FUSION FOR ENERGY
Administration Department

FRAMEWORK SERVICE CONTRACT IN CASCADE

"Multiple Framework Service Contract in Cascade for the Provision of Information and Communications Technology (ICT) Development Services to Fusion for Energy"

Lot 1: Development Services on a Time & Means Basis / Lot 2: SAP Business Objects / Business Intelligence related Services on a Time & Means Basis / Lot 3: Deltek Cobra related Services on a Time & Means Basis

CONTRACT NUMBER – **F4E-ADM-430.01**

The European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter referred to as "Fusion For Energy"), established by Council Decision (Euratom) N° 2007/198 of 27 March 2007, represented for the purposes of the signature of this contract by **Mr. Hans Jahreiss**, Director of Fusion for Energy,

of the one part,

and

[official name in full]
[*official legal form*][1]
[*statutory registration number***]**[2]
[official address in full]
[*VAT registration number*]

(hereinafter referred to as "**the Contractor**"), represented for the purpose of the signature of this contract by Mr/Ms [*Name*], [*Function*]

of the other part,

HAVE AGREED

[1] Delete if contractor is a natural person or a body governed by public law.
[2] Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

the **Special Conditions** and the **General Conditions** below and the following annexes:

Annex I Tender Specifications

Annex II Contractor's Tender

Annex III Order Form

Annex IV Instruction for invoicing and reporting

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Order Forms (Annex III), the latter taking precedence over the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Fusion for Energy, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

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I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1 The subject of the Contract is to provide Information and Communications Technology (ICT) Development Services to Fusion for Energy in accordance with the Tender Specifications (Annex I) and the Contractor's Tender (Annex II).

I.1.2 Signature of the Contract imposes no obligation on Fusion for Energy to purchase. Only implementation of the Contract through Order Forms is binding for Fusion for Energy.

I.1.3 Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the services in accordance with all terms and conditions of the Contract.

I.1.4 The Contract does not confer to the Contractor any exclusive right to provide the services described in Annex I to Fusion for Energy. The contractor is selected as the first/second/third contractor of a multiple framework contract in cascade.

ARTICLE I.2 - DURATION

I.2.1 The Contract shall enter into force on the date when it is signed by the last Contracting party.

I.2.2 Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the services may under no circumstances begin before the date on which the orders enter into force.

I.2.3 The Contract is concluded for a period of 48 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

I.2.4 Each specific contract form will enter into force at the date of its signature by both parties, which should happen before the expiry date of the Contract to which it refers. The duration of the activities under each specific contract cannot exceed the expiry date of the Contract by more than six months. The Contract shall continue to apply to such specific contracts.

ARTICLE I.3 –PRICES

I.3.1 The prices of the services shall be as listed in Annex II.

I.3.2 Prices shall be expressed in EUR and VAT excluded.

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I.3.3 Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract. From the beginning of the second year of duration of the Contract, prices may be revised upwards or downwards, where such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which the Contract was signed. Fusion for Energy shall purchase on the basis of the prices in force on the date on which orders are signed. Such prices shall not be subject to revision. This revision shall be determined by the trend in the harmonised consumer price index (MUICP) published by the Office for Official Publications of the European Communities in the Eurostat monthly bulletin at **http://www.ec.europa.eu/eurostat/**.

Revision shall be calculated in accordance with the following formula:

$$Pr = Po\left(0{,}2+0{,}8\,\frac{Ir}{Io}\right)$$

where:

Pr	=	revised price;
Po	=	price in the original tender;
Io	=	index for the month
Ir	=	index for the month

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

As stipulated in the Tender Specifications (Annex I).
The multiple framework contracts in cascade will be implemented by means of Order Forms, intended as self-standing activities. Each Order Form shall be signed by the Contractor and the Joint Undertaking.

ARTICLE I.5 – PAYMENT MODALITIES AND PERIODS

I.5.1 Payments under the Contract shall be made after the Order Form to which it refers comes into force, in accordance with Article II.4 and Article II.5. Payment requests may not be made if payments for previous Order Forms have not been executed as a result of default or negligence of the Contractor.

