

# **GENERAL CONDITIONS FOR ITER ORGANIZATION SERVICE CONTRACTS**

(2014)

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### **Article 1. Definitions**

- 1.1 The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract.
- 1.2 Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3 Words designating persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.4 Days shall have the meaning of calendar days; a year is made of 365 days.

### **Article 2. Law and language of the Contract**

- 2.1 The ITER Organization is governed by international agreements (“Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project “so-called “ITER Agreement” and the “Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project”) = establishing the ITER Organization and its privileges and immunities.
- 2.2 The applicable law for Contract interpretation is French law.
- 2.3 The language used shall be English.

### **Article 3. Communications**

- 3.1 Official Communications between the ITER Organization and the Contractor shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the ITER Organization on the one hand, and the Contractor on the other hand, shall be sent by telex, fax transmission, e-mail or delivered by hand, to the addresses designated by the parties for that purpose.
- 3.2 If the person sending a communication requires acknowledgement of receipt, he shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication.
- 3.3 Wherever the Contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

### **Article 4. Performance of the Contract**

- 4.1 The Contractor’s obligations are stated in the Special Conditions and the other relevant Annexes. The Contractor accepts any obligation and all costs not expressly agreed in the contract that are nevertheless necessary to provide the services as described in the Contract.
- 4.2 The Contractor shall implement the Contract with due care and diligence. The Contractor shall have sole responsibility for complying with all legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

- 4.3 The Contractor shall have sole responsibility for taking the necessary steps to obtain any permits, visas, Intellectual Property rights or licenses required for performance of the Contract under the laws and regulations in force at the place(s) where the tasks assigned to him are to be executed. In particular, the Contractor is responsible for obtaining any export licenses, and such licenses shall be obtained within delivery period and are included in the contract price.
- 4.4 Any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- 4.5 The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- 4.6 The Contractor shall neither represent the ITER Organization nor behave in any way that would give such an impression. The Contractor shall inform third parties that he is not employee of the ITER Organization.
- 4.7 The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:
- The staff executing the tasks assigned to the Contractor may not be given orders directly by the ITER Organization except for operational and safety matters necessary for the performance of the Services;
  - The ITER Organization may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the ITER Organization any right arising from the contractual relationship between the ITER Organization and the Contractor.
- 4.8 In the event of a Contractor's staff does not correspond to the profile required by the Contract or the staff member does not perform as required in the Contract, the Contractor shall replace him without delay.. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- 4.9 The Contractor shall have in place, for the duration of the contract, a Project Manager able to provide the requested project management support and possessing all the competences required to perform the task. This function shall be described in the technical specifications describing the distribution of roles and responsibilities and the workflow.
- 4.10 The Contractor shall demonstrate that its organization takes into account that continuity is maintained through appropriate training and efficient handover during staff movements.
- 4.11 Under no circumstances, the Contractor shall accept or perform any task if not foreseen and for which no financial provision was agreed in the Contract.
- 4.12 Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the ITER Organization. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

4.13 In the event of the Contractor not complying with the scope of work assigned by the ITER Organization, the ITER Organization reserves the right to inform the Contractor of such erroneous or incorrect actions in writing.

In such instances, the ITER Organization reserves the right to instruct the Contractor to perform any re-work necessary to make good any erroneous work or services of his own volition at the Contractor's own cost. Such re-work will not be reimbursable and will be executed in a manner so as not to affect adversely on the progress of other parallel contract scope activity by the Contractor.

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

4.15 For any interruption of services due to the Contractor and beyond the control of the ITER Organization, the Contractor is responsible to provide the ITER Organization with a recovery plan within 5 working days from the occurrence of such interruption.

#### **Article 5. Replacement of Personnel**

5.1 The Contractor shall make changes to the Contractor's personnel in the following cases:

- a. In the event of death, in the event of illness or in the event of accident of Contractor's personnel;
- b. If it becomes necessary to replace Contractor's personnel for any other reasons beyond the Contractor's control (e.g. resignation).

