



FUSION FOR ENERGY

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

THE EXECUTIVE COMMITTEE

DECISION OF THE EXECUTIVE COMMITTEE APPROVING THE AMENDED MODEL GRANT AGREEMENT FOR SINGLE BENEFICIARIES

THE EXECUTIVE COMMITTEE,

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it¹ (hereinafter "the Statutes") and in particular Article 7(1) thereof,

HAVING REGARD to the Decision of the Governing Board of 18 December 2007² delegating the approval of the model grant agreement and its general conditions to the Executive Committee,

HAVING REGARD to the approval by the Executive Committee of the model grant agreement for single beneficiaries by written procedure on 26 May 2008³,

HAVING REGARD to the Decision of the Governing Board of 31 October 2008⁴ endorsing the report of the Ad-Hoc Group on Fusion for Energy Funding schemes.

Whereas:

- (1) The Executive Committee should examine the model grant agreement with regard to the reimbursement of management costs and the removal of its 7% limitation (Article II.14).
- (2) The Executive Committee should review the wording of the model grant agreement with regard to the liability clause (Article II.37).

¹ O.J. L 90, 30.03.2007, p. 58.

² F4E(07)-GB04-13, Adopted 18/12/2007

³ F4E(08)-EC-WP01, Adopted 26/05/2008

⁴ F4E(08)-GB07-09, Adopted 31/10/2008.

HAS ADOPTED THIS DECISION:

Article 1

Article II.14 (“upper funding limits”) of the grant agreement of single beneficiaries is amended as follows:

1. For research and technological development activities, Fusion for Energy’s financial contribution may reach a maximum of 40% of the total eligible costs.
2. For demonstration activities, Fusion for Energy’s financial contribution may reach a maximum of 40% of the total eligible costs.
3. For other specific activities not covered by paragraphs 1 and 2, Fusion for Energy's financial contribution may reach a maximum of 100% of the total eligible costs. Those activities shall be described in Annex I together with an indication of the associated costs.

Paragraphs 1 to 3 shall apply also in the case of actions where flat rate financing is used for the whole or for part of the action.

4. For management activities Fusion for Energy's financial contribution may reach a maximum of 100% of the total eligible costs. Those management activities include the legal, financial and administrative management including obtaining certificates on the financial statements and on the methodology and costs relating to financial and technical audits.

Article 2

Article II.37 (“liability”) of the grant agreement of single beneficiaries is amended as follows:

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

- (d) as a result of a damage caused due to the use of the results of the action by the beneficiary or by any third party to whom the beneficiary made the results of the action available, or
 - (e) as a result of a damage caused by any products, processes or services separately or subsequently developed by the beneficiary on the basis of foreground resulting from the action.
4. In the event of any action brought by a third party against the beneficiary in connection with the performance of this grant agreement, Fusion for Energy may assist the latter upon written request. The costs incurred by Fusion for Energy in this connection shall be borne by the beneficiary.
- In the event of any action brought by a third party against Fusion for Energy in connection with the performance of this grant agreement, Fusion for Energy may request in writing the beneficiary to assist Fusion for Energy. The costs incurred by the beneficiary in this connection shall be borne by Fusion for Energy.
5. The beneficiary shall bear sole responsibility for ensuring that its acts within the framework of this action do not infringe third parties rights.
6. Fusion for Energy shall not be held liable for any consequences arising from the proper exercise of its rights under this grant agreement and its rights and obligations under the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project⁵ or any other applicable law.

Article 3

This Decision shall have immediate effect.

Done at Barcelona, 25th June 2009.

For the Executive Committee

Karl Tichmann
Chair of the Executive Committee

Annex: Amended Model Grant Agreement for Single Beneficiaries

⁵ OJ L 358 of 16.12.2006, p.73.

MODEL GRANT AGREEMENT FOR SINGLE BENEFICIARIES

**[TITLE OF ACTION]
[ACRONYM OF ACTION]
ACTION NO [_____]¹**

THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ("Fusion for Energy") represented for the purposes of signature of this agreement by Didier Gambier², Director of Fusion for Energy,

of the one part,

and

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

represented for the purposes of signature of the agreement by [name, forename and function], or his/her/their authorised representative ("the beneficiary"),

of the other part,

¹ The footnotes contained on this page and in the specific conditions are internal instructions only and should be deleted from the grant agreement before signature.
² Or his authorised representative.
³ Delete if the beneficiary is a natural person or a public body.
⁴ Delete if the beneficiary is a public body (for natural persons, also indicate the number of their identity card or, failing that, of their passport or equivalent.)

hereafter referred to as “the Parties”

HAVE AGREED,

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

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

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

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

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

I. Specific Conditions

Article I.1

Scope

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

Article I.2

Duration and start date of the action

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

Article I.3

Reports, deliverables and time schedule

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

- P1 from month 1 to month X a [*periodic report*] [*periodic report for deliverables 1 to X*]
- P2 from month X+1 to month Y a [*periodic report*] [*periodic report for deliverables X+1 to Y*]
- P3 from month Y+1 to month Z a [*periodic report*] [*periodic report for deliverables Y+1 to Z*]
- PX [.....]

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

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

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

⁵ Note: in cases where the start date of the action is before the grant agreement is signed by both parties, i.e. before it has entered into force, according to Article 101 of the Fusion for Energy's Financial Regulation, it is required that the beneficiary can demonstrate to Fusion for Energy the need to start the action before the agreement is signed.

Article I.4
Fusion for Energy financial contribution

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

Name of account holder:

Name of bank:

Account reference: IBAN/sort code and number

Article I.5
Payment arrangements

1. A pre-financing of EUR [*insert amount*] (*[insert amount in words]*⁶ EURO) shall be paid to the beneficiary within 45 days following the date of entry into force of this grant agreement.
2. Interim payments shall be made to the beneficiary following the procedures laid down in Articles II.4 to II.6.
3. A final payment shall be made to the beneficiary following the procedures laid down in Articles II.4 to II.6.