I.5.2 No payment is due as a result of the signature of the framework contract. Only Order Forms will be subject to payments. No advance payment shall be made and therefore no financial guarantees shall be required. Payments under the Order Form shall be carried out subject

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to prior approval of the reports and services provided to Fusion for Energy.

I.5.3 For Order Forms not exceeding 40 working days (and subject to prior approval of the deliverables and services provided to Fusion for Energy), within 45 days of the date on which the deliverables are received and approved by Fusion for Energy and receipt of the relevant invoice, payment of the amount(s) referred to in the relevant Order Form shall be made.

For Order Forms exceeding 40 working days, the Contractor will have the option of submitting, per Order Form, one invoice per month to Fusion for Energy. Monthly invoicing shall be understood to mean invoicing each calendar month during which the services covered by the Order Form are being provided. Payments of the monthly invoices are subject to prior approval of the deliverables and services provided to Fusion for Energy by the date of the invoice (and will be made within 45 days of the date on which the deliverables are received and approved by Fusion for Energy and receipt of the relevant invoice).

I.5.4 Based on decision 2513 of Spanish Foreign Affairs Ministry published in BOE n° 33 of 7 February 1997, Fusion for Energy, as an European Communities body, is directly exempted from value added tax (VAT), for the delivery of goods and services for official use, if the amounts of each transaction is equal or higher than 301 €, VAT excluded (751 € if related to constructions).

Therefore, invoices presented by the Contractor to Fusion for Energy, for an amount equal or higher to the above mentioned value, shall apply a 0 % VAT rate and shall indicate the following statement:
"Exoneración directa del I.V.A. en base a la disposición 2513 del Mtrio. de AA.EE. publicada en el BOE n° 33 del 7 de febrero de 1997, páginas 3917 a 3919".

Fusion for Energy will provide the Contractor a certificate in accordance with the note 125/08 from the "Agencia tributaria" (Spanish tax authorities), dated 25 April 2008.

ARTICLE I.6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in Euro, identified in the Financial Identification Form included in the Contractor's Tender (Annex II) and identified as follows:
[insert bank details]

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract or Order Form numbers. Ordinary mail shall be deemed to have been received by Fusion for Energy on the date on which it is registered by Fusion for Energy.

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The responsible person at Fusion for Energy for the follow-up of the contract is Mr. Cathal Thorne.

Communications shall be sent to the following addresses:

For Fusion for Energy:

Fusion for Energy
Administration Department
C. Josep Pla, 2
Torres Diagonal Litoral B3
08019 Barcelona, Spain

Contractor:

Mr/Mrs/Ms [complete]
[Function**]**
[*Company name***]**
[Official address in full**]**

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.8.1 The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Spain.

I.8.2 Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Barcelona, Spain.

ARTICLE I.9 – DATA PROTECTION

Any personal data included in or relating to the Contract, including its execution shall be processed pursuant to Regulation (EC) No 45/2001 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. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Fusion for Energy without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Fusion for Energy. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.10 –STABILITY OF SERVICES

When a change of staff is unavoidable, there should be a ten-day period of adjustment when both the replacement and original personnel should work

side by side for training and transfer of relevant information. The costs of the period of adjustment shall be borne by the Contractor.

In no event shall the Contractor be able to plead a change of staff as a reason for not meeting any of its obligations, in particular with regard to deadlines and quality.

ARTICLE 1.11 – OWNERSHIP OF SOURCE CODE

Fusion for Energy shall become owner of source code, results and documentation resulting from the execution of this contract in an exclusive and definite manner.

ARTICLE I.12 – MAXIMUM CONTRACT VALUE

The maximum contract value cannot exceed €2,200,000 (Two Million Two Hundred Thousand Euros) / €400,000 (four hundred thousand Euros) for its maximum duration of 48 months.

ARTICLE I.13 – TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

I.13.1 Fusion for Energy may, at any time, at its discretion terminate the Contract or any part thereof in accordance with this Article.

