputes in the form of providing recommendations, opinions or organizing workshops to the parties of the relevant Operational Contract of Fusion for Energy (together dispute avoidance), or maintaining sound knowledge of overall progress of the Operational Contracts of Fusion for Energy in the form of regular site visits instructed by Fusion for Energy.

I. SPECIAL CONDITIONS

Article I.1 – Subject

I.1.1. The subject of the Contract is the appointment of the Expert to be an adjudicator in the Panel of Adjudicators in order to act as an Adjudicator in any Dispute (i) arising from or in relation to the Buildings Contract(s) between F4E and its Contractor(s) (or any third party who has been accepted to join the adjudication) once the conditions under the respective provisions on adjudication of the Buildings Contract(s) are met, and (ii)

between the Contractors (or any third party who has been accepted to join the adjudication).

- I.1.2.** Subject to the conditions under the respective provisions on adjudication of the Buildings Contract(s) the Expert hereby accepts to be an adjudicator in the Panel of Adjudicators and agrees that she/he may be nominated as an Adjudicator, which will be a personal nomination, by the Chairperson of the Panel of Adjudicators, and agrees to be bound by the terms and conditions of this Contract and to follow the relevant provisions of the Buildings Contract(s). In order to make such nomination, the Expert undertakes to sign a declaration in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests).
- I.1.3.** The scope of adjudication is described in detail in Annex I (Terms of Appointment and Rules of Procedure). Without prejudice to the introductory provisions on priority of documents, the Expert agrees (i) to follow the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s) that will enter into force after the Commencement Date and shall be added to this Contract, to the extent that such provisions and annex of such Buildings Contract(s) are identical or similar in all material particulars to the provisions referred to in Annex I (Terms of Appointment and Rules of Procedure); and (ii) to consider in good faith a request from F4E to bind herself/himself to the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s) that differ in material respects from the provisions set out in Annex I (Terms of Appointment and Rules of Procedure), and allow such Buildings Contract(s) to be added to this Contract, and if refusing to bind herself/himself, to provide her/his reasons for so refusing.
- I.1.4.** The Expert shall, amongst others:
- a) be reasonably available for F4E and its Contractor(s) so that they have effective resort to adjudication;
 - b) serve as an Adjudicator and/or act as the chairperson of the panel of Adjudicators in any Dispute arising between F4E and its Contractor(s) (or any third party who has been accepted to join the adjudication) under the respective Buildings Contract(s), subject to the terms and conditions of this Contract, when nominated by the Chairperson of the Panel of Adjudicators;
 - c) serve as an Adjudicator and/or act as the chairperson of the panel of Adjudicators, in any Dispute arising between the Contractors (or any third party who has been accepted to join the adjudication) when agreed by the Contractors or nominated by the Engineer.
 - d) attend visits on the ITER Site (the “**Visit**” or the “**Visits**”), meetings or hearings, when requested or instructed in accordance with this Contract, or under the Buildings Contract(s);

- e) provide her/his adjudication expertise and collaborative dispute resolution skills, amongst others, by acting as a facilitator, giving recommendations or delivering opinions in relation to the implementation of the Buildings Contract(s), if so requested jointly by F4E and the Contractor(s), or the parties to the adjudication, as the case may be, (the “**Dispute Avoidance Function**”),
- f) in case of need and at Fusion for Energy discretion, Fusion for Energy can nominate the expert to act as the chairperson of the board temporarily until the chairperson is hindered to perform his her duties,

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

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

The Dispute between the Contractors, or any other parties to the adjudication, may be resolved by one (1) Adjudicator (also by the Chairperson of the Panel of Adjudicators) as agreed by the parties to the adjudication or as nominated by the Engineer.

- I.1.5. The Expert shall not be bound by any instructions except from those given in accordance with this Contract; she/he shall be completely independent in the performance of her/his tasks. F4E shall not seek advice from, or consultation with, the Expert regarding the Buildings Contract(s) and/or the ITER project otherwise than within providing her/his adjudication expertise in accordance with this Contract. The only exception to this prohibition shall be where F4E and all respective Contractors, or all parties to the adjudication, as the case may be, jointly agree in writing to do so.
- I.1.6. The Expert shall be entitled, unless effective resort to adjudication of F4E and/or its Contractor(s) would be prevented by such resignation, to resign from this appointment by giving a 90 (ninety) calendar day reasoned notice in writing to F4E. Resignation shall be considered as resignation from the nomination as Adjudicator or chairperson of the panel of Adjudicators, if applicable, in relation to adjudication, and termination of this Contract. During the foregoing termination period the Expert shall not participate in resolving any Dispute under the Buildings Contract(s) unless otherwise instructed by F4E and its Contractor(s), or the parties to the adjudication, however, she/he shall still be subject to the terms and conditions of this Contract and shall act in compliance with the highest professional standards applicable to adjudicators and shall take any immediate or

reasonable steps which are necessary or desirable to take for the interests of F4E and its Contractor(s), or the parties to the adjudication.

Terms of Appointment and Rules of Procedure are detailed in Annex I.

Article I.2 – Duration and Planning

- I.2.1.** The Contract shall enter into force on the date of signature of the last Party (the “**Commencement Date**”).
- I.2.2.** This Contract shall last until 31 December 2028 with effect from the Commencement Date. Notwithstanding the foregoing, this Contract shall be automatically renewed maximum two (2) times for a period of one calendar year unless it is terminated in accordance with this Contract, or all the Buildings Contracts are terminated for whatever reason. The contracting parties may however agree under exceptional circumstances to extend the duration of this Contract in order to ensure consistency in the decisions of the Adjudicator(s) taken with respect to the Buildings Contract(s). In any event, the Contract shall not be extended after 31st December 2030.
- I.2.3** Performance of the tasks shall not start before the Commencement Date. The Expert may perform her/his tasks remotely. Performance of the tasks of the Expert as an Adjudicator shall only start, by signing a declaration in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests), upon receipt of a written notice of the Chairperson of the Panel of Adjudicators on nomination
- I.2.4.** The point of origin for travel is the place of residence as indicated in the address above or insert other address.

Article I.3 – Contact Price and Reimbursements of Expenses

- I.3.1.** For each full day of work spent providing her/his adjudication expertise under this Contract or the Building Contract(s), the Expert is entitled to:
- i. a set daily fee (the “**Daily Fee for Dispute related activities**”) of €2000 (two thousand Euro) for:
 - a) each calendar day spent on studying the working files/submissions of the parties to the adjudication/preparation for a hearing/meeting (Dispute related tasks);
 - b) each calendar day spent on Visits or any hearing/meeting related to Disputes held in accordance with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s),

- ii. a set daily fee (the “**Daily Fee for non-Dispute related activities** ”) of €950.00 (nine hundred fifty Euro) for :
 - c) each calendar day spent on Visits or any hearing/meeting related to non-Dispute related activities upon the instruction of F4E, held in accordance with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s);
 - d) each calendar day spent on studying the working files/submissions of the parties to a Buildings Contract, and each calendar day spent on Visits or any hearing/meeting related to non-Dispute related activities upon the joint request of the parties to a Buildings Contract, for the purpose of performing non-Dispute related activities .