5.2 Where Contractor's personnel are to be replaced, the replacement staff must possess at least equivalent qualifications and experience. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the ITER Organization may either decide to terminate the Contract, if the proper performance of it is jeopardized, or, if it considers that this is not the case, accept the replacement, provided that the rates of the latter are renegotiated to reflect the appropriate qualifications and/or experience.

5.3 Additional costs incurred due to the replacement are the responsibility of the Contractor. The ITER Organization shall make no payment for the period when the Contractor's to be replaced is absent. The replacement of any Contractor's staff, must be proposed by the Contractor within fifteen (15) calendar days from the first day of the Contractor's absence.

#### **Article 6. Supply of documents**

6.1 Within 30 days of the signature of the Contract, the ITER Organization shall, where necessary, provide the Contractor, free of charge, with a copy of the drawings prepared for the implementation of the Contract and a copy of the specifications and other Contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon termination of this Contract, the Contractor shall return to the ITER Organization all drawings, specifications and other documents given to him with the purpose of giving execution to the Contract.

- 6.2 Unless it is necessary for the purposes of the Contract, the drawings, specifications and other documents provided by the ITER Organization shall not be used or communicated to a third party by the Contractor without the prior consent of the ITER Organization.

#### **Article 7. Performance guarantee**

- 7.1 ITER Organization may request a performance guarantee. The Contractor shall, together with the return of the countersigned Contract, furnish ITER Organization with a guarantee for the full and proper execution of the Contract. The amount of the guarantee shall be specified in the Special Conditions.
- 7.2 The performance guarantee shall be held against payment to the ITER Organization for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.
- 7.3 The performance guarantee shall be in the format provided by the ITER Organization and may be provided in the form of a first-demand bank guarantee.
- 7.4 The performance guarantee shall be denominated in the currency in which the Contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the Contract has been fully and properly performed.
- 7.5 During the execution of the Contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The ITER Organization shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, ITER Organization may terminate the Contract. Before so doing, the ITER Organization shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter to extend or provide a new guarantee.
- 7.6 The ITER Organization shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the Contract, in accordance with the terms of the guarantee and up to the value thereof. Before making any claim under the performance guarantee, ITER Organization shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

#### **Article 8. Approval of Contractor's documents**

- 8.1 The Contractor shall submit to the ITER Organization for approval:
- the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Technical Specifications and/or Special Conditions;
  - such other documents as the ITER Organization may reasonably require for the implementation of the Contract.

The Contractor warrants that all the documentation delivered in the frame of the Contract shall:

- be fit for its intended purpose; and
- otherwise comply with the requirements set forth in the Technical Specifications.

- 8.2 The ITER Organization is committed to review the documents submitted by the Contractor, to provide comments for implementation by the Contractor, to approve the documents thereof or to reject them within the time specified in the Special Conditions. If a document is rejected the ITER Organization will provide the Contractor with the technical grounds that justify the rejection, the ITER Organization may also provide comments to the rejected document that the Contractor undertakes to implement in the revised document. Any rejected document must be modified according to the ITER Organization's comments and resubmitted by the Contractor without delay; this Article shall reapply to any documents resubmitted by the Contractor.
- 8.3 If the ITER Organization fails to notify its decision of approval referred to in Article 8.2 within the deadlines referred to in the Contract or the approved programme of implementation, such drawings, documents, samples or models shall be deemed to be approved on expiry of the deadlines. If no deadline is specified, they shall be deemed to be approved 30 days after receipt.
- 8.4 Approved drawings, documents, samples and models shall be signed or otherwise identified by the ITER Organisation and may only be departed from on ITER Organization's instructions. Any of the Contractor's drawings, documents, samples or models which the ITER Organization refuses to approve shall immediately be modified to meet the requirements of the ITER Organization and resubmitted by the Contractor for approval by the ITER Organization.
- 8.5 The approval of the drawings, documents, samples or models by the ITER Organization shall not relieve the Contractor from any of his obligations under the Contract.
- 8.6 ITER Organization shall have the right to inspect all drawings, documents, samples or models relating to the Contract at the Contractor's premises at all reasonable times.

