



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE D - Nuclear Safety and Fuel Cycle  
The Director

Luxembourg, 18 OCT. 2012  
ENER D2/JCV/jp Ares (2012)

## **INVITATION TO TENDER No. ENER/D2/2012-518**

(Negotiated procedure)

Dear Sir/Madam,

1. The European Commission invites to tender for a service contract regarding the following project: *Synthesis on the economics of nuclear energy*.
2. If you are interested in this contract, you must submit a tender **in duplicate**, in one of the official languages of the European Union not later than 30 days from the date of this document to the following address:

European Commission  
Directorate-General for Energy  
For the attention of Ms Ulrike Poelcher, EUFO 4294  
Jean Monnet Building  
Plateau de Kirchberg,  
L-2920 Luxembourg

Tenders must be placed inside two sealed envelopes. The inner envelope, addressed to the department indicated in the invitation to tender, should be marked as follows: "Invitation to tender n° ENER/D2/2012/518 - not to be opened by the internal mail department". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

3. Tenders must be accompanied by a cover letter signed by the tenderer or his duly authorised representative. All tender documents shall be perfectly legible so that there can be no doubt as to words and figures.
4. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.

5. The original signature of the tenderer on the administrative identification form (Annex 1) shall be considered as the signature of the tender. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are binding on the tenderer to whom the contract is awarded during the performance of the contract.
6. Requests for additional information must be sent to the following address (preferably email address):

Ms Ulrike Poelcher  
European Commission  
EUFO 04/294  
10, rue Robert Stumper  
L-2557 Luxembourg, LU  
ENER-LUX-D2-TENDERS@ec.europa.eu

7. This invitation to tender is in no way binding on the Commission. A commitment will come about only when a contract with the successful tenderer has been signed.  
Until a contract is signed, the awarding authority may decide not to award a contract or to cancel the tendering procedure, without the candidates or tenderers being entitled to claim any compensation. Where appropriate, the decision will be substantiated and brought to the attention of the tenderers.
8. Tenderers will be informed of whether their tenders have been accepted or rejected.
9. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the Director of the Shared Resource Directorate MOVE/ENER, acting as data controller. Details concerning the processing of your personal data are available on the privacy statement at: [http://ec.europa.eu/dataprotectionofficer/privacystatement\\_publicprocurement\\_en.pdf](http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf).
10. Your personal data (name, given name if natural person, address, legal form, registration number and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the Early Warning System (EWS) only or both in the EWS and Central Exclusion Database (CED) by the Accounting Officer of the Commission, should you be in one of the situations mentioned in:  
  
- the Commission Decision 2008/969 of 16.12.2008 on the Early Warning System (for more information see the Privacy Statement on [http://ec.europa.eu/budget/info\\_contract/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/info_contract/legal_entities_en.htm)), or

- the Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database (for more information see the Privacy Statement on [http://ec.europa.eu/budget/library/explained/management/protecting/privacy\\_statement\\_ced\\_en.pdf](http://ec.europa.eu/budget/library/explained/management/protecting/privacy_statement_ced_en.pdf))

Yours faithfully,



Peter Faross  
Director

## **SPECIFICATIONS**

### **TENDER No. ENER/D2/2012-518: SYNTHESIS ON THE ECONOMICS OF THE NUCLEAR ENERGY**

#### **1. Introduction**

Moving towards a Low carbon Economy and the ageing of existing infrastructures will require a major effort in term of investment for the electricity generation in the coming decades. Investment decisions, in particular for the building of new nuclear power plants, have proven to be difficult for a set of factors which have been analysed, ia in the Financing report of ENEF SWG Financing models published in 2011<sup>1</sup>. The escalating financial crisis and the Fukushima accident have recently increased the difficulties. Investors and the Banking Sector, such as the EIB, have shown interest to have reliable cost figures for nuclear electricity generation (investments and externalities).

#### **2. Purpose of the contract**

##### *Scope of the study:*

The aim of the activity to be performed is to establish an exhaustive picture of costs estimations in the nuclear sector to serve as coherent background for the discussions on costs of electricity generation on the base of the available up-dated information. This would support the establishment of a more objective environment for nuclear investments.

The outcome of the study should constitute a valuable source of information for DG ENER and a solid reference for the Perspectives on Energy 2030.