I.3.2. Without prejudice to Article I.2.3 the total amount of the Daily Fees to be paid to the Expert by F4E under this Contract (with the exception of payment of the Daily Fees to be made based on the award of the costs taken in line with the respective provisions on adjudication of the Buildings Contract(s) as per Article I.4.4.2 which will be paid under the respective Buildings Contract(s) and according to the award of the costs shall not exceed EUR 9,500 (nine thousand five hundred euro) in each full calendar year. If this Contract is terminated for whatever reason during the calendar year, these amounts shall be reduced respectively and proportionately for that part calendar year.

I.3.3. Without prejudice to Article I.4.4.2, travel and subsistence expenses directly connected with the performance of the tasks (the “**Expenses**”) shall be reimbursed as follows:

- a) transport costs incurred when travelling from a point within the EU, the United Kingdom or Europe to a Visit or a hearing/meeting within the EU, the United Kingdom or Europe shall be reimbursed at a flat rate of EUR 500 (five hundred euro) per round trip; this shall cover all transport expenses incurred, such as flight, taxi, car rental; the Expert travelling less than 200 km (two hundred kilometre) distance will receive a flat rate reduced by 50% (fifty per cent) corresponding to EUR 250 (two hundred fifty euro);
 However, where the request/instruction to attend a Visit or any other meeting, as the case may be, was made/given within 48 (forty-eight) hours as from the date of the Visit and the meeting and travel expenses exceed the EUR 500 (five hundred euro) flat rate, the Expert may request the difference to be paid by F4E based on the original proof of payment document(s) and the boarding pass(es) of economic class flight ticket(s). In the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es) shall be attached to such request

- b) a per diem, as provided in the most up-to-date European Commission table³ ([per diem rates 20191218.pdf \(europa.eu\)](https://ec.europa.eu/international-partnerships/system/files/per-diem-rates-20191218.pdf)) per calendar day of the Visit or the hearing/meeting shall cover, as a daily flat rate, all expenditure at the place where the Visit or the hearing/meeting is held, including for example accommodation, meals, local transport (bus, tram, metro, taxi), parking, motorway tolls, fuel, etc., as well as any insurance. The per diem to be used is the French rate for Visits or Meetings on the ITER Site in Cadarache (France) and the Spanish rate for Visits or Meetings in F4E office in Barcelona.
- I.3.4.** Without prejudice to Article I.2.3 the total amount of the Expenses to be reimbursed to the Expert by F4E under this Contract (with the exception of reimbursement of the Expenses to be made based on the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on the procedural rules for adjudication to, the Buildings Contract(s) as per Article I.4.4.2 which will be made under the respective Buildings Contract(s) and according to the award of the costs) shall not exceed EUR 5,000 (five thousand euro) in each full calendar year. If this Contract is terminated for whatever reason during the calendar year, these amounts shall be reduced respectively and proportionately for that part calendar year.
- I.3.5.** 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. The Expert shall not be entitled to get any Daily Fee for any time spent travelling.
- I.3.6.** All charges related to, amongst others, postage, telephone calls, facsimiles, photocopies shall be deemed to be covered by the Daily Fee and shall not give rise to reimbursement.
- I.3.7.** Notwithstanding any provision of this Contract, the remuneration of the Adjudicator in relation to any Dispute between Contractors shall be subject to separate arrangements of the parties to such Dispute made directly with the Expert, unless F4E becomes a party to such Dispute in which case this Article I.3 shall mutatis mutandis apply to the extent F4E is concerned in such Dispute.

Article I.4 – Payment Formalities

I.4.1. Pre-financing:

Pre-financing is not applicable.

I.4.2. Interim payment:

Interim payment is not applicable.

³ https://ec.europa.eu/international-partnerships/system/files/per-diem-rates-20200201_en.pdf

I.4.3. Payments modalities

F4E shall pay the Expert within 60 (sixty) calendar days of receipt of the original of any admissible request for payment/reimbursement under this Article I.4, unless the time-limit has been suspended or the payment/reimbursement (further referred to as “payment”) is refused by F4E as stipulated in Article II.4.

All payments under this Contract or based on the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), to be made under the respective Buildings Contract(s) to the Expert as an Adjudicator, shall be made by F4E in euro to the bank account of the Expert indicated in Article I.5.

I.4.4. Payments of the Daily Fees and reimbursement of the Expenses to the Expert as an Adjudicator for the performance of her/his tasks related to a Dispute under the Buildings Contract(s)

I.4.4.1. Payments shall be calculated in line with this Contract and shall be paid under the respective Buildings Contract(s) according to the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s). The award of the costs shall reflect the relative success or failure of the parties to the adjudication in the respective Dispute, and therefore, F4E and/or its Contractor(s), as the case may be, shall pay (the respective part of) the Daily Fees and the Expenses incurred in relation to the Dispute by the Adjudicator according to the award of the costs.

I.4.4.2 The Expert, acting as an Adjudicator in the case of a Dispute, agrees that the award of the costs taken in line with the respective provisions on adjudication of, and the respective annex on procedural rules for adjudication to, the Buildings Contract(s), or the award of the costs taken in line with Schedule 4 (Adjudications Procedure) if F4E becomes a party to such Dispute to the extent F4E is concerned in such Dispute, shall comply with this Contract and shall be taken in the form as attached hereto as Annex IV (Award of the Costs Form). The award of the costs will state the Daily Fees (the number of calendar days on which her/his tasks are performed as per Article I.3.1 i. a) and the number of calendar days on which her/his tasks are performed as per Article I.3.1 i. b)) of the Adjudicator) incurred in relation to the Dispute in compliance with Article I.3.1, Article I.3.3 Concerning the reimbursement of the Expenses incurred in relation to the Dispute by the Adjudicator the following amounts shall be paid as a lump sum, including the charges for couriers, if applicable. If the Daily Fees of the Adjudicator regarding the calendar days on which her/his tasks are performed as per Article I.3.1 b) are below or equal to the amount indicated below, the maximum corresponding lump sum of the Expenses shall be as follows:

| Number of days | Maximum amount of Daily Fees as per Article I.3.1 i b) (EUR) | Maximum corresponding lump sum of Expenses |
|-----------------------|---|---|
|-----------------------|---|---|

| | | (EUR) |
|----|--------|--------|
| 2 | 4,000 | 1,000 |
| 5 | 10,000 | 2,500 |
| 10 | 20,000 | 4,000 |
| 15 | 30,000 | 6,500 |
| 20 | 40,000 | 9,000 |
| 30 | 60,000 | 12,000 |