Article I.6
Special clauses

[*No special clauses apply to this grant agreement.*]

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

[*I.6.[.] A share of [x%] of [An amount of € x of] the pre-financing referred to in Article I.5. shall be retained by Fusion for Energy until the beneficiary provides to Fusion for Energy a financial guarantee equivalent to that [share][amount].*]⁷

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

⁷ Payment of the beneficiary's pre-financing subject to obtaining a financial guarantee and where the pre-financing exceeds EUR 60 000 and 80% of the total amount of the grant. The authorising officer

[I.6.[.] The reimbursement rate regarding [research and technological development activities],[and][demonstration activities],[and][other activities] may reach a maximum of [insert percentage % (< than the one mentioned in Article II.14)]

[I.6.[.] [Name of the department/institute etc.], which is an integral part of the beneficiary has an analytical accounting system which allows it to identify its actual indirect costs. Therefore, and without prejudice to the provisions of Article II.13, [name of the department/institute etc.] may declare indirect costs in Fusion for Energy grant agreements based on its actual indirect costs, despite the fact that the beneficiary has opted for a flat rate.]

[I.6.[.] The percentage of indirect costs is fixed at [x<20%] of the total direct eligible cost excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the beneficiary.]

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

[I.6.[.] 1. The following third parties are linked to the beneficiary

– [name of the legal entity]

– [name of the legal entity]

2. The beneficiary may charge costs incurred by the above-mentioned third parties in carrying out the action, in accordance with the provisions of this grant agreement.

The third parties shall identify the costs to the action mutatis mutandis in accordance with the provisions of Part B of this grant agreement. Each third party shall charge its eligible costs in accordance with the principles established in Articles II.12 and II.13. The beneficiary shall provide to Fusion for Energy:

– an individual financial statement from each third party in the format specified in Form A. These costs shall not be included in the beneficiary's Form A;

– certificates on the financial statements and/or on the methodology from each third party in accordance with the relevant provisions of this grant agreement;

– a summary financial report consolidating the sum of the eligible costs borne by the third parties and the beneficiary, as stated in their individual financial statements .

When submitting reports referred to in Article II.4, the beneficiary shall identify work performed and resources deployed by each third party.

responsible may waive this obligation for public bodies and international organisations, pursuant to Article 170 §5 of Fusion for Energy's Implementing Rules of the Financial Regulation.

3. *The eligibility of the third parties' costs charged by the beneficiary is subject to controls and audits of the third parties, in accordance with Articles II.17 and II.18.*
4. *The beneficiary shall retain sole responsibility towards Fusion for Energy for the third parties linked to it. The beneficiary shall ensure that the third parties abide by the provisions of the grant agreement.*
5. *Any change regarding a third party during the action shall be agreed in writing by Fusion for Energy.]*

Article I.7
Communication

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

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

Grant Agreement No. [...]

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

c/Josep Pla 2

Torres Diagonal Litoral - Building B3

08019 Barcelona

Spain

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

[insert contact address]

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

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

For the beneficiary: *[insert email address]*

3. In case of refusal of the notification or absence of the recipient, the beneficiary is deemed to have been notified on the date of the latest delivery, if notification to the beneficiary has been sent to one of the addresses mentioned in paragraphs 1 and 2 and to its legal representative.
4. Any communication or request relating to the processing of personal data (Article II.11) shall be submitted using the addresses for Fusion for Energy identified in paragraphs 1 and 2.

Article I.8
Applicable law and competent court

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

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

Article I.9
Entry into force of the grant agreement

This grant agreement shall enter into force on the date when the last Party signs⁸.

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

For the beneficiary done at [*insert place*]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

For Fusion for Energy done at Barcelona:

Name of legal representative:

Stamp of the organisation

Signature of legal representative:

Date:

⁸ The recommended practice is for Fusion for Energy to sign last.

II. General Conditions

Article II.1 *Definitions*

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

9. "Background" shall mean Intellectual Property or Information which is held by the beneficiary prior to its signature of the present grant agreement or outside its scope and which is needed for carrying out the action or for using the foreground.
10. "Foreground" shall mean Information and Intellectual Property whether or not protectable generated in the course of the execution of the present grant agreement including through subcontracting.
11. "Dissemination" shall mean the disclosure of the foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of these results in any medium.
12. "Nuclear applications" shall mean applications involving the production or use of nuclear energy or intended, either directly or indirectly, for the production or use of such energy, including nuclear energy research.
13. "Fair and reasonable conditions" shall mean appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged.
14. "Improvements" shall mean any technological advancement of the foreground, including derivative works.
15. "Tasks and activities of Fusion for Energy" shall mean tasks and activities of Fusion for Energy defined in the Council decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (Council Decision No. 2007/198/Euratom).

Part A

Implementation of the Action

SECTION 1

GENERAL PRINCIPLES

Article II.2

Performance obligations

The beneficiary shall:

- (a) carry out the work identified in Annex I, in accordance with the terms and conditions of this grant agreement. However, where it is necessary for the implementation of the action it may call upon third parties to carry out certain elements identified in Annex I;
- (b) ensure that any contract related to the action, entered into between the beneficiary and any third party contain provisions that this third party, including the auditor providing the certificate on the financial statements or on the methodology, shall have no rights vis-à-vis Fusion for Energy under this grant agreement;
- (c) ensure that the rights of Fusion for Energy and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the Fusion for Energy financial contribution, on the same terms and conditions as those indicated in this grant agreement;
- (d) ensure that the conditions applicable to it under m), n) and p) of this Article; Articles II.3, II.4.5, II.9, II.10, II.11, II.12, II.17, II.18, Part C, II.36 and II.37 are also applicable to any third party whose costs are claimed under the action according to the provisions of this grant agreement;
- (e) ensure that the tasks assigned to it are correctly and timely performed;
- (f) provide all detailed data requested by Fusion for Energy for the purposes of the proper administration of this action;
- (g) inform Fusion for Energy in due time of:
 - (i) the names of the person(s) who shall manage and monitor its work, and its contact details as well as any changes to that information;
 - (ii) any event which might affect the implementation of the action and the rights of Fusion for Energy;