This outcome will also be presented for discussion at the ENEF Plenary meeting<sup>2</sup>.

For the future of nuclear energy, different scenarios (called social scenarios in these specifications) should be envisaged:

- plant closing at the end of the initially planned operation duration;
- extension of operation with equipment up-grading;
- new build in a "new fleet" configuration.

The costs estimations should cover normal operation of existing plants (including maintenance and fuel costs at large including final repositories), large safety upgrades (including post-Fukushima programmes), lifetime extensions programmes, decommissioning and waste management programmes, building generation III plants. Costs estimations should include the "associated" costs, such as the extension or the up-grading of the transmission network, the need to (re)create a supply industry to support a large new built programme, as well as building necessary large supporting research infrastructures and programmes. A "First-Of-A-Kind" versus a "Serial/Fleet" effect on costs will be analysed. This will need to be supported by a reflection on organisational scenarios for the supply industry in a market economy. Other aspects, such as possible "hidden costs" not covered by the electricity tariffs paid by customers, will also be part of the estimations and the mechanisms to cover them analysed.

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<sup>1</sup> [http://ec.europa.eu/energy/nuclear/forum/opportunities/doc/financing\\_models/enef\\_-\\_financing\\_report\\_final.pdf](http://ec.europa.eu/energy/nuclear/forum/opportunities/doc/financing_models/enef_-_financing_report_final.pdf)

<sup>2</sup> [http://ec.europa.eu/energy/nuclear/forum/forum\\_en.htm](http://ec.europa.eu/energy/nuclear/forum/forum_en.htm)

The work will be based on literature research (ia national reports such as the recently issued French Cour des Comptes on the cost of nuclear in France, NEA analyses, industry and associations publications, etc.) and, as appropriate, on direct contacts with organisations (vendors, operators, investors, consumers organisation, electricity network regulators, etc.) who have reliable insight information. The work will focus on the costs estimations for the EU, but comparative figures should also be provided for other main parts of the world.

One recognises the commercial sensitivity of the information and the difficulty to collect insights. Nevertheless trying to build a good vision of the real costs estimations seems most critical to feed the discussions on the competitiveness of nuclear in the low carbon energy mix and to help set a more positive environment for investment decisions, including a political level.

The ENEF Working Group on Competitiveness will serve as a Steering Committee for the study, making comments on the proposed work plan, and on the intermediate and final draft reports.

### **3. Reports and documents to produce - Timetable to observe**

Execution of the tasks begins after the date on which the Contract enters into force.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of *force majeure*). Adequate resources and appropriate organisation of the work including management of potential delays should be put in place in order to observe the timetable below.

*A kick-off meeting will take place in Luxembourg at the latest 30 days following the signature of the contract, in order to settle all the details of the study to be undertaken.*

#### **3.1. Interim reports**

After completion of step 1 above described and not later than 3 months after date of signature of contract, an **interim report** showing progress of the work shall be submitted to the Commission.

The Commission shall have twenty days from receipt to approve or reject the report. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another report.

The contractor will be invited by DG ENER to present the interim report to the ENEF Working Group (one day meeting in Brussels). Following this presentation, the Contractor will submit validated figures, so as to enable DG ENER or the COMPETITIVENES WG to present the results at the ENEF Plenary in Prague in May 2013.

#### **3.2. Final report**

The contractor will submit a draft final report to the Commission at the latest 10 months after the signature of the contract.

Within 20 days after submission of this draft final report the Commission will provide the contractor with its comments on the draft final report and the date of a meeting in Luxembourg or Brussels will be agreed in order to discuss the Commission's observations. After this meeting, the Contractor shall have 20 days in which to submit additional information or a new final report.

### **3.3. Report format and publication**

5 copies of the reports shall be supplied in paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that there are no restrictions based on confidentiality and/or intellectual property rights are expected from the third party. Should he intend to use the study data, which cannot be published, this must be explicitly mentioned in the offer.

### **4. Duration of the tasks**

The duration of the tasks shall not exceed **12 months**.

### **5. Place of performance**

The tasks will be performed on the Contractor's premises. However, meetings between the contractor and the Commission will be held on Commission premises in Brussels or Luxembourg.