If the amount of Daily Fees of the Adjudicator regarding the calendar days on which her/his tasks are performed as per Article I.3.1 i. b) is above EUR 60,000 (sixty thousand euro), the corresponding lump sum of Expenses of the Adjudicator shall be nonetheless fixed at EUR 12,000 (twelve thousand euro). If there is no Daily Fee payable as per Article I.3.1 i. b), the charges for couriers shall be reimbursed upon presentation of the original proof of payment documents. The award of the costs will set a deadline for payments to be made by F4E and/or its Contractor(s), as the case may be; Article I.4.3 shall apply by analogy to the deadline to make payments. If the Dispute is decided by a (three-member) panel of Adjudicators, the award of the costs will have separate provisions for each Adjudicator being a member of such panel of Adjudicators. Requests for payment of such Daily Fees and requests for reimbursement of such Expenses as per the award of the costs shall be issued by each Adjudicator being member of the panel of Adjudicators in line with the award of the costs and this Contract, and, if submitted with F4E, accompanied by the award of costs (or a certified copy thereof) supported by the proof of attendance on the respective Visits and/or hearings/meetings (such as letter/e-mail of invitation or minutes of hearing/meeting) in relation to which the lump sum of Expenses is claimed. All requests for payment of the Daily Fees and requests for reimbursement of the Expenses will be signed and dated by the Adjudicator and will clearly quote the reference number of this Contract, the respective Buildings Contract(s) and the award of the costs.

I.4.4.3. It is understood that payment of the Daily Fees and reimbursement of the Expenses to the Expert, or any other type of remuneration as the case may be, in relation to any Dispute between Contractors and calculated in accordance with the separate arrangements of, the parties to such Dispute, made directly with the Expert, and any of such amounts shall be borne and paid by such parties according to such arrangements; therefore, this Article I.6 shall not apply to any such Disputes unless F4E becomes a party such Dispute in which case this Article I.6 shall mutatis mutandis apply to the extent F4E is concerned in such Dispute.

I.4.5. Payments of the Daily Fees and reimbursement of the Expenses to the Expert for Visits and Meetings not directly related to a Dispute under the Buildings Contract(s) and instructed by F4E

I.4.5.1. The Daily Fees of the Expert for a Visit not directly related to a Dispute and instructed by F4E as per Article I.3.1 i. c), and the Daily Fees of the Expert for meetings which are not directly related to a Dispute and on which the Expert's attendance is required as per the instruction of F4E as per Article I.3.1 i. c), shall be paid (i) after occurrence, (ii) in the

case of a Visit, on presentation of a written report produced by the Expert in relation to such Visit as per Article III.6.2, and (iii) in the case of a meeting, a mission statement obtained from the representative of F4E being present on such meeting confirming the attendance of the Expert on such meeting. Requests for payment of such Daily Fees shall be submitted and addressed to F4E, and accompanied by (i) the instruction of F4E regarding such Visit/meeting, (ii) in the case of a Visit, a copy of the written report produced by the Expert in line with Article III.6.2, (iii) in the case of a meeting, the mission statement referred to in this Article I.4.5.1, and (iv) the timesheet form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form). All requests for payment of such Daily Fees must be dated and must clearly quote the reference number of this Contract and the respective Buildings Contract(s). Requests for payment under this Article I.4.5.1 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Daily Fees of the Adjudicator related to a Dispute shall be established according to Article I.4.4.2.

I.4.5.2. The Expenses of the Expert for a Visit not directly related to a Dispute and instructed by F4E as per Article I.3.1 i. c), and for meetings which are not directly related to a Dispute and on which the Expert's attendance is required as per the instruction of F4E as per Article I.3.1 i. c), shall be reimbursed (i) after occurrence, (ii) if related to a Visit not directly related to a Dispute, or any other meeting, instructed by F4E in either case, once per Visit, following which a written report is drawn up as per Article III.6.2, or meeting, and (iii) on presentation of the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). Requests for reimbursement of the Expenses shall be submitted and addressed to F4E, and accompanied by (i) the reimbursement form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form), and (ii) the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). All requests for reimbursement of such Expenses must be signed and dated by the Expert and must clearly quote the reference number of this Contract and the respective Buildings Contract(s). Requests for reimbursement under this Article I.4.5.2 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Expenses of the Adjudicator related to a Dispute shall be established according to Article I.4.4.2.

I.4.5.3. The Daily Fees of the Expert for a Visit not directly related to a Dispute and jointly requested by the parties to a Buildings Contract as per Article I.3.1. i. d), and the Daily Fees of the Expert for meetings which are not directly related to a Dispute and on which the Expert's attendance is required as per the joint request of the parties to a Buildings Contract as per Article I.3.1. i. d), shall be paid (i) after occurrence, (ii) presentation of a document containing the Expert's advice/opinion/Visit outcome. Requests for payment of such Daily Fees shall be submitted and addressed to the Contractor under the relevant

Buildings Contract, and accompanied by (i) the joint request of the parties to a Building Contract regarding such Visit/meeting/advice/opinion, (ii) the timesheet form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form), and (iii) a document containing the Expert's advice/opinion/Visit outcome. All requests for payment of such Daily Fees must be dated and must clearly quote the reference number of this Contract and the respective Buildings Contract. Requests for payment under this Article I.4.5.3 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Daily Fees of the Adjudicator related to a Dispute shall be established according to Article I.4.4.2. F4E shall reimburse the Contractor under the relevant Buildings Contract parts of such Daily Fees as per the terms of the relevant Buildings Contract.

I.4.5.4. The Expenses of the Expert for a Visit not directly related to a Dispute and jointly requested by the parties to a Buildings Contract as per Article I.3.1. i. d), and for meetings which are not directly related to a Dispute and on which the Expert's attendance is required as per the joint request of the parties to a Buildings Contract as per Article I.3.1. i. d), shall be reimbursed (i) after occurrence, (ii) if related to a Visit not directly related to a Dispute, or any other meeting, jointly requested by the parties to a Buildings Contract in either case, once per Visit, and (iii) on presentation of the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). Requests for reimbursement of the Expenses shall be submitted and addressed to the Contractor under the relevant Buildings Contract, and accompanied by (i) the reimbursement form signed and dated as provided for in Annex III (Request for Payment, Timesheet and Cost Declaration Form), and (ii) the original supporting documents, namely tickets and proof of payment document(s) or, in the case of online booking(s) or electronic boarding pass(es), the printout(s) of the electronic reservation(s) and/or such boarding pass(es). All requests for reimbursement of such Expenses must be signed and dated by the Expert and must clearly quote the reference number of this Contract and the respective Buildings Contract. Requests for reimbursement under this Article I.4.5.4 shall be drawn up in line with the form and requirements of Annex III (Request for Payment, Timesheet and Cost Declaration Form). The Expenses of the Adjudicator related to a Dispute shall be established according to Article I.4.4.2. F4E shall reimburse the Contractor under the relevant Buildings Contract parts of such Expenses as per the terms of the relevant Buildings Contract.