- (iii) any change in its legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control;
 - (iv) any circumstance affecting the conditions of participation referred to in the work programme or in the call for proposals or of any requirements of this grant agreement, especially if and when any eligibility criteria cease(s) to be met during the duration of the action.
- (h) provide Fusion for Energy including the European Anti-Fraud Office (OLAF) and Court of Auditors directly with all information requested in the framework of controls and audits;
 - (i) take part in meetings concerning the supervision, monitoring and evaluation of the action which are relevant to it;
 - (j) allow Fusion for Energy to take part in meetings concerning the action;
 - (k) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this grant agreement and inform Fusion for Energy of any unavoidable obligations which may arise during the duration of the grant agreement which may have implications for any of its obligations under the grant agreement;
 - (l) ensure that it complies with the provisions of the state aid framework;
 - (m) ensure that it complies with the Annex on Information and Intellectual Property of the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project⁹;
 - (n) carry out the action in accordance with fundamental ethical principles;
 - (o) have regard to the general principles of the Commission's Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers, if any, recruited for the action;
 - (p) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the action.

⁹ OJ. L 358 of 16.12.2006, p.73.

SECTION 2 MONITORING, REPORTING AND PAYMENTS

Article II.3 Action monitoring and review

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

Such action reviews may involve review meetings. The beneficiary undertakes to attend such meetings. Costs incurred by the beneficiary in relation to these meetings shall be eligible under the activity referred to in Article II.14.4.

5. With respect to the Description of Work (Annex I), the action review shall objectively assess the following:
 - (a) the degree of fulfilment of the action work plan for the relevant period and of the related milestones and deliverables;
 - (b) the continued relevance of the objectives to Fusion for Energy;
 - (c) the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - (d) the management procedures and methods of the action;
 - (e) the beneficiary's plan for the use and dissemination of foreground, including the status of the protection of rights, creation of foreground, requests for access, licensing and any other related activities or issues that concern the proper execution of Part C of this grant agreement (hereinafter “the plan for the use and dissemination of foreground”).
6. Fusion for Energy may be assisted in action reviews by external experts. Prior to the review, Fusion for Energy shall communicate to the beneficiary the identity of the appointed experts. The beneficiary shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.

7. A report on the outcome of the action review shall be drawn up. It shall be sent by Fusion for Energy to the beneficiary, who may make observations thereon within one month of receiving it.
8. On the basis of the outcome of the action review, Fusion for Energy will take all appropriate measures which it considers necessary, including:
 - (a) to accept or reject the deliverables;
 - (b) to allow the action to continue without modification of Annex I or with minor modifications;
 - (c) to consider that the action can only continue with major modifications;
 - (d) to suspend the action in accordance with Article II.8;
 - (e) to initiate the termination of the grant agreement in accordance with Article II.33;
 - (f) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.

Article II.4
Reports and deliverables

1. The beneficiary shall submit a periodic report to Fusion for Energy for each reporting period, set out in Article I.3, within 30 days after the end of each respective period. The reporting shall comprise:
 - (a) an activity report, including a short publishable summary, of the progress of the work made towards the objectives of the action, including the attainment of milestones and deliverables. This report shall describe the differences between the work actually carried out and the work foreseen in Annex I as well as propose, if necessary, any modifications to the action;
 - (b) an explanation of the use of the resources including subcontracts;
 - (c) a financial statement, and
 - (d) a report on implementation of the plan for the use and dissemination of foreground.
2. The beneficiary shall submit any other reports or deliverables required by any Annex to this grant agreement within the period specified therein.
3. The beneficiary shall submit a final report to Fusion for Energy within 60 days after the end date of the action. The report shall comprise:
 - (a) a final activity report, including a short publishable summary, covering all the work, objectives, results and conclusions of the action and

- (b) a financial statement, from the beneficiary together with a summary financial report consolidating the claimed Fusion for Energy contribution of the beneficiary in an aggregate form.
4. A certificate on the financial statements shall be submitted for claims of interim payments and final payments when the amount of the Fusion for Energy financial contribution claimed by the beneficiary under the form of reimbursement of costs is equal to or superior to EUR 375 000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted. This certificate shall be forwarded in the form of a detailed description verified as factual by its external auditor (Form B - Annex IV). However, for actions of a duration of 2 years or less, the certificate on the financial statements shall be submitted only for claims on final payments when the amount of the Fusion for Energy financial contribution claimed by the beneficiary, in the form of reimbursement of costs, is equal to or superior to EUR 375 000 when cumulated with all previous payments.

Certificates on the financial statements shall certify that the costs claimed and the receipts declared during the period for which they are provided, meet the conditions required by this grant agreement. Where third parties' costs are claimed under this grant agreement, such costs shall be certified in accordance with the provisions of this Article. The auditor shall include in its certificate that no conflict of interest exists between itself and the beneficiary in establishing this certificate.

Fusion for Energy may, at its sole discretion, accept at the request of the beneficiary, that it submits a certificate on the methodology for the calculation of costs, which it used to prepare its claims with regard to both personnel and indirect costs, and the related control systems. This certificate shall be forwarded in the form of a detailed description verified as factual by its external auditor (Form C - Annex IV). When this certificate is accepted by Fusion for Energy, the requirement to provide an intermediate certificate on the financial statements for claims of interim payments shall be waived.

Certificates on the financial statements and on the methodology shall be prepared and certified by an external auditor and shall be established in accordance with the terms of reference attached as Annex IV to this grant agreement. The beneficiary is free to choose any qualified external auditor, including its usual external auditor, provided that the cumulative following requirements are met:

- (a) the auditor shall be independent from the beneficiary;
- (b) the auditor shall be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8th Council Directive on statutory audits of annual accounts and consolidated accounts¹⁰ or any Community legislation replacing this Directive. In case the beneficiary is established in a third country it shall comply with national regulations in the same field and the certificate on the financial statement provided shall consist of an independent report of factual findings based on procedures specified by Fusion for Energy.

¹⁰ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

Public bodies, secondary and higher education establishments and research organisations may opt for a competent public officer to provide their certificate on the financial statements and on the methodology, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer, in particular regarding the preparation of the financial statements, can be ensured.

Certificates by external auditors according to this Article do not affect the liability of the beneficiary nor the rights of Fusion for Energy arising from this grant agreement.