### **Article 9. Liability**

- 9.1 The ITER Organization shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the ITER Organization causing such damage.
- 9.2 The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting. The ITER Organization shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- 9.3 The Contractor shall hold harmless the ITER Organization in the event of any action, claim or proceeding brought against the ITER Organization by a third party as a result of damage caused by the Contractor in performance of the Contract. The Contractor shall indemnify and keep the ITER Organization free from any claims or complaints concerning any governmental or local fines, taxes, excises or assessments arising from failure by the Contractor to carry out its obligations under this contract.
- 9.4 In the event of any action brought by a third party against the ITER Organization in connection with performance of the Contract, the Contractor shall assist the ITER Organization. Expenditure incurred by the Contractor to this end shall be borne by the Contractor.
- 9.5 The Contractor shall respect and abide by all relevant laws and regulations in force in the territory where the services are performed and shall ensure that his personnel, Contractor's and subcontractors' personnel also respect and abide by all such laws and regulations. The Contractor shall hold harmless the ITER Organization against claims and proceedings arising from any

infringement by the Contractor, his personnel, Contractor's and subcontractors' personnel of such laws and regulations.

#### **Article 10. Conflict of interest**

- 10.1 The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective execution of the Contract. Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or any other relevant connection or shared interest. Any conflict of interest which arises during the performance of the Contract shall be notified to the ITER Organization in writing without delay. In the event of the occurrence of such conflict, the Contractor shall immediately take all necessary steps to resolve it.
- 10.2 The ITER Organization reserves the right to verify that the remedying measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article 5 the Contractor shall replace, immediately and without compensation from the ITER Organization, any member of his staff exposed to a conflict of interest situation.
- 10.3 By signing this Contract, the Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under this Contract;
  - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any third party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.
- 10.4 The Contractor shall inform in writing the contractual obligations of the Parties to his staff, board members, and directors as well as to any other third party involved with the performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the ITER Organization should it so request.

#### **Article 11. Payment**

- 11.1 At the end of each of the periods indicated in Special Conditions, the Contractor shall submit to the ITER Organization a formal request for payment accompanied by the following documents:
- Any report or deliverable (technical) report in accordance with the instructions laid down in the Special Conditions;
  - The relevant invoices indicating the reference number of the Contract to which they refer.
- 11.2 If the report is a condition for payment, on receipt the ITER Organization shall have such a period of time agreed upon the parties in which:
- To approve it, with or without comments or reservations;
  - To suspend such period and request additional information; or
  - To reject it and request a new report.

- 11.3 If the ITER Organization does not react within this period of time, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.
- 11.4 Where the ITER Organization requests a new report because the one previously submitted has been rejected, this shall be submitted within two weeks. The new report shall likewise be subject to the above provisions.

## **Article 12. General provisions concerning payments**

- 12.1 Payments shall be deemed to have been made on the date on which the ITER Organization's account is debited.
- 12.2 The payment periods referred to in the Special Conditions may be suspended by the ITER Organization at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the ITER Organization may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.
- 12.3 The ITER Organization shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or by email. Suspension shall take effect from the date of receipt of the letter. The remainder of the period referred to in the Special Conditions shall begin to run again once the suspension has been lifted.
- 12.4 In the event of late payment, without prejudice to Article 12.2 above, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“the reference rate”) plus 1.5 percentage points (“the margin”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the ITER Organization may not be deemed to constitute late payment.
- 12.5 The ITER Organization may request Contractor’s staff to travel and work at places other than ITER site, in this case travel mission expenses are claimed by the Contractor according to the following principles:
- Only economy class flights are reimbursed by the ITER Organization;
  - Subsistence expenses reimbursement rate for the Contractor’s employee shall be reimbursed at ITER Organization’s per diem rates (DSA, daily subsistence allowance) for each overnight on mission, from the time of departure until the time of return, on the basis of the quickest, most direct route. If travelling lasts more than 30 consecutive days, the DSA will be reduced by 20% starting on the 31st day overnight inclusively;
  - Travel by train (second or first class);
  - Travel by private car reimbursement rate is 0.50 € / km plus toll and parking expenses when flight or train are not available;
  - Visa expenses (only fees of embassy, consulate or visa centre) will be reimbursed.