Article I.5 – Bank Account

Payments shall be made to the Expert's bank account denominated in Euro:

Name of bank: *[complete]*

Branch Address in full: *[complete]*

Exact designation of account holder: *[complete]*

Full account number including codes: [complete]
 IBAN code: [complete]

Article I.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.

Fusion for Energy:

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

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 (two) 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 France.
- 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 Head of Department, Commercial Department: Commercial-Department-Controller@f4e.europa.eu;
- (b) F4E privacy policy can be consulted on F4E website at the following address: (<https://fusionforenergy.europa.eu/privacy-policy/>) and the data protection notice is available the following link: <https://f4ewebsitest.blob.core.windows.net/default/2020/05/PN-on-Contract-and-Grant-Implementation-Excluding-Claims-2GBPFE.pdf>

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 as described in this Contract;
- (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.** There may be one (1) Visit after the Commencement Date, on which the attendance of the Expert is required. This Visit shall give the Expert the opportunity to become familiar with the progress of the implementation of the Buildings Contract(s) and anticipate any issue that may lead to a Dispute between F4E and its Contractor(s) under the Buildings Contract(s) and/or between the Contractors. Payment of the Daily Fees and reimbursement of the Expenses relating to this Visit will be borne and paid by F4E according to this Contract.
- I.9.2.** The Expert shall visit the ITER Site at such intervals and/or at such times of critical construction events as F4E shall request, but not more frequently than two (2) times a calendar year. Payment of the Daily Fees and reimbursement of the Expenses relating to such Visit(s) will be borne and paid by F4E according to this Contract.
- I.9.3.** Obligations under this Contract and/or in its Annexes, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in Article II.2 (Liability), Article II.8 (Use, distribution and publication of information), Article II.9 (Confidentiality), Article II.13 (Substantial errors, irregularities and fraud attributable to the Expert), Article II.14 (Checks and audits), Annex I (Terms of Appointment and Rules of Procedure) and the declaration signed by the Expert in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests) shall survive the termination or expiration of this Contract and/or its Annexes.

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.

I. 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.** 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, for act or default of 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. F4E shall not be liable to provide the Expert with any compensation or coverage in the event of injury or illness, unless otherwise provided in this Contract.
- II.2.2.** With the exception of the breach of confidentiality undertaking, neither conflict of interests nor breach of independence and impartiality obligations of the Expert, without prejudice to Article II.8.4, lead to the Expert being liable to F4E for claims of any kind for anything done or omitted in the discharge of her/his tasks or functions as an Adjudicator, whether in negligence or otherwise, unless the act or omission is shown to have been in bad faith. However, the application of this Article II.2.2 shall not prevent F4E to terminate this Contract in accordance with Article II.8.
- II.2.3.** In the case of breach of confidentiality undertaking, conflict of interests, and/ or breach of independence and impartiality obligations of the Expert, the Expert shall not be entitled to payment of the Daily Fees and reimbursement of the Expenses in accordance with this Contract.

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. F4E reserves the right to refuse to make payment of the Daily Fees and/or reimbursement of the Expenses if within 30 (thirty) calendar days, no sufficient information and/or documentation has been provided by the Expert. When F4E decides not to proceed with the payment of the Daily Fees and/or the reimbursement of the Expenses, F4E shall duly inform the Expert in line with Article I.8.
- 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.
- II.4.10** F4E reserves the right to recover any payment/reimbursement made and to exclude from further tasks the Expert who has breached any substantial obligations of this Contract, such as her/his confidentiality undertaking, no conflict of interests, independence and impartiality obligations. Recovery shall be made amongst others with respect to previously paid amounts to the Expert in accordance with this Contract if, as a consequence of such breach, any proceedings or decisions of the Adjudicator are rendered void or ineffective in accordance with the provisions of the Buildings Contract(s).

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:
https://ec.europa.eu/international-partnerships/system/files/per-diem-rates-20200201_en.pdf
- (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 0,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.
- (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

- II.9.1.** 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. 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.

II.9.2 The Buildings Contract(s) include(s) provisions on confidentiality, which shall be respected by the Expert in accordance with such provisions of the respective Buildings Contract(s), but at least for a period of ten (10) calendar years from termination of this Contract for whatever reason. The Expert shall be required to sign a declaration to this effect in the form as attached hereto in Annex II (Acceptance of Nomination and Declaration of Independence, Commitment and Conflict of Interests).

II.9.3. In addition to the above, the Expert undertakes to treat in the strictest confidence and not make use of or divulge to third parties, with the exception of the Contractor(s) (and any other party to the adjudication, as the case may be), any information or documents which are linked to the performance of this Contract. In particular, she/he undertakes not to reveal any detail of the adjudication and its outcome. 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 her/his tasks, unless otherwise instructed by F4E and its Contractor(s), or the parties to the adjudication. The Expert shall continue to be bound, without any time limit, by this undertaking after completion of her/his tasks.

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 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 Regulation⁴ ;
- (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;

⁴ 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)

- (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) where F4E has evidence, or seriously suspects the Expert, of professional misconduct;
- (j) where F4E has evidence, or seriously suspects the Expert or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the Community or the European Union;
- (k) where a change in the Expert's personal situation could, in F4E's opinion, have a significant effect on the performance of this Contract;
- (l) at the discretion of F4E to withdraw the appointment of the Expert in the Panel of Adjudicators by 60 (sixty) calendar days notice in writing, and to terminate this Contract. Such termination, if applicable, shall be without prejudice to any accrued rights of F4E, its Contractor(s) or the Expert;
- (m) otherwise provided by this Contract.

II.12.2. Prior to termination, the Expert shall be given the opportunity to submit his/her 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. Termination of this Contract, unless otherwise specified in such letter, shall entail withdrawal of the appointment of the Expert as an adjudicator in the Panel of Adjudicators and of the nomination as an Adjudicator and the chairperson of the panel of Adjudicators, if applicable, in relation to adjudication. Article I.1.6 shall apply respectively.

II.12.3. Consequences of termination:

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/her commitments. He/She 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 or nominate any other adjudicator in the Panel of Adjudicators 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, with the exception of Annex VI (List of Buildings Contracts), 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.