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

Article II.5

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

1. At the end of each reporting period, referred to in Article I.3, Fusion for Energy shall evaluate periodic reports and deliverables required by the provisions of Annex I and disburse the corresponding payments within 105 days of their receipt unless the time-limit, the payment or the action has been suspended.
2. Payments shall be made after Fusion for Energy's approval of periodic reports and/or deliverables. The absence of a response from Fusion for Energy within this time-limit shall not imply its approval. However, Fusion for Energy should send a written reply to the beneficiary in accordance with paragraph 3. Fusion for Energy may reject reports and deliverables even after the time-limit for payment. Approval of the reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and do not imply exemption from any audit or review.
3. After reception of the periodic reports Fusion for Energy may:
 - (a) approve the reports and deliverables, in whole or in part or make the approval subject to certain conditions.
 - (b) reject the reports and deliverables by giving an appropriate justification and, if appropriate, start the procedure for termination of the grant agreement in whole or in part.
 - (c) suspend the time limit if one or more of the reports or appropriate deliverables have not been supplied, or are not complete or if some clarification or

additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted. The suspension will be lifted from the date when the last report, deliverable or the additional information requested is received by Fusion for Energy, or where Fusion for Energy decides to proceed with an interim payment in part in accordance with paragraph 4.

Fusion for Energy shall inform the beneficiary in writing of any such suspension and the conditions to be met for the lifting of the suspension.

Suspension shall take effect on the date when notice is sent by Fusion for Energy.

- (d) suspend the payment at any time, in whole or in part for the amount intended for the beneficiary:
 - (i) if the work carried out does not comply with the provisions of the grant agreement;
 - (ii) if the beneficiary has to reimburse to its national state an amount unduly received as state aid;
 - (iii) if the provisions of the grant agreement have been infringed or if there is a suspicion or presumption thereof, in particular in the wake of any audits and checks provided for in Articles II.17 and II.18.;
 - (iv) if there is a suspicion of irregularity committed by the beneficiary in the performance of the grant agreement;
 - (v) if there is a suspected or established irregularity committed by the beneficiary in the performance of another grant agreement funded by the budget of Fusion for Energy or the general budget of the European Communities. In such cases, suspension of the payments will occur where the irregularity (or suspected irregularity) is of a serious and systematic nature which is likely to affect the performance of this grant agreement.

When Fusion for Energy suspends the payment the beneficiary shall be duly informed of the reasons why payment in whole or in part will not be made.

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

Interest on late payment shall cover the period from the final date of the period for payment, exclusive, up to the date when the payment is debited to Fusion for Energy's account, inclusive. The interest shall not be treated as a receipt for the action for the purposes of determining the final grant. Any such interest payment is not considered as part of the Fusion for Energy financial contribution.

6. The suspension of the time-limit, of payment or of the action by Fusion for Energy may not be considered as late payment.
7. At the end of the action, Fusion for Energy may decide not to make the payment of the corresponding Fusion for Energy financial contribution subject to one month's written notice of non receipt of a report, of a certificate on the financial statements or of any other action deliverable.

Article II.6 ***Payment modalities***

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

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

Where the amount of the corresponding Fusion for Energy's financial contribution is more than any amount already paid to the beneficiary, Fusion for Energy shall pay the difference as the final payment within the limit of Articles I.4.1 and II.15.

2. The total amount of the pre-financing and interim payments shall not exceed 90% of the maximum Fusion for Energy's financial contribution defined in Article I.4.1.
3. Payments by Fusion for Energy shall be made in Euro.
4. Costs shall be reported in Euro. In case the beneficiary keeps accounts in currencies other than the Euro it shall report costs by using, either the conversion rate published by the European Central Bank that would have applied on the date that the actual costs were incurred, or its rate applicable on the first day of the month following the end of the reporting period. In case the beneficiary has an account in Euro it shall convert costs incurred in other currencies according to their usual accounting practices.
5. The bank account mentioned in Article I.4.3 shall allow Fusion for Energy's financial contribution to be identified. Otherwise, the accounting methods of the

beneficiary or intermediaries shall make it possible to identify Fusion for Energy's financial contribution.

6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.
7. Payments by Fusion for Energy shall be deemed to be effected on the date when they are debited from Fusion for Energy's account.

SECTION 3 IMPLEMENTATION

Article II.7 Subcontracting

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

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

3. Where, as laid down in Annex I, it is necessary for the beneficiary to subcontract certain elements of the work to be carried out, the following conditions shall be fulfilled:
 - (a) subcontractors may only cover the execution of a limited part of the action;
 - (b) recourse to the award of subcontracts shall be duly justified in Annex I having regard to the nature of the action and what is necessary for its implementation;
 - (c) recourse to the award of subcontracts by the beneficiary may not affect the rights and obligations of the beneficiary and Fusion for Energy laid down in Part C of this grant agreement regarding background and foreground;
 - (d) The specific tasks to be subcontracted, the subcontractor and an estimation of the costs shall be indicated in Annexes I and II;
 - (e) Any change, removal or addition of a subcontractor during the action shall be agreed in writing by Fusion for Energy.

4. Any subcontract, the costs of which are to be claimed as an eligible cost, shall be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment.¹¹
5. The beneficiary may use external support services for assistance with minor tasks that do not represent per se action tasks as identified in Annex I.

Article II.8 ***Suspension of the action***

1. The beneficiary shall immediately inform Fusion for Energy of any event affecting or delaying the implementation of the action.
2. The beneficiary can propose to suspend the whole or part of the action if force majeure or exceptional circumstances render its execution excessively difficult or uneconomic. The beneficiary shall inform Fusion for Energy without delay of such circumstances, including full justification and information related to the event, as well as an estimation of the date when the work on the action will begin again.
3. Fusion for Energy may suspend the whole or part of the action where it considers that the beneficiary is not fulfilling its obligations according to this grant agreement. The beneficiary shall be informed without delay of the justification for such an event and the conditions necessary to reinstate the work again. This suspension takes effect 10 days after the receipt of the notification by the beneficiary.
4. During the period of suspension, no costs may be charged to the action for carrying out any part of the action that has been suspended.
5. The suspension of the whole or part of the action may be lifted once the Parties to the grant agreement have agreed on the continuation of the action and, as appropriate, any necessary modification, including extension of the duration of the action, has been identified by means of a written amendment.