- 12.6 All other expenses are considered to be included in the DSA. All claims for mission travel will be reimbursed only when supported by invoices and flight tickets.

### **Article 13. Recovery**

- 13.1 If total payments made exceed to the amount actually due under the Contract or if justified in accordance with the terms of the Contract, the Contactor shall reimburse the appropriate amount in euro or other currency indicated in the contract on receipt of the debit note, in the manner and within the time limits set by the ITER Organization.
- 13.2 In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 12.4

### **Article 14. Property of the ITER Organization and Property of the Contractor**

- 14.1 Where for the purpose of the Contract the ITER Organization provides to the Contractor access to drawings, files, technical data, computer programs, source codes, and any other item of property, the ITER Organization remains the sole owner of any item provided.
- 14.2 These items may only be used by the Contractor for the purposes of the Contract. The distribution, reproduction or use by a third party without prior written approval by ITER Organization is strictly forbidden.
- 14.3 All property of the Contractor while at the ITER Organization premises shall be at the risk of the Contractor and the ITER Organization shall accept no liability for any loss or damage to that property or caused by that property except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee of the ITER Organization acting in the course of his employment. The ITER Organization shall accept liability only to the extent to which such loss or damage is so caused or contributed to.

### **Article 15. Intellectual Property Permits and Licenses**

- 15.1 The Contractor shall be responsible for obtaining all permits and licenses required for the implementation of the Contract under the laws and regulations in force at the place(s) at which the works under the Contract are to be carried out, except as otherwise agreed by the Parties.
- 15.2 If the Contactor is unable to obtain any of the permits and licenses referred to above, he shall forthwith inform the ITER Organization, who after consultation with the Contractor and with due regard to the effect of this situation upon the works, shall decide whether all or any of the works are to be discontinued.

### **Article 16. Intellectual Property and Information**

#### **16.1 Definitions**

The ITER Organization is submitted to the Annex on Information and Intellectual Property of the ITER Agreement. For the purposes of this Contract, the terms Information, Intellectual Property, Background Intellectual Property and Generated Intellectual Property shall have the meaning provided as follows, in compliance with the ITER Agreement and its IIP Annex:

**“Intellectual Property”** shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

- a. have been held in confidence by their owner;
- b. are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents;
- c. have not been made available by their owner to other parties without an obligation concerning confidentiality; and
- d. are not available to the receiving party without an obligation concerning confidentiality.

**“Information”** shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in the paragraph above.

**“Background Intellectual Property”** shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of the Contract, or outside the scope of this Contract.

**“Generated Intellectual Property”** shall mean Intellectual Property that is generated or acquired with full ownership by the ITER Organization pursuant to and in the course of the performance of this Contract.

## **16.2 Background Intellectual Property (hereinafter referred to as “BIP”)**

The Contractor shall declare in the Intellectual Property BIP declaration any Intellectual Property which is held by the Contractor prior to the signature of the Contract or outside its scope and which is required for carrying out the Contract or for using the supplied goods. The declaration shall provide detailed information on the origin and ownership of the BIP as well as any legal restrictions relating to its use of which the Contractor is aware. In cases where there is no BIP, a declaration specifically stating the non-existence of BIP should be submitted. The declaration of the BIP constitutes part of the Contract.

Any other BIP identified after the signature of the Contract may only be added to the BIP declaration after approval of the IO. The Contractor shall justify why the existence of such BIP could not be invoked prior to the signature of the Contract and the IO shall decide if the addition may be accepted.

In case where the BIP belongs to a third party, its use was granted to the Contractor under a license agreement, the Contractor shall obtain from that third party all the rights allowing use of the BIP in conformity with this license agreement.

If all or part of the BIP is confidential, it must be clearly identified so in the declaration and special additional measures may be agreed between the Contractor and the ITER Organization to preserve its confidentiality.

BIP shall remain the property of the Contractor or the third party that owns this Intellectual Property.