### **6. Estimate of the amount of work involved**

The amount of work involved to carry out this contract is estimated to correspond to a total of 4 man-months. Costs related to the presentations (work plan, interim report and final report) have to be incorporated in the submitted pricing.

### **7. Terms of contract**

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

### **8. Terms of payment**

Payments shall be made within 30 days of the date of approval of the services by the Commission. No pre-financing shall be provided.

### **9. Structure of the tender**

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

#### **9.1 Section One: administrative proposal**

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- Tenderers' identification (Annex 1)

All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.

- **Financial identification (Annex 2)**

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

- **Legal entities (Annex 3)**

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

## **9.2 Section Two: Technical proposal**

The technical proposal must provide all the information needed for the purpose of assessing the bid and of awarding the contract.

The proposal should clearly indicate which methodologies or approaches will be used to carry the above survey.

The technical proposal should address all matters laid down in the above point 2 and should describe the models of data compilation and extrapolation and detail the sources of information.

The level of detail of the tender will be extremely important for the evaluation of the tender.

## **9.3 Section Three: Financial proposal**

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- Prices must be fixed amounts and include all expenses, such as travel expenses and daily allowances.
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the European Union is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965

(OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT.

- **Prices shall be fixed and not subject to revision during the performance of the contract.**

## **10. Exclusion criteria (exclusion of tenderers)**

### **10.1. Exclusion criteria (Article 93 Financial Regulation<sup>3</sup>)**

1. To be eligible for participating in this contract award procedure, tenderers must not be in any of the following situations:
  - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
  - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
  - (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
  - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.

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<sup>3</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European  
L 248 of 16.9.2002)



2. The cases referred to in point IV.1.1. e) above shall be the following:
- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995<sup>4</sup>;
  - (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997<sup>5</sup>;
  - (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council<sup>6</sup>;
  - (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC<sup>7</sup>.

**10.2. Other cases of exclusion (Article 94 Financial Regulation)**

**Contracts will not be awarded to tenderers who, during the procurement procedure:**

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information.

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<sup>4</sup> OJ/C 316 of 27.11.1995, p. 48

<sup>5</sup> OJ/C 195 of 25.6.1997, p. 1

<sup>6</sup> OJ/L 315 of 29.12.1998, p. 1

<sup>7</sup> OJ/L 166 of 28.6.1991, p.77

- c) find themselves in one of the **situations of exclusion**, referred to in point 10.1 above for this procurement procedure.

### **10.3 Declaration to be provided by the tenderers**

When submitting their bids, each tenderer shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above. For that purpose, they must complete and sign the form attached in Annex 4.

Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.

## **11. Selection criteria (selection of tenderers)**

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

In particular, the following selection criteria have been set for this tender:

### Financial and economic criteria:

The tenderer must have the financial and economic capacity to perform the tasks described in the specifications of work, taking into account; in particular, the terms of payment (see point 8).

### Professional and technical criteria:

Proven experience in the management of economic oriented studies in relation with energy consumption, energy generation, energy technologies, costs evaluation under different political, economic, social and technological conditions.

The tenderer confirms it meets the selection criteria specified above by signing the declaration on honour attached to this invitation to tender (Annex 4) and should provide a list of main services delivered in the last 3 years in the domains related to the proposal study by the tenderer in general.

## **12. Evaluation of tenders – award criteria**

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

### a) Technical evaluation criteria in their order of importance as weighted by percentage

<b>N°</b>	<b>Award Criteria</b>	<b>Weighting</b>
1	Clarity and completeness of proposal ( reliability of source material, data compilation,data extrapolation within different social scenarios)	40

2	Understanding of the specifications( in particular costs integration )	30
3	The organisation of the work and the means put in place in order to meet the requirements , time and quality control	30
<b>Total number of points</b>		<b>100</b>

**b) Total price**

The contract will be awarded to the tenderer whose offer represents the best ratio quality/price.

**13. ANNEXES**

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria and selection criteria)
5. Draft contract

# ANNEX 1

## IDENTIFICATION OF THE TENDERER

(Each service provider, including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender ENER D2/2012-518

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) <sup>8</sup>	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname:	
First name:	
Title (e.g. Dr, Mr, Ms):	
Position (e.g. manager):	
Telephone number:	
Fax number:	
E-mail address:	

<sup>8</sup> For natural persons

**Legal Representatives**

**Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties**

**Declaration by an authorised representative of the organisation<sup>9</sup>**

I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.