Article II.9 ***Confidentiality***

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

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

2. Paragraph 1 no longer applies where:
 - (a) the confidential information becomes publicly available by means other than a breach of confidentiality obligations;

¹¹ For public bodies, the award procedure shall comply with any national legislation applicable to them.

- (b) the disclosing Party subsequently informs the recipient that the confidential information is no longer confidential;
 - (c) the confidential information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
 - (d) the disclosure or communication of the confidential information is foreseen by other provisions of this grant agreement or as agreed by the Parties.
3. Without prejudice to the preceding paragraphs, the treatment of data, documents or other material which are classified (“classified information”) or subject to security restrictions or export- or transfer- control, shall follow the applicable rules established by the relevant national and Community legislation for such information, including Fusion for Energy’s internal rules for handling classified information.¹²
 4. Confidential information shall be treated by the Parties with a due regard to the obligations concerning the protection of Intellectual Property and subject to the provisions laid down in Part C of this grant agreement.

Article II.10 ***Information and communication***

1. Without prejudice to Article II.29, the beneficiary shall, throughout the duration of the action, take appropriate measures to raise awareness about the action and to highlight Fusion for Energy’s financial support. Any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), shall specify that the action has received Fusion for Energy’s research funding and display the “F4E” logo. This obligation to use the “F4E” logo in respect of actions to which Fusion for Energy contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the logo, or of any similar trademark, whether by registration or by any other means. Under these conditions, the beneficiary is exempted from the obligation to obtain prior permission from Fusion for Energy to use the logo. Further detailed information and downloadable files of the “F4E” logo can be found on Fusion for Energy’s web page.

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

2. Fusion for Energy shall be authorised to publish, in whatever form and on or by whatever medium, the following information:
 - (a) the name of the beneficiary;
 - (b) contact addresses of the beneficiary;

¹² Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1 (as last amended by Decision 2006/548/EC, Euratom, OJ L 215, 5.8.2006, p. 38).

- (c) the general purpose of the action in the form of the summary provided by the beneficiary;
- (d) the amount and rate of Fusion for Energy's financial contribution granted to the action;
- (e) the geographic location of the activities carried out;
- (f) the list of patent (applications) relating to foreground;
- (g) the details/references and the abstracts of scientific publications relating to foreground and the published version or the final manuscript accepted for publication;
- (h) the publishable reports submitted to it;
- (i) any picture or any audiovisual or web material provided to Fusion for Energy in the framework of the action.

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

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

Article II.11 ***Processing of personal data***

1. All personal data contained in the grant agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed by Fusion for Energy solely in connection with the implementation and follow-up of the grant agreement and the evaluation and impact assessment of Fusion for Energy's activities, including the use and dissemination of foreground, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with Community legislation, Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it¹³ and this grant agreement.
2. The beneficiary may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to Fusion for Energy. The beneficiary may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

¹³ OJ. L 90 , 30.03.2007, p. 58.

3. For the purposes of this grant agreement, the person identified in Article I.7 shall be the contact person for Fusion for Energy in matters relating to the processing of personal data.

Part B

Financial Provisions

SECTION 1

GENERAL FINANCIAL PROVISIONS

Article II.12

Eligible costs of the action

1. Costs incurred for the implementation of the action shall meet the following conditions in order to be considered eligible:
 - (a) they shall be actual;
 - (b) they shall be incurred by the beneficiary;
 - (c) they shall be incurred during the duration of the action, with the exception of costs incurred in relation to final activity reports and activity reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the action or the date of termination whichever is earlier;
 - (d) they shall be determined in accordance with the usual accounting and management principles and practices of the beneficiary. The accounting procedures used in the recording of costs shall respect the accounting rules of the State in which the beneficiary is established. The beneficiary's internal accounting and auditing procedures shall permit direct reconciliation of the costs declared in respect of the action with the corresponding financial statements and supporting documents;
 - (e) they shall be used for the sole purpose of achieving the objectives of the action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - (f) they shall be recorded in the accounts of the beneficiary; in the case of third parties, they shall be recorded in the accounts of the third parties;
 - (g) they shall be indicated in the estimated overall budget in Annex II.

Without prejudice to point a), the beneficiary may opt to declare average personnel costs if based on a certified methodology approved by Fusion for Energy and consistent with the management principles and usual accounting practices of the beneficiary. Average personnel costs charged to this grant agreement by the beneficiary having provided a certificate on the methodology are deemed not to significantly differ from actual personnel costs.

Such a certificate shall be issued in accordance with the provisions laid down in Article II.4.4 and the relevant part of Form C in Annex IV, unless it has already been

submitted for a previous grant agreement with Fusion for Energy and the methodology certified has not changed.

2. The following costs shall be considered as non-eligible and may not be charged to the action:
 - (a) identifiable indirect taxes including value added tax;
 - (b) duties;
 - (c) interest owed;
 - (d) provisions for possible future losses or charges;
 - (e) exchange losses, cost related to return on capital;
 - (f) costs declared or incurred, or reimbursed in respect of another Community action;
 - (g) debt and debt service charges, excessive or reckless expenditure.
3. Contributions in kind shall not constitute eligible costs.

Article II.13

Identification of direct and indirect costs

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

With regard to personnel costs, only the costs of the actual hours worked by the persons directly carrying out work under the action may be charged. Such persons shall:

- (a) be directly hired by the beneficiary in accordance with its national legislation;
- (b) work under the sole technical supervision and responsibility of the latter, and
- (c) be remunerated in accordance with the normal practices of the beneficiary.

Costs related to parental leave for persons who are directly carrying out the action are eligible costs, in proportion to the time dedicated to the action, provided that they are mandatory under national law.

2. Indirect costs are all those eligible costs which cannot be identified by the beneficiary as being directly attributed to the action but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the action. They may not include any eligible direct costs.