The Contractor shall provide the ITER Organization or shall ensure the ITER Organization is provided a worldwide, non-exclusive, irrevocable, royalty-free licence to use the BIP if the BIP is required for carrying out the Contract and/or if the BIP is needed for the use of the Generated Intellectual Property developed under the Contractor for the use of the goods supplied under the Contract with the right for the ITER Organization to sub-license to the ITER Members under the same conditions and with the right for the ITER Members to sub-license within their respective territory for the purpose of fusion research and development.

The Contractor shall grant on fair and reasonable conditions to any third party nominated by the ITER Organization for the purpose of fulfilling a contract with the ITER Organization a license to use the BIP if such BIP is needed for using the Generated Intellectual Property under the Contract or the goods supplied under the Contract.

### **16.3 Ownership of the results and of Generated Intellectual Property**

Any results (including reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials) or rights thereon, including copyright and other Intellectual Property rights, obtained/generated in the performance of the Contract (including those obtained/generated by subcontractors) shall be transmitted/reported without delay to the ITER Organization using the form provided in the Contract and shall be owned solely by the ITER Organization, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitations, in compliance with the Intellectual Property rights existing prior to the Contract being entered into.

The Contractor shall upon completion of the Contract, deliver all such results to the ITER Organization. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the Contract without the prior written consent of the ITER Organization.

The Generated Intellectual Property (GIP) resulting from the execution of the Contract is established by, inter alia, a comparison between the overall results of the Contract and the pre-existing knowledge and information incorporated in the BIP declaration. Any relevant information or knowledge not indicated in the BIP declaration will be considered as GIP. The Contractor shall therefore identify all the tasks leading to the results as well as the results themselves that can take the form of an invention, information, business confidential information, trade secrets, software, a database etc. The Contractor shall provide the GIP declaration as soon as the GIP is created.

If the Contractor wishes to use the GIP for his own needs, the ITER Organization shall grant permission on terms to be agreed.

The Contractor shall not publish articles relating to the supplies/services or refer to them when carrying out any services for others, or divulge information obtained from the ITER Organization, without the prior consent of the ITER Organization.

Intellectual Property The Parties acknowledge and expressly agree that the contract price is understood to be inclusive of all fees, royalties, and any other payment which may have been due by the ITER Organization to the Contractor for the above mentioned Intellectual Property rights.

The Contractor shall systematically and in due time report to the ITER Organization any creation of Generated IP using the form provided in to this Contract.

#### **16.4 Management of Intellectual Property**

The ITER Organization and the Contractor shall communicate to each other any information concerning Intellectual Property, which may impede the performance of the Contract.

At the first indication of any action and in particular the lodging of a claim for the Intellectual Property rights by a third party, even after performance of the Contract, the party implicated shall notify the other party thereof without delay, whereupon both Parties shall act jointly and shall exchange all information and evidence, which they may possess or obtain.

The fact that the supply or any part thereof is covered by an Intellectual Property owned by the Contractor, or in respect of which he possesses a license, shall not prevent the ITER Organization from repairing or causing repairs to be made to such a supply by whomsoever it may think fit, if the Contractor after having been consulted in the first instance cannot effect the repairs within a reasonable time limit and at a reasonable price.

In order to facilitate the management of Intellectual Property within the Contract and to ensure that Intellectual Property is duly protected where necessary, the Contractor shall report on the status of Intellectual Property in the context of the progress meetings with ITER Organization. During these progress meetings the Contractor shall give account of the status of the protection of the IP, creation of Generated IP, requests for access rights and any other IP related issue that may affect the proper execution of the Contract.

#### **16.5 Third Party Intellectual Property Rights**

The Contractor explicitly warrants and represents that in carrying out its activities in the Contract shall not infringe or misuse any third party Intellectual Property Rights.

The Contractor shall indemnify and hold harmless the ITER Organization concerning any claims against or costs, losses or damages, suffered or incurred by the ITER Organization, arising out of or in any way in connection with, any actual or alleged infringement or misuse of any Intellectual Property Rights:

- by the Contractor;
- arising out, or in any way in connection with, the carrying out of the Contractor's activities related to the Contract;
- arising out, or in any way in connection with, the exercise of Intellectual Property Rights granted to ITER Organization pursuant to this Contract.