I.13.2 Any such termination shall be effected by delivery to the Contractor of a written notice sent by registered letter with acknowledgement of receipt. This notice shall specify the extent to which performance under the Contract is to be terminated and the effective date of termination.

I.13.3 Upon receipt of a notice under this Article, the Contractor shall discontinue performance of the Contract in accordance with the notice and shall take any reasonable steps which are necessary or desirable to terminate performance in a safe and timely manner and minimise the costs associated with the termination.

I.13.4 Fusion for Energy shall reimburse the Contractor for those costs actually and reasonably incurred, including demobilisation costs, if applicable, and claimed in accordance with this Article by the Contractor as a direct result of termination of the Contract or of any portion thereof, as well as a cancellation fee corresponding to 3% (three percent) of the remaining payments of any works that have been explicitly ordered but not yet delivered in accordance with the Contract. However, no cancellation fee shall be paid if termination is made based on change in legislation.

I.13.5 As promptly as possible and in no event later than 30 (thirty) days after the effective date of termination, the Contractor shall submit to Fusion for Energy his claim for reimbursement in writing by registered letter with acknowledgement of receipt. Such claim for reimbursement shall include a cost breakdown of unavoidable costs reasonably and actually incurred as a result of termination which he is seeking to recover from Fusion for Energy with supporting evidence.

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I.13.6 The amount of reimbursement payable under this Article shall be fixed on the basis of the evidence produced by the Contractor and accepted by the Fusion for Energy. It shall take account of the proportion of the Contract completed and accepted by Fusion for Energy in accordance with the provisions of the Contract, and shall be consistent with this Article. The Contractor hereby expressly waives the right to claim any loss of profit in respect of the uncompleted or outstanding works which were to be performed after the termination date.

I.13.7 Fusion for Energy shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the total contract price payable under the Contract.

I.13.8 Ownership of all materials, parts and unfinished work paid for by Fusion for Energy under the provisions of the Contract shall be vested in or transferred to Fusion for Energy as soon as they have been paid for.

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For the Framework Service Contract General Conditions, please click on the following link:
http://f4e.europa.eu/downloads/procurements/General_Conditions_FWK_Service_Contract_F4E_Lisbon.pdf

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ANNEX I Tender Specifications

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ANNEX II Contractor's Tender

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Annex III

ORDER FORM No [complete]

Governed by the provisions of Framework Contract No

F4E-ADM-430.01 signed on [complete]

Fusion for Energy C/Josep Pla, 2 Torres Diagonal Litoral B3 08019 Barcelona, Spain	Mr/Mrs/Ms [complete] [Function] [*Company name*] [Official address in full]

Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the s exempt from all taxes and dues, including value added tax, on payments due in respect of this order form.

Description of the services	Quantity	Price
TOTAL PRICE		

Fixed price without reimbursable costs

The duration of the tasks shall not exceed [complete]. *Execution of the tasks shall start from the date of Contractor's signature of this order form [complete date]*	*Other details:*

Acceptance of this order implies that the Contractor waives all other terms of business or of execution of the services.

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

signature[s]:_____

Done at Barcelona, [date]

For the Contractor,
[*Company name*/forename/surname/function]

signature[s]: _____

Done at [xxxx], [date]

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ANNEX IV: Instruction for invoicing and reporting

Invoice/Request for Payments

This form must be submitted on headed stationery of the Contractor.
It must contain the following information:

1. The mention;
2. A number allowing the unique identification of this invoice;
3. Your VAT number, if applicable;
4. Your contact at Fusion For Energy (name, title, telephone number, email address);
5. The reference number of the Framework contract, of the specific contract or the order form, with the requested amount in EURO exclusive of VAT;
6. The mention “The payment should be made into the following bank account” and the following information:
    a. Beneficiary:
    b. Bank:
    c. Bank address:
    d. Bank Account:
7. Detailed billing information;
8. Any other relevant information;
9. Your name, date and signature.

Reporting (if applicable)

Reports should be submitted and, where stipulated, be in the format described in the request for offer of Fusion for Energy

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