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

- (a) Based on actual indirect costs for the beneficiary who has an analytical accounting system to identify its indirect costs as indicated above.

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

- (b) The beneficiary may opt for a flat rate of 20% of its total direct eligible costs, excluding its direct eligible costs for subcontracting.

- 3. The beneficiary shall apply the option chosen in paragraph 2 to all grant agreements concluded with Fusion for Energy.

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

Article II.14 ***Upper funding limits***

- 1. For research and technological development activities, Fusion for Energy's financial contribution may reach a maximum of 40% of the total eligible costs.
- 2. For demonstration activities, Fusion for Energy's financial contribution may reach a maximum of 40% of the total eligible costs.
- 3. For other specific activities not covered by paragraphs 1 and 2, Fusion for Energy's financial contribution may reach a maximum of 100% of the total eligible costs. Those activities shall be described in Annex I together with an indication of the associated costs.

Paragraphs 1 to 3 shall apply also in the case of actions where flat rate financing is used for the whole or for part of the action.

- 4. For management activities Fusion for Energy's financial contribution may reach a maximum of 100% of the total eligible costs. Those management activities include the legal, financial and administrative management including obtaining certificates on the financial statements and on the methodology and costs relating to financial and technical audits.

Article II.15 ***Fusion for Energy's financial contribution***

- 1. Fusion for Energy's financial contribution to the action ("Fusion for Energy's financial contribution ") shall be determined by applying the upper funding limits

laid down in Article II.14, per activity to the actual eligible costs and/or to the flat rates and/or lump sums accepted by Fusion for Energy.

2. Fusion for Energy's financial contribution shall be calculated by reference to the cost of the action as a whole and its reimbursement shall be based on the accepted costs of the beneficiary.
3. Fusion for Energy's financial contribution cannot give rise to any profit for the beneficiary.
4. The total amount of payments by Fusion for Energy shall not exceed the maximum amount referred to in Article I.4.1.
5. Without prejudice to the right to terminate the grant agreement under Article II.33, Fusion for Energy may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this grant agreement.

SECTION 2

RECOVERIES

Article II.16

Reimbursement and recoveries

1. If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of this grant agreement, the beneficiary undertakes to repay Fusion for Energy the sum in question, on whatever terms and by whatever date it may specify.
2. If payment has not been made by the due date, sums owed to Fusion for Energy may be recovered by offsetting them against any sums it owes to the beneficiary, after informing the latter accordingly. In exceptional circumstances, justified by the necessity to safeguard the financial interests of Fusion for Energy and the Communities, Fusion for Energy may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.
3. If the obligation to pay the amount due is not honoured by the date set by Fusion for Energy, the sum due shall bear interest at the rate indicated in paragraph 5 of Article II.5. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which Fusion for Energy receives full payment of the amount owed is reimbursed in full, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

SECTION 3 CONTROLS

Article II.17 ***Financial audits and controls***

1. Fusion for Energy may, at any time during the implementation of the action and up to five years after the end of the action, arrange for financial audits to be carried out, by external auditors, or by Fusion for Energy and Commission services, including the European Anti-Fraud Office (OLAF). The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by Fusion for Energy. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the grant agreement. They shall be carried out on a confidential basis.
2. The beneficiary shall make available directly to Fusion for Energy all detailed information and data that may be requested by Fusion for Energy or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data shall be precise and complete.
3. The beneficiary shall keep the originals or, in exceptional cases, duly authenticated copies – including electronic copies - of all documents relating to the grant agreement for up to five years after the end of the action. These shall be made available to Fusion for Energy where requested during any audit.
4. In order to carry out these audits, the beneficiary shall ensure that Fusion for Energy's staff and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the action. They shall ensure that the information is readily available in an appropriate form.
5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by Fusion for Energy or its authorised representative to the beneficiary, which may make observations thereon in writing to Fusion for Energy within one month of receiving it. The final report shall be sent to the beneficiary within two months of expiry of the aforementioned deadline.
6. On the basis of the conclusions of the audit, Fusion for Energy shall take all appropriate measures which it considers necessary, including:
 - (a) to initiate the termination of the grant agreement according to Article II.33;
 - (b) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.
7. The European Court of Auditors shall have the same rights as Fusion for Energy, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

8. In addition, OLAF may carry out on-the-spot checks and inspections for the protection of the financial interests of Fusion for Energy and the European Communities against fraud and other irregularities, in accordance with Council Regulation (Euratom, EC) No 2185/96¹⁴, Regulation (EC) No 1073/1999 of the European Parliament and of the Council¹⁵ and Council Regulation (Euratom) No 1074/1999¹⁶.

Article II.18
Technical audits

1. Fusion for Energy may initiate a technical audit at any time during the implementation of the action and up to five years after the end of the action. The aim of a technical audit shall be to examine scientific, technological and other aspects relating to the proper execution of the action and the grant agreement.
2. Audits shall be deemed to be initiated on the date of receipt by the beneficiary of the relevant letter sent by Fusion for Energy.
3. Any such audit shall be carried out on a confidential basis.
4. Fusion for Energy may be assisted in technical audits by external experts. Prior to the audit, Fusion for Energy shall communicate to the beneficiary the identity of the appointed experts. The beneficiary shall have the right to refuse the participation of a particular expert on grounds of commercial confidentiality.
5. Audits may be carried out at the place of work or involve sessions with action representatives either at Fusion for Energy's premises or at the premises of the beneficiary. Fusion for Energy or the expert shall have access to the locations and premises where the work is being carried out, and to any document concerning the work.
6. The beneficiary shall make available to Fusion for Energy all detailed information and data that may be requested by it or the expert with a view to verifying that the action is being/has been implemented in accordance with the provisions of this grant agreement.
7. A report on the outcome of the audits shall be drawn up. It shall be sent by Fusion for Energy to the beneficiary, who may make written observations to Fusion for Energy thereon within one month of receiving it. The beneficiary shall be informed.
8. On the basis of the findings of the audit, Fusion for Energy will take all appropriate measures which it considers necessary, including:
 - (a) to initiate the termination of the grant agreement according to Article II. 33;
 - (b) to issue a recovery order regarding all or part of the payments made by Fusion for Energy.