ANNEX I- TERMS OF APPOINTMENT AND RULES OF PROCEDURE

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

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

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

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

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

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

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

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

ARTICLE III.3 – SCOPE OF ADJUDICATION

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

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

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

ARTICLE III.4 – NATURE OF ADJUDICATION

III.4.1 Subject to the terms and conditions of the Buildings Contract(s), the Chairperson of the Panel of Adjudicators shall have the right to consider appropriate to refer any Dispute between F4E and its Contractor(s), or any other parties to the adjudication, to be resolved by one (1) Adjudicator (also by the Chairperson of the Panel of Adjudicators) or by the panel of Adjudicators consisting of three (3) Adjudicators, out of which one (1) member may be the Chairperson of the Panel of Adjudicators as well.

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

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

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

III.5.1 No conflict of interests

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

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

A disqualifying conflict of interests exists if the Adjudicator:

- a) was involved in the preparation of the proposal or tender relating to the Buildings Contract(s) and/or the performance of the Buildings Contract(s);
- b) stands to benefit directly should any Dispute be decided by her/him in favour of any parties to the adjudication;
- c) has a close family/emotional relationship with any person representing an organization participating in the performance of the Buildings Contract(s);
- d) is a director, officer, trustee or business partner of an economic operator/organization under the Buildings Contract(s);
- e) is employed by one (1) of the economic operators/organisations participating in the performance of the Buildings Contract(s);
- f) is in any other situation that compromises her/his ability to participate in the adjudication in line with this Terms of Appointment and Rules of Procedure impartially.

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

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

- a) was employed by one (1) of the economic operators/organisations participating in the performance of the Buildings Contract(s) within three (3) calendar years prior to the Commencement Date;
- b) was involved in a contract or research collaboration with an economic operator/organization participating in the performance of the Buildings Contract(s) within three (3) calendar years prior to the Commencement Date;

- c) is in any other situation that could cast doubt on her/his ability to participate in the adjudication impartially, or that could reasonably appear to do so in the eyes of an external third party.

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

III.5.2 Impartiality and independence

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

Amongst others, the Adjudicator shall:

- a) have no interest financial or otherwise in F4E or its Contractor(s) or financial interest in the Buildings Contract(s) except for payments made in accordance with this Contract;
- b) have disclosed in writing to F4E and its Contractor(s) prior to the Commencement Date any professional or personal relationships with any director, officer or employee of F4E or its Contractor(s), and any prior involvement in the ITER project;
- c) not previously have been employed as a consultant or otherwise by F4E or its Contractor(s) except in those circumstances which have been disclosed in writing to F4E and its Contractor(s) prior to the Commencement Date;
- d) not, while an adjudicator in the Panel of Adjudicators, be employed as a consultant or otherwise by F4E or its Contractor(s) unless F4E and its Contractor(s) otherwise agree in writing;
- e) not while an adjudicator in the Panel of Adjudicators enter into discussions or make any agreement with F4E or its Contractor(s) regarding employment by any of them whether as a consultant or otherwise after ceasing to be an adjudicator in the Panel of Adjudicators unless F4E and its Contractor(s) otherwise agree in writing;
- f) not seek employment by F4E or its Contractor(s) for one (1) calendar year after her/his appointment as an adjudicator in the Panel of Adjudicators

ceased to exist for any reason unless F4E and its Contractor(s) otherwise agree in writing.

III.5.3 Warranties and undertakings

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

The Adjudicator undertakes to:

- a) ensure her/his reasonable availability for all Visits and hearings/meetings, as the case may be, which she/he is required to attend and shall observe this Terms of Appointment and Rules of Procedure;
- b) ensure to be at the Commencement Date and remain impartial and independent from F4E and its Contractor(s) while performing her/his tasks under this Terms of Appointment and Rules of Procedure;
- c) ensure that she/he is not in a conflict of interests situation at the Commencement Date and while performing her/his tasks under this Terms of Appointment and Rules of Procedure;
- d) immediately take all necessary steps to resolve any conflict of interests and to cooperate with the parties involved;
- e) maintain all documents received in connection with the Buildings Contract(s) if applicable, and the ITER project in a current working file;
- f) when required for the purposes of a meeting relating to the progress of the Buildings Contract(s) and the ITER project, study all documents received and maintain them in a current working file;
- g) treat the details of the Buildings Contract(s) and the ITER project, and all activities and hearings/meetings as private and confidential and shall not publish or disclose the same without the prior written consent of the parties to the adjudication or the parties to the respective Buildings Contract(s); and
- h) save as provided for in this Terms of Appointment and Rules of Procedure, not assign, delegate or subcontract any of the tasks under this Terms of Appointment and Rules of Procedure.

III.5.4 Common provisions

If the Adjudicator has been or will be brought into conflict with any of her/his undertakings and/or obligations in this Article III.5, she/he shall inform F4E, its

Contractor(s) and the other adjudicators in the Panel of Adjudicators without delay, and shall recuse herself/himself from the adjudication regarding the Buildings Contract(s). F4E and its Contractor(s) may waive the Adjudicator's conflict in writing. Such waiver shall be irrevocable.

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

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

ARTICLE III.6 – PROCEDURAL RULES

III.6.1 General provisions

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

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

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

The Adjudicator shall act fairly and impartially but shall not be obliged or empowered to act as though she/he were an arbitrator, and shall have full authority

to conduct any hearing/meeting as she/he thinks fit, not being bound by any rules or procedures other than those appearing in the Buildings Contract(s), this Contract and those set out herein.

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

- a) require any party to the adjudication to produce any document both to the Adjudicator and to the other parties to the adjudication, whether helpful or otherwise to that party's case, and to draw such inference as may seem proper from any failure by any such party to the adjudication to produce such documents, provided that the parties to the adjudication shall not be required to produce documents protected by legal privilege and its equivalent principles under French law "protection du secret professionnel de l'avocat et de la confidentialité des échanges entre avocats";
- b) limit the length of any written or oral submission;
- c) require the attendance before her/him for questioning of any party to the adjudication or employee or agent of any such party, provided that she/he gives all parties to the adjudication reasonable notice of such required attendance;
- d) make any further Visits or inspect any property or thing relevant to the Dispute, as the case may be;
- e) make use of her/his own specialist knowledge;
- f) make directions for the conduct of the adjudication in writing;
- g) review and revise any of her/his own directions;
- h) conduct the adjudication inquisitorially and take the initiative in ascertaining the facts and the laws;
- i) submit a list of questions to the parties to the adjudication which she/he wishes the parties or the parties' witnesses to consider and answer;
- j) reach her/his decision with or without holding a hearing/meeting, and with or without having endeavoured to facilitate agreement between the parties to the adjudication;
- k) refuse admission to hearings/meetings or audience at hearings/meetings to any persons other than the parties to the adjudication and/or their authorised representatives;
- l) proceed in the absence of any party to the adjudication who the Adjudicator

is satisfied received notice of the hearing/meeting;

- m) take minutes on the hearings/meetings held;
- n) award interest to any of the parties to the adjudication at such rate as is provided for in the Buildings Contract(s) or if no rate is provided, at a reasonable commercial rate; or
- o) adopt any procedures suitable to the circumstances of the adjudication which will avoid unnecessary delay or expense.