### **Article 17. Confidentiality**

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

17.2 The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or

that of any third party any document or information not available publicly, even after completion of the tasks.

#### **Article 18. Use, distribution and publication of information**

- 18.1 The Contractor shall authorise the ITER Organization to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract..
- 18.2 Unless otherwise provided by the Special Conditions, the ITER Organization shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the ITER Organization.
- 18.3 Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the ITER Organization. It shall state that the opinions expressed are those of the Contractor only and do not represent the ITER Organization's official position.
- 18.4 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the ITER Organization has specifically given prior written authorisation to the contrary.

#### **Article 19. Taxation**

- 19.1 The Contractor shall have responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- 19.2 The Contractor recognises that the ITER Organization is exempt from all taxes and duties, including value added tax (VAT) pursuant to the international agreement on the privileges and immunities of the ITER Organization
- 19.3 The Contractor shall complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes, duties including VAT.
- 19.4 Only if the direct exemption of taxes and duties at the source is legally not possible, the Contractor shall invoice them. This applies in particular to VAT invoiced in France.
- 19.5 In cases of Article 19.4 above, invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

#### **Article 20. Force majeure**

- 20.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial

problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- 20.2 If either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- 20.3 Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- 20.4 The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **Article 21. Subcontracting**

- 21.1 The Contractor shall not subcontract without prior written authorisation from the ITER Organization nor cause the Contract to be performed in fact by third parties.
- 21.2 Even where the ITER Organization authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the ITER Organization under the Contract and shall bear exclusive liability for proper performance of the Contract.
- 21.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the ITER Organization is entitled by virtue of the Contract.

#### **Article 22. Assignment**

- 22.1 The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the ITER Organization.
- 22.2 In the absence of the above authorisation or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the ITER Organization.

#### **Article 23. Termination by the ITER Organization**

- 23.1 The ITER Organization may, after giving the Contractor 15 days' prior notice, terminate the Contract in any of the following cases:
- a. where the Contractor fails to fulfil its contractual obligations, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;
  - b. where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation ;
  - c. where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of res judicata;
  - d. where the Contractor has been guilty of grave professional misconduct proven by any means

which the ITER Organization can justify;

- e. where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- f. the Contractor has been convicted of fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the ITER Organization's financial interest;
- g. where the Contractor was guilty of misrepresentation in supplying the information required by the ITER Organization as a condition of participation in the Contract procedure or failed to supply this information;
- h. where a change in the Contractor's legal, equity, technical or organizational situation could, in the ITER Organization's opinion, have a significant effect on the performance of the Contract. The decision shall be substantiated by a report of independent auditors to be nominated by the ITER Organization;
- i. where the Contractor is unable, through his own fault, to obtain any permit or license required for performance of the Contract.

23.2 Termination shall be without prejudice to any other rights or powers of the ITER Organization and the Contractor under the Contract. The ITER Organization may, thereafter, conclude a Contract with a third party to remedy the failures of the Contractor. The Contractor's liability for delay in completion shall immediately cease upon termination without prejudice to any liability there under that may already have occurred.

23.3 The ITER Organization shall, upon the issue of the notice of termination of the Contract, instruct the Contractor to take immediate steps to bring the implementation of the supplies to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

23.4 In the event of termination, the ITER Organization shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the work performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the ITER Organization as at the date of termination of the Contract.

23.5 The ITER Organization shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the ITER Organization shall be entitled to recover from the Contractor the extra costs, if any, of providing the supplies or shall pay any balance due to the Contractor prior to the termination of the Contract.

23.6 If the ITER Organization terminates the Contract it shall be entitled to recover from the Contractor any loss it has suffered as a result of the termination.