¹⁴ OJ L 292, 15.11.1996, p.2.

¹⁵ OJ L 136, 31.5.1999.

¹⁶ OJ L 136, 31.5.1999.

Article II.19
Liquidated damages

1. If the beneficiary is found to have overstated any claimed amount and has therefore received an unjustified financial contribution from Fusion for Energy, it shall, without prejudice to any other measures provided for in this grant agreement, be liable to pay liquidated damages. Liquidated damages are due in addition to the recovery of the unjustified Fusion for Energy's financial contribution from the beneficiary. In exceptional cases Fusion for Energy may refrain from claiming liquidated damages.
2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of Fusion for Energy's financial contribution. The following formula shall be used to calculate liquidated damages:

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

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

3. Fusion for Energy shall inform the beneficiary which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The beneficiary shall have a period of 30 days to answer Fusion for Energy's claim.
4. The procedure for repayment of unjustified Fusion for Energy's financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.16. Liquidated damages will be deducted from any further payment or will be subject to recovery by Fusion for Energy.
5. Fusion for Energy shall be entitled to liquidated damages in respect of any overstated amount which comes to light after the end of the action, in accordance with the provisions of paragraphs 1 to 4.

Part C

Information and Intellectual Property

SECTION 1

BACKGROUND

Article II.20

Ownership of the background

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

Article II.21

Identification of the background

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

4. If the background is confidential, it must be marked so and special measures shall be agreed between the beneficiary and Fusion for Energy to preserve its confidentiality.

SECTION 2

FOREGROUND

Article II.22

Ownership of the foreground

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

Article II.23

Notification and protection of the foreground

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

Unless otherwise agreed between the beneficiary and Fusion for Energy the beneficiary shall keep secret such business confidential information in conformity with Article II.9.

3. Where foreground is capable of industrial or commercial application or has economic or strategic value for Euratom's fusion programme, its owner shall provide for its adequate and effective protection.

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

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

“The work leading to this invention has received funding from the European Joint Undertaking for ITER and the Development of Fusion Energy under grant agreement n° [xxxxxx].”

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

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

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

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

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

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

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

Article II.24 ***Use of the foreground***

1. The beneficiary that owns the foreground shall have the right to use such foreground subject to the relevant provisions of this grant agreement.
2. In the case of nuclear applications, the beneficiary may only grant non-exclusive licenses or sub-license:
 - (a) to third parties established in the territory of the members of Fusion for Energy provided that it informs Fusion for Energy prior to such intended use;
 - (b) to third parties established outside the territories of the members of Fusion for Energy, provided that Fusion for Energy, following a consultation with the Commission, does not object in writing within 45 days from the receipt of a written request.

3. In the case of non-nuclear applications, the beneficiary shall inform Fusion for Energy prior to the use of that foreground including the grant of licenses inside or outside the territories of the members of Fusion for Energy.
4. Fusion for Energy may object to the granting of a license regarding the foreground to third parties established in the territory of the Members of Fusion for Energy or in a third country if it considers that this is not in accordance with tasks and activities of Fusion for Energy or where the European Commission considers that such use is not in accordance with the interests of developing the competitiveness of the European economy, with ethical principles, with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty or with the implementation of the Euratom Treaty including international agreements concluded by Euratom.

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

Article II.25
Transfer of the foreground

1. The owner of the foreground may transfer the ownership of such foreground to any legal entity, subject to prior written consent of Fusion for Energy.
2. Fusion for Energy may object to the transfer of the foreground as stipulated in paragraph 4 of Article II.24.
3. Where the beneficiary transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with this grant agreement.

SECTION 3
ACCESS RIGHTS

Article II.26
Principles

1. All requests for access rights by any Party to this agreement shall be made in writing.
2. The beneficiary shall inform without delay each other and Fusion for Energy of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.
3. The termination of this grant agreement shall in no way affect the obligation of the beneficiary to grant access rights to Fusion for Energy under the terms and conditions established by this grant agreement.
4. Improvements of the foreground licensed or sub-licensed by the beneficiary to third parties that are communicated by the licensees to the beneficiary shall further be communicated to Fusion for Energy for free use in furtherance of tasks and activities of Fusion for Energy.

5. In case that Fusion for Energy assumes ownership, it shall take on the obligations regarding granting of access rights under this section.

Article II.27

Access rights of Fusion for Energy

1. Fusion for Energy shall enjoy, during the project and after its completion, access rights to the foreground and the background.
2. Access rights to foreground shall take the form of a worldwide, non-exclusive, irrevocable, royalty-free license with the right to further sub-license and use it for any purpose.
3. Access rights to background shall take the form of a worldwide, non-exclusive, irrevocable license, with the right to further sub-license and use it for any purpose under the following conditions:
 - (a) royalty free where the background has been generated or acquired by the beneficiary within the scope referred to in paragraph 4 of Article II.22 or after the establishment of Fusion for Energy under contracts placed with the support of Euratom in the framework of the Euratom fusion programme; or
 - (b) under fair and reasonable conditions or royalty free where the background is not falling under letter a) above. As long as these conditions are met, access to Fusion for Energy to the background shall not be denied.
4. The beneficiary acknowledges that, within the limits of paragraphs 2 and 3, Fusion for Energy may grant to the Communities the necessary access rights to allow the Communities to exercise its rights and obligations under Title II, Chapter 2 of the Euratom Treaty as provided for in Article 10 of the Council decision No 2007/198/Euratom.
5. In case the foreground is used by Fusion for Energy in its call for proposals or tenders, the owner shall undertake to provide to applicants or candidates established in the territory of the members of Fusion for Energy and upon their request, access to the above foreground and background as well as a necessary assistance in order to allow them to participate as candidates or applicants in the call for proposals or tenders. Such assistance shall be provided on a fair and non-discriminatory basis and on terms and conditions agreed between the beneficiary and the applicant or candidate.