The Adjudicator shall not:

- a) express any conclusive opinions during any hearing/meeting concerning the merits of any arguments advanced by the parties to the adjudication;
- b) give advice to F4E or its Contractor(s) or concerning the conduct of the ITER project other than within the scope of the adjudication;
- c) discuss any Disputes under the Buildings Contract(s) with third parties, except with the express prior agreement of the parties to the adjudication;
- d) require any advance of or security for her/his Daily Fees and Expenses;
- e) reject, or fail to consider, any written submissions that are submitted in accordance with this Terms of Appointment and Rules of Procedure or the Buildings Contract(s);
- f) receive any written submissions from a party to the adjudication that are not also made available to the other parties to the adjudication;
- g) refuse any party to the adjudication the right at any hearing/meeting to be represented by any representative of that party's choosing who is present; or
- h) act or continue to act in the face of conflict of interests.

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

III.6.2 Visits

The agenda for the Visits may require the attendance, for all or part of the Visits, of

F4E, its Contractor(s) and other parties to the adjudication, as the case may be. The Visits shall be coordinated in the case of Visits instructed by F4E under this Contract and adjudication under the Buildings Contract(s) by F4E. F4E or its Contractors, as the case may be, shall ensure the provision of appropriate conference facilities and secretarial and copying services.

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

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

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

Following the referral of any Dispute to adjudication:

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

III.6.3 Joinder

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

III.6.4 Decision

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

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

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

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

Any payment according to the award of the costs shall not be unreasonably suspended, withheld or refused, and shall be made without undue delay to the Adjudicator as set out in such award of the costs. If the Contractor(s) fail(s) to make such payment to the Adjudicator according to the award of the costs within 60 (sixty) calendar days as from the date when the payment becomes due according to such award of the costs, F4E may decide, by informing simultaneously the Contractor(s) thereof, to make such payment directly to the Adjudicator on behalf of the Contractor(s), in which case F4E shall be entitled to recover such payment from the Contractor under the Buildings Contract(s) in accordance with the Buildings Contract(s).

III.6.5 Notices

The Chairperson of the Panel of Adjudicators and/or the Adjudicator(s) shall immediately acknowledge and confirm receipt of the respective Notice of Referral to Adjudication to the parties to the adjudication.

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

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

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

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

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

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

relation to the sent e-mail.

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

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

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

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

III.6.6. Dispute avoidance

If the parties to a Buildings Contract so agree, they may jointly request (in writing, with a copy to the Engineer) the Panel of Adjudicators (or one or several members of it) to provide assistance and/or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Buildings Contract before any Dispute may arise. If the Panel of Adjudicators becomes aware of an issue or disagreement, it may invite the Parties of the Building Contract to make such a joint request.

Such joint request may be made at any time, except during the period that the Engineer is carrying out his/her duties under Sub-Clause 3.5 [Determinations] on the matter at issue or in disagreement unless the Parties of Buildings Contract agree otherwise.

Such informal assistance may take place during any meeting, Site visit or otherwise. However, unless the Parties agree otherwise, both Parties shall be present at such discussions. The parties of the Buildings Contracts are not bound to act on any advice given during such informal meetings, and the Panel of Adjudicators shall not be bound in any future Dispute resolution process or decision by any views or advice given during the informal assistance process, whether provided orally or in writing.

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

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

Via the Chairperson of the Panel of Adjudicators

Name of the Adjudicator: [*]

Dear Sirs,

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

I hereby accept the personal nomination as an Adjudicator for the Dispute presented to me in the respective Notice of Referral to Adjudication, and agree to be bound by the terms and conditions of the Contract and to follow the relevant provisions of the Buildings Contract(s). In addition, I hereby acknowledge and confirm receipt of the respective Notice of Referral to Adjudication.

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

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

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

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

I hereby declare that I have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such

advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to performance of the Buildings Contract(s) and/or the Contract.

This declaration shall form an integral part of the Contract.

Yours sincerely,

For the Adjudicator,

[*]

Signature: _____

Done at [*], [*]



F4E_D_2QLF2Q

**ANNEX III- REQUEST FOR PAYMENT , TIMESHEET AND COST
DECLARATION FORM**

REQUEST FOR INTERIM / FINAL PAYMENT WHEN THE REQUEST IS TO BE ADDRESSED TO F4E

| | |
|--|--|
| <p>Adjudicator's name: Address:</p> <p>E-mail: Bank Account: <i>as per Article 1.5 of the contract</i></p> | <p>To: Fusion for Energy (F4E) Josep Pla 2 Torres Diagonal Litoral B3 08019 Barcelona Spain</p> <p>Attn: Name of F4E Responsible Officer</p> |
|--|--|

Contract Ref: F4E-XXX

Task summary

Amount requested

| |
|---|
| <p>1. Fees: <i>(number of working days x daily rate - supported by timesheet).....€</i></p> |
| <p>2. Expenses:</p> <p>Travel lump sum€</p> <p>Per diem <i>(number of days for the meeting x per diem allowance)</i>.....€</p> |
| <p>TOTAL€</p> |

Signature of the Adjudicator:

Date:

Documents to be annexed: Timesheet and Cost Declaration Form

TIMESHEET

Contract Reference: F4E-XXX

Name of the Adjudicator:

| Date (dd/mm/yyyy) | Duration in full days and/or half days | Brief description of the task |
|------------------------------|---|--------------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Signature of the Adjudicator:

Signature of F4E Responsible Officer

Date:

Date:

**REQUEST FOR PAYMENT WHEN THE REQUEST IS TO BE ADDRESSED
TO A CONTRACTOR UNDER A BUILDINGS CONTRACT**

Adjudicator's name:

Address:

E-mail:

Bank Account: *as per Article 1.5 of the contract*

To: Contractor under the relevant
Buildings Contract

Attn: **Name of** the representative of the
Contractor under the relevant Buildings
Contract

| |
|------------------------------|
| Contract Ref: F4E-XXX |
|------------------------------|

Task summary

| |
|--|
| |
|--|

Amount requested

| | | |
|---------------------|--|---|
| 1. Fees: | <i>(number of working days x daily rate - supported by timesheet).....</i> | € |
| 2. Expenses: | | |
| | Travel lump sum | € |
| | Per diem <i>(number of days for the meeting x per diem allowance)</i> | € |
| TOTAL | | € |

Signature of the Adjudicator:

Date:

Documents to be annexed: Timesheet and Cost Declaration Form

TIMESHEET

Contract Reference: F4E-XXX

Name of the Adjudicator:

| Date (dd/mm/yyyy) | Duration in full days and/or half days | Brief description of the task |
|------------------------------|---|--------------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Signature of the Adjudicator:

Date:

COST DECLARATION FORM

Contract Reference: F4E-XXX

Name of the Adjudicator:

Meeting details:

Meeting name:

Meeting duration (*based on approved agenda*):

Meeting location (*country*):

PER DIEM

Do you wish to claim a per diem allowance: Yes No

| | |
|--|--|
| Total number of days x per diem | |
|--|--|

TRAVEL COSTS

Do you wish to claim travel costs: Yes No

| TRAVEL MODE <small>(Flight/train/car/boat)</small> | FROM | | | TO | | | KM | Amount |
|---|-------|------|------|-------|------|------|--------------------------------|-----------------------------------|
| | Place | Date | Time | Place | Date | Time | <small>(travel by car)</small> | <small>(specify currency)</small> |
| | | | | | | | | |
| | | | | | | | | |
| TOTAL TRAVEL COSTS | | | | | | | | |

TOTAL COSTS CLAIMED


| Total Per Diem | Total Travel Costs | TOTAL |
|----------------|--------------------|-------|
| | | |

I declare on my honor that I have attended the above-mentioned meeting and that amount claimed for per diem and travel costs are not reimbursed by another party.

Signature of the Adjudicator:

Date:

ANNEX IV- AWARD OF THE COSTS FORM

| | | | | | |
|---|----------|---|----------------|--|----------|
|  | | AWARD OF COSTS related to the Buildings Contract(s) F4E-OPE-__ (SB-PS) | | | |
| Chairman of the panel of Adjudicators: | | | | | |
| Names of the Adjudicators: | | Adjudicator 1: | Adjudicator 2: | | |
| Contract reference numbers: | | | | | |
| Dispute reference and starting/end date of the Dispute: | | | | | |
| Number of days of the Dispute: | | | | | |
| Bank account: | | See Article 1.5 of the Adjudicator's contracts | | | |
| | | | | | |
| Chairman | | Adjudicator 1 | | Adjudicator 2 | |
| • Number of working days in relation to the dispute: | € | • Number of working days in relation to the dispute: | € | • Number of working days in relation to the dispute: | € |
| • <u>Daily Fees:</u> | | • <u>Daily Fees:</u> | | • <u>Daily Fees:</u> | |
| 1) Fees related to work at home*: | € | 1) Fees related to work at home*: | € | 1) Fees related to work at home*: | € |
| 2) Fees related to work on meetings**: | € | 2) Fees related to work on meetings**: | € | 2) Fees related to work on meetings**: | € |
| • <u>Corresponding lump sum of Expenses:</u> | € | • <u>Corresponding lump sum of Expenses:</u> | € | • <u>Corresponding lump sum of Expenses:</u> | € |
| Percentage to be paid by F4E: | % | Percentage to be paid by F4E: | % | Percentage to be paid by F4E: | % |
| Total costs due by F4E: | € | Total costs due by F4E: | € | Total costs due by F4E: | € |
| Total costs due by the Contractor(s): | € | Total costs due by the Contractor(s): | € | Total costs due by the Contractor(s): | € |
| Date: | | | | | |
| Signature of the chairman of the panel of Adjudicators: | | | | | |

*See Article 1.3.1 a) of the Adjudicator's contracts and Article 1.5.2.1.a) of F4E-AFC-1322 for the Chairman fees

**See Article 1.3.1 b) of the Adjudicator's contracts. And Article 1.5.2.1.b) of F4E-AFC-1322 for the Chairman fees.

To be paid within 60 (sixty) calendar days of receipt of the original of request for payment (see Article 1.4.3 of the Adjudicator's contracts, and Article 1.6.5.8 of F4E-AFL

**ANNEX V- DECISION FORM⁵
FORM OF DECISION
IN THE MATTER OF ADJUDICATION**

between

[*] as referring Party

and

[*] as responding Party

in connection with

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

DECISION

made by

Name: [*]

Adjudicator

Name: [*]

Adjudicator

acting as chairperson

of

the panel of Adjudicators

Name: [*]

Adjudicator

on [*]

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

⁵ It is understood that the chairperson of the panel of Adjudicators will draw up the decision that will have to be signed by the other Adjudicators in the panel of Adjudicators. This form of decision will have to be filled in and customised to the Dispute referred to adjudication.

DECISION IN THE MATTER OF ADJUDICATION

1. Introduction and background

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

2. Nomination of the Adjudicator(s)

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

3. The Dispute

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

4. The adjudication procedure

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

5. The jurisdiction of the Adjudicator(s)

5.1. *[Confirm the jurisdiction of the Adjudicator(s) with respect to the Dispute (all issues and preliminary issues included) and that preconditions for adjudication are fulfilled. Refer to Sub-Clause 20.3 [Adjudication] of the Buildings Contract.]*

5.2. *[Describe any problems and the actions taken by the Adjudicator(s) concerning the jurisdiction of the Adjudicator(s), if any.]*

6. The issues to be determined

6.1. *[The issues which the Adjudicator(s) has (have) been asked to determine are listed in the above Sections and are considered at the below Sections.]*

6.2. *[In order to determine these issues it was necessary for the Adjudicator(s) to consider the following preliminary issues:]*

6.2.1. *[Description of the preliminary issue.]*

6.2.2. *[Description of the preliminary issue.]*

6.3. *[These preliminary issues are considered at the below Sections.]*

7. Preliminary Issue No. 1

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

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

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

9. Issue No. 1

9.1. *[Brief description of the issue, the Parties' positions and the decision of the Adjudicator, including reasons, for issue no. 1 (give reference to Sub-Clauses of the Buildings Contract or any applicable documents listed in Annex U [List of Applicable Documents] to the Buildings Contract). If the issue is complex, or requires a lengthy description, then the Parties' positions may be included as separate Sub-Sections.]*

9.2. *[Summary table showing figures for the claim, any valuation by the responding Party and the decision of the Adjudicator(s). This summary table may include interest at a reasonable commercial rate as per Annex D [Procedural Rules for Adjudication] to the Buildings Contract.]*

10. Issue No. 2

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

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

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

12. The Decision of the Adjudicator(s)

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

12.1.1. Issue No. 1:

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

12.1.2. Issue No. 2:

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

13. Directions of the Adjudicator(s)

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

13.1.1. *[[*] shall pay to [*] the sum of EUR [*] ([*] euro) within 60 (sixty) calendar days of the receipt of the [invoice]/[debit note] of [the winning Party];]*

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

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

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

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

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

13.2. The decision and the award of the costs shall be binding on the Parties upon receipt thereof via e-mail, notwithstanding any referral to the Court of Justice of the European Union pursuant to Sub-Clause 20.5 [Reference to the ECJ] of the Buildings Contract, who shall give immediate effect to, and shall comply with, the decision and the award of the costs, in accordance with Sub-Clause 20.3 [Adjudication] of the Buildings Contract.