#### **Article 24. Termination by convenience by the ITER Organization**

24.1 The ITER Organization may, of its own volition and without being required to pay compensation, terminate the Contract by serving a 15 days formal prior notice. Should the ITER Organization terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services delivered and objectively justified irrevocable commitments entered into before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all

appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up technical and financial reports for services rendered and irrevocable commitments up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

- 24.2 The ownership of all documents, drawings, Intellectual Property rights, partially delivered services and unfinished work paid for by the ITER Organization under the provisions of this contract shall be vested in or transferred to the ITER Organization.

#### **Article 25. Termination by the Contractor**

- 25.1 If the ITER Organization is in material breach of its obligation under this Contract and pending that the Contractor can provide evidence that reasonable measures have been taken to eliminate or limit the consequences of said the ITER Organization's omissions or delays on his own performance, the Contractor may give notice to the ITER Organization requesting the ITER Organization to remedy to the said failure within 60 calendar days. Termination may only take place after the Parties have made all efforts to agree on corrective measures. Should the failure of the ITER Organization be not corrected, the Contractor shall send a letter mentioning the terminations reasons. Termination cannot take effect before 6 months unless otherwise agreed between the Parties. The Contractor may only claim any sums due by the ITER Organization for the Services performed prior to the effective date of termination of the Contract. The ITER Organization shall not be liable to pay compensation for loss of profits or any consequential damages.

#### **Article 26. Substantial errors, irregularities and fraud attributable to the Contractor**

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the ITER Organization may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor in application of Article 21 above, in proportion to the seriousness of the errors, irregularities of fraud.

#### **Article 27. Joint and several liability**

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

### **Article 28. Insurances**

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

### **Article 29. Liquidated damages**

- 29.1 Liquidated Damages payable under this Contract are the following:
- Liquidated Damages are agreed genuine pre-estimates of the losses incurred by the ITER Organization that may be reasonably anticipated from such failure to perform obligations;
  - The amount of the Liquidated Damages will be a debt due by the Contractor to the ITER Organization;
  - The ITER Organization shall have the right to deduct the amount accrued as Liquidated Damages from any debt or money due by the ITER Organization to the Contractor.
- 29.2 Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the ITER Organization's right to terminate the Contract, the ITER Organization shall impose liquidated damages of a percentage of the contract price per calendar day of delay. In the case of deliverable-based contract, liquidated damages shall apply to each milestone in the amount of 0.2% of total value of each milestone payment detailed per calendar day of delay of a milestone its value, unless otherwise stipulated in the Special Conditions, with a maximum cumulative ceiling of 10% of the value of total contract price.
- 29.3 The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the ITER Organization within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

### **Article 30. Liquidated damages for non-availability (fee-based contracts)**

- 30.1 If, during performance of the Contract, the Services are not available as required the Contractor shall pay liquidated damages of EUR 500.00 (five hundred euros) for each commenced calendar day for service not performed. Liquidated damages shall also be due if the service is partially available but the failure to provide the full availability of the service causes delay or results in the ITER Organization incurring additional costs.
- 30.2 The maximum amount of liquidated damages for non-availability applicable in any year shall be 10% of the annual price for the Service.

### **Article 31. Amendments**

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

### **Article 32. Suspension of the Contract**

Without prejudice to the ITER Organization's right to terminate the Contract, the ITER Organization may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The ITER Organization may within sixty (60) calendar days following suspension give notice to the Contractor to resume the work suspended or terminate the Contract following Article 21. If the suspension under this article is cancelled or the period of the notification or any extension thereof expires, the Contractor shall resume work. The ITER Organization will make an equitable adjustment in the delivery schedule or contract price, or both, and the Contract shall be modified, in writing, accordingly if 1) the suspension results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of the Contract; and 2) the Contractor asserts its right to the adjustment within thirty (30) days after receiving it.

### **Article 33. Settlement of disputes**

- 33.1 In the event of any dispute arising out of or in connection with the present Contract, the parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce dispute settlement mediation ICC Mediation Rules.
- 33.2 If the dispute has not been settled pursuant to the said ICC Mediation Rules within 45 days following the filing of a request for mediation or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce of Paris by one or more arbitrators appointed in accordance with the said Rules of Arbitration. The arbitration proceedings in English shall take place in Paris, unless otherwise agreed by the parties.