SECTION 4

MANAGEMENT OF INTELLECTUAL PROPERTY

Article II.28

Royalties

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

Article II.29
Dissemination

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

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

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

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

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

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

Article II.30
Survival of rights and obligations

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

Final Provisions

Article II.31

Requests for amendments and termination at the initiative of the beneficiary

1. Amendments and termination to this grant agreement may be requested by the beneficiary. Such requests shall be signed by the legal representative of the beneficiary and submitted in writing in accordance with Article I.7.
2. The beneficiary shall send the request to Fusion for Energy in good time before it is due to take effect and in any event one month before the end of the action, except in cases duly justified and accepted by Fusion for Energy.

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

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

The amendments may not have the purpose or the effect of making changes to the agreement which might make the grant redundant for objectives of Fusion for Energy.

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

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

Article II.32

Approval of amendments and termination

1. Without prejudice to Article II.33, any amendment or termination of this grant agreement shall be agreed by the Parties in writing.

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

2. Fusion for Energy's approval of the requested amendment or termination shall be notified to the beneficiary.

3. Amendments and terminations shall take effect on the date agreed by the Parties; where there is no date specified they shall take effect on the date of Fusion for Energy's approval.

Article II.33

Termination of the grant agreement at Fusion for Energy's initiative

1. Fusion for Energy may terminate this grant agreement, without any indemnity and at any time, in the following cases:
 - (a) in case of non-performance or poor performance of the work that is not remedied following a written request to the beneficiary to rectify the situation within a time limit specified by Fusion for Energy;
 - (b) in case of a breach of any substantial obligation imposed by this grant agreement that is not remedied following a written request to the beneficiary to rectify the situation within a time limit specified by Fusion for Energy;
 - (c) for major technical or economic reasons substantially adversely affecting the completion of the action;
 - (d) where a beneficiary has deliberately or through negligence committed an irregularity in the performance of any grant agreement with Fusion for Energy;
 - (e) where the required reports or deliverables are not submitted or Fusion for Energy does not approve the reports or deliverables submitted;
 - (f) if the potential use of the foreground, as laid down in Part C of this grant agreement diminishes to a considerable extent;
 - (g) where a legal, financial, organisational or technical change or change of control of the beneficiary calls into question the decision of Fusion for Energy to accept its participation;
 - (h) where any such change identified in (g) above substantially affects the implementation of the action, or the interests of Fusion for Energy, or calls into question the decision to grant Fusion for Energy's contribution;
 - (i) in case of force majeure notified in conformity with Article II.35, where any reactivation of the action after suspension is impossible;
 - (j) where the beneficiary is found guilty of an offence involving its professional conduct by a judgment having the force of res judicata or if it is guilty of grave professional misconduct proven by any justified means;
 - (k) where a beneficiary is declared bankrupt or is being wound up.
2. Termination of this grant agreement at Fusion for Energy's request shall be notified to the beneficiary and shall take effect on the date indicated in the notification and at least 30 days after its receipt by the beneficiary.
3. Within 45 days after the effective date of termination, the beneficiary shall submit all required reports and deliverables referred to in Article II.4 relating to the work

carried out up to that date. In the absence of receipt of such documents within the above time-limits, Fusion for Energy may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any pre-financing due by the beneficiary.

4. Based on documents and information referred to in the paragraphs above, Fusion for Energy shall establish the debt owed by the beneficiary and notify it to him.

Article II.34 ***Effects of termination***

1. In the event of termination, any financial contribution from Fusion for Energy is limited to those eligible costs incurred and accepted up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.
2. By derogation to the above paragraph, in the case of Article II.33.1.a) and b) any financial contribution from Fusion for Energy is limited to those eligible costs incurred up to the date of receipt of the written request to take corrective measures or rectify the breach.
3. In addition, in the cases of Article II.33.1.a), b), c), d), e) and j), Fusion for Energy may require reimbursement of all or part of Fusion for Energy's financial contribution. In the case of Article II.33.1.a) and b), Fusion for Energy shall take into account the nature and results of the work carried out and its usefulness to Fusion for Energy in the context of its Work Programme.
4. Reports and deliverables submitted in the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.
5. Where Fusion for Energy makes a payment after termination of the grant agreement, this payment shall be considered as a final payment

Without prejudice to the termination of the grant agreement, the provisions identified in Articles II.9, II.10, II.16 to 19, II.31, II.33, II.36, and II.37 continue to apply after the termination of the grant agreement.

Article II.35 ***Force majeure***

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

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

Article II.36
Assignment

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

Article II.37
Liability

1. Fusion for Energy shall not be liable for any acts or omissions of the beneficiary in performance of this grant agreement.
2. The beneficiary shall not be liable for any damage caused to Fusion for Energy:
 - (a) by the use of the results of the action by Fusion for Energy, or
 - (b) in case of any action, complaint or proceeding brought against Fusion for Energy by a third party to whom Fusion for Energy provided the results of the action and who suffered damage by the use of the results,provided the beneficiary has fulfilled his obligations under this grant agreement.
3. The beneficiary shall indemnify Fusion for Energy in case of any action, complaint or proceeding brought by a third party against Fusion for Energy:
 - (a) as a result of damage caused by the beneficiary to a third party in performance of this grant agreement, or
 - (b) as a result of a damage caused due to the use of the results of the action by the beneficiary or by any third party to whom the beneficiary made the results of the action available, or
 - (c) as a result of a damage caused by any products, processes or services separately or subsequently developed by the beneficiary on the basis of foreground resulting from the action.

4. In the event of any action brought by a third party against the beneficiary in connection with the performance of this grant agreement, Fusion for Energy may assist the latter upon written request. The costs incurred by Fusion for Energy in this connection shall be borne by the beneficiary.

In the event of any action brought by a third party against Fusion for Energy in connection with the performance of this grant agreement, Fusion for Energy may request in writing the beneficiary to assist Fusion for Energy. The costs incurred by the beneficiary in this connection shall be borne by Fusion for Energy.

5. The beneficiary shall bear sole responsibility for ensuring that its acts within the framework of this action do not infringe third parties rights.
6. Fusion for Energy shall not be held liable for any consequences arising from the proper exercise of its rights under this grant agreement and its rights and obligations under the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project¹⁷ or any other applicable law.

¹⁷ OJ L 358 of 16.12.2006, p.73.