13.3. If [the losing Party] fails to make payment to [the winning Party] according to, or otherwise comply with, the decision, as from the date when the decision becomes binding or the payment becomes due, as the case may be, according to the decision, [the winning Party] shall be entitled to any contractual means that are available in the Buildings Contract to enforce the decision within the implementation of the Buildings Contract.

13.4. If the Contractor fails to make payment to the Adjudicator(s) according to the award of the costs within 60 (sixty) calendar days, as from the date when the payment becomes due according to the award of the costs, the Employer shall be entitled, by informing simultaneously the Contractor thereof, to make such payment, upon receipt of the invoice of the Adjudicator(s), directly to the Adjudicator(s) on behalf of the Contractor, in which case the Employer shall be entitled to recover such payment from the Contractor under the Buildings Contract.

Appendices:

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

| | | |
|---|---|--------------------|
| Name: [*] | Name: [*] | Name: [*] |
| Adjudicator | Adjudicator acting as chairperson of the panel of Adjudicators | Adjudicator |
| Date: [*] | Date: [*] | Date: [*] |
| Issued in [*] originals | | |
| Sent via e-mail and registered post to the Parties on [*] | | |

ANNEX VI- RULES ON PROCESSING OF PERSONAL DATA

I. Processing of Personal Data by Fusion for Energy

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

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

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

Details concerning the processing of personal data are available in the Privacy Notice referred to in the Contract.

II. Processing of Personal Data by the Contractor

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

The Appointee may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights. The Appointee shall assist the controller for the fulfilment of the controller’s obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The Appointee shall inform without delay the data controller about such requests.

If applicable, the Appointee may be asked by F4E to use some ITER Organization IT applications that store information in data centers or similar premises, located on the territory of the European Union Member States (incl. back-up storage).

With regard to the appropriate technical and organisational security and giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, the Appointee makes sure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;

- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) the protection of personal data from accidental or unlawful destruction, loss, alteration, erasure, unauthorised disclosure and use of or access to personal data transmitted, stored or otherwise processed.

In case the Appointee is asked by Fusion for Energy to use systems and IT applications provided by the ITER Organisation the above mentioned technical and organizational security measures apply to the extent falling under the Appointee's responsibility.

The Expert shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Expert becomes aware of the breach. In such cases, the Appointee shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The Appointee shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 39 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The Appointee shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The Appointee acknowledges that the potential costs in relation with its obligations are under its entire responsibility with no right to be reimbursed.

Fusion for Energy is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of Fusion for Energy in the premises of the Appointee.

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

The duration of processing of personal data by the Appointee will not exceed the period referred to in Article II.10 (Checks and audits) of the Contract. Upon expiry of this period, the Appointee shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

ANNEX VII- LIST OF BUILDINGS CONTRACTS

| TENDER BATCH | CONTRACT | TITLE | CONTRACTOR |
|--------------|------------------------|---|--|
| | F4E-OPE-025-01 (SB-PS) | Contract for the Provision of Health and Safety Protection Coordination and Legal Inspection Services for the Construction of the ITER Buildings | APAVE |
| | F4E-OPE-058-01 (SB-PS) | Contract for the provision of Civil Engineering and Construction Consultancy Services in connection with the ITER Project (Architect Engineer) | ENGAGE SNC |
| | F4E-OPE- 1137 | NEW Contract for the provision of Civil Engineering and Construction Consultancy Services in connection with the ITER Project (Consultant) | |
| TB03 | F4E-OPE-286 (SB-PS) | Contract for the Construction of the Tokamak Complex, Assembly Hall and Surrounding Buildings and the Design, Manufacture and Installation of Heavy Nuclear Doors on the ITER Facilities at Cadarache, France | VFR CONSORTIUM |
| TB02 | F4E-OPE-285 (SB-PS) | Contract for the Design, Certification, Manufacturing, Testing, Installation and Commissioning of a Tokamak Cargo Lift and Tokamak/Assembly Hall Cranes and the Design and Construction of Associated Infrastructure on the ITER Facilities | NKM NOELL SPECIAL CRANES, REEL SAS |
| TB04 | F4E-OPE-301 (SB-PS) | Contract for the Design, Construction and Maintenance of the HVAC, Electrical, I&C Handling Equipment and Gas and Liquid Networks for the Tokamak Complex and Surrounding Buildings | OMEGA CONSORTIUM |
| TB05 | F4E-OPE-378 (SB-PS) | Contract for the Design and Construction of the Magnet Power Conversion Buildings and the Reactive Power Control Building | FERROVIAL AGROMAN S.A. |
| TB07 | F4E-OPE-429 (SB-PS) | Contract for the Design and Construction of the Structures for the Cold and Hot Basin and Cooling Towers (67), Water Cooling Pumping Station (68), Heat Exchangers (69) and Water Treatment Facility (64) | FERROVIAL AGROMAN S.A. |
| TB16 | F4E-OPE- 636 | Site Infrastructure Works (re-launch of part of the TB08 scope) | SPIE BATIGNOLLES, VALERIAN, ATELIER DE FOS |
| TB09 | F4E-OPE-XXX | Construction of Hot Cell (21), Radwaste (23) & Personal Access Control Building (24) | |
| TB11 | F4E-OFC-755 | Finishing works including TKC metal finishing works (civil, mechanical and electrical works) | DALKIA |
| TB12 | F4E-OPE-688 | Design and Build of Buildings 34, 37, 71 and 75 and Plant Bridges | DEMATHIEU BARD |
| TB13 | F4E-OPE-1003 | Emergency Power Supplies Buildings (B44-47) with supply and installation of electrical components | ANSALDO, MONSUD |
| TB17 | F4E-OPE-XXX | Electrical Diesel Generators, Fuel Tanks and buildings 42, 43, 57-60 | |
| TB18 | F4E-OPE-996 | Civils and Finishing Tritium building above level L2 | VFR CONSORTIUM |
| TB19 | F4E-OPE-906 | Painting and Coating for Tokamak Complex | GDES revanti |
| TB20 | F4E-OPE-XXX | TKC Doors procurement and installation | |
| TB21 | F4E-OPE-XXX | Electrical and Mechanical Works | |

| | | | |
|------|-------------|----------------------------------|--|
| TB22 | F4E-OPE-XXX | Finishing and Retrofitting Works | |
|------|-------------|----------------------------------|--|