### **Article 34. Ethics clauses**

- 34.1 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the ITER Organization's prior approval. He may not commit the ITER Organization in any way without its prior written consent.
- 34.2 For the duration of the Contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores.
- 34.3 The Contractor may accept no payment connected with the Contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the ITER Organization.
- 34.4 The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the Contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.
- 34.5 The Contract shall govern the parties' use of all reports and documents drawn up, received or presented by them during the execution of the Contract.

- 34.6 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the ITER Organization may, regardless of injury, terminate the Contract without further notice and without the Contractor having any claim to compensation.
- 34.7 The ITER Organization reserves the right to suspend or cancel the Contract if corrupt practices of any kind are discovered at any stage of the award process and if the Contractor fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a Contract or implementation of a Contract already concluded with the ITER Organization.
- 34.8 Such unusual commercial expenses are commissions not mentioned in the main Contract or not stemming from a properly concluded Contract referring to the main Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 34.9 The Contractor undertakes to supply the ITER Organization on request with all supporting documents relating to the conditions of the Contract's execution. The ITER Organization may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

#### **Article 35. Financial audits**

- 35.1 The Contractor will allow the ITER Project designated auditors to audit the implementation of the Contract and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Contract. These audits may take place up to 5 years after the final payment.
- 35.2 To this end, the Contractor undertakes to give appropriate access, with three day notice, to designated auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the Contract and to take all steps to facilitate their work. Access given shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination.

#### **Article 36. Performance Assessment**

- 36.1 Three (3) months before the end of each year of the Contract, an assessment of the completion of the work may be performed by the ITER Organization (e.g. technical quality of the work, schedule compliance, capability to solve technical issues).

Such assessment shall be based on the following indicators:

- number of revisions / versions before approval of the deliverables;
- percentage deliveries on schedule;
- continuity of services;

- proper implementation of provisions for replacement of personnel.

### **Article 37. Internet Policy Compliance**

- 37.1 The Contractor shall observe the following stipulations concerning the Internet Access Policy:
- a. The Contractor must ensure that his employees comply with the ITER Organization's Internet access services and any restrictions and requirements designed to protect the ITER Organization's information, its computing resources and reputation;
  - b. On-site Contractor's staff using the ITER Organization Internet access service shall in particular:
    - Ensure that their use of the service is wholly consistent with the purpose of the contract;
    - Ensure that all communications are clearly marked with the name of the Company using them;
    - Ensure that their use of the service does not bring the ITER Organization into disrepute;
    - Notify immediately the ITER Organization's Security Officer of any actual or suspected security threat to the ITER Organization's automation resources.
- 37.2 On-site Contractor's staff using the ITER Organization Internet access service shall not:
- a. Attempt to bypass any of the ITER Organization's security mechanisms either from within or outside the ITER Organization's premises.
  - b. Violate any national law by using the service. These laws generally prohibit the unauthorized alteration, modification, damage, destruction, or access to software or information, and also theft of services, fraud and embezzlement by using automated systems.
  - c. Make copies of copyrighted material, store such copies on the ITER Organization systems, place copies on the Internet or transmit them over the ITER Organization's networks.
  - d. Use the service for financial gain or private purposes (for example, conduct private business).
  - e. Use the service to conduct company business other than that covered by the Contract.
  - f. Use the service to intentionally copy computer programs from the Internet.
  - g. Use the service in any way that would expose the ITER Organization to claims of civil liability, for instance by:
    - Transmitting defamatory (libelous or scandalous) statements;
    - Transmitting, receiving or copying obscene material;
    - Using offensive languages.
- 37.3 The ITER Organization's System Administrator may access and view an electronic mail, if this is necessary when investigating or correcting an operational problem. Consequently the ITER Organization shall not guarantee the privacy or confidentiality of the correspondence and use of the Internet access service by the Contractor's employees. Verification of same may be made each year by the ITER Organization by carrying out a random check in order to verify the correct use of access to the Internet.