Surname:

First name:

Signature:

<sup>9</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

## **ANNEX 2**

### **Financial identification form**

(to be completed by the tenderer and his or her financial institution)

A specific form for each Member State is available at the following Internet address:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

## **ANNEX 3**

### **Legal entity form**

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

In the case of a grouping, this form must only be provided by the person heading the project.

## ANNEX 4

### Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

Each service provider, including subcontractor(s) or any member of a consortium or grouping, must sign this declaration

The undersigned [*name of the signatory of this form, to be completed*]:

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator<sup>10</sup>*)  
or
- representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is

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<sup>10</sup> To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).



established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;

- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget;
- g) that the company or organisation meets the selection criteria specified in the invitation to tender.

In addition, the undersigned declares on their honour:

- h) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- i) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- j) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- k) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- l) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete;
- m) that in case of award of contract, they shall provide upon request the evidence that they are not in any of the situations described in points a, b, d, e above.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

## ANNEX 5



EUROPEAN COMMISSION

DG

Directorate

**Unit**

## DRAFT CONTRACT



**EUROPEAN COMMISSION**  
DG [Energy]  
Directorate  
Unit

## **SERVICE CONTRACT**

**CONTRACT NUMBER — ENER/D2/2012-518**

The European Atomic Energy Community (hereinafter referred to as "the Community") represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Peter Faross, Director in the Directorate-General for Energy, Directorate Nuclear Energy.

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and function,]

of the other part,

**HAVE AGREED**

the **Special Conditions** and the and the following Annexes:

**Annex I** – General Conditions for service contracts

**Annex II** – Tender Specifications (Invitation to Tender No [complete] of [insert date])

**Annex III** – Contractor's Tender (No [complete] of [insert date])

[Other Annexes]

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 other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).

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 the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1.** The subject of the Contract is a synthesis on the economics of nuclear energy.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex II).

### **ARTICLE I.2 - DURATION**

- I.2.1.** The Contract shall enter into force [on the date on which 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.
- I.2.3.** The duration of the execution of the tasks shall not exceed 12 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract.

The period of execution of the tasks may be extended only in exceptional and duly justified cases and with the express written agreement of the parties. If the request for extension is made by the contractor, he must send it to the Commission in good time before it is due to take effect and at all events one month before the period of the execution of the tasks elapses, except in cases duly substantiated by the contractor and accepted by the Commission.

### **ARTICLE I.3 – CONTRACT PRICE**

- I.3.1.** The [maximum] total amount to be paid by the Commission under the Contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Commission.

- I.3.2.** Prices shall be expressed in EUR.

## **ARTICLE I.4 – PAYMENTS**

### **Payment of the balance**

The invoice shall be admissible if accompanied by the final progress report in accordance with the instructions laid down in Annex II.

The Commission shall have twenty days from receipt to approve or reject the final progress report, and the Contractor shall have 20 days in which to submit additional information or a new final progress report.

Provided the final progress report has been approved, the Commission shall have thirty days from the receipt of the relevant invoice to pay the balance.

\*\*\*

[For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language]

## **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor’s bank account denominated in euro, identified as follows:

Name of bank: [complete]  
Address of branch in full: [complete]  
Exact designation of account holder: [complete]  
Full account number including codes: [complete]  
[IBAN code: [complete]]

## **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic form and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

**Commission:**

European Commission  
Directorate-General for Energy  
Financial & Contractual cell  
For the attention of Mr Alain Cluzeau, EUFO 4475  
Jean Monnet Building  
Plateau de Kirchberg  
L- 2920 Luxembourg

**Contractor:**

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

**ARTICLE I.7- APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.7.1. The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Luxembourg.
- I.7.2. 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 Luxembourg.

**ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract 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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Director of the Shared Resource Directorate MOVE/ENER acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

**ARTICLE I.9 - USE OF THE RESULTS**

**I.9.1 Modes of exploitation**

All studies/analysis/elaborations/thesis/materials/reports, scientific work, broadcasts, designs, drawings, website layout or content, computations, documented data, database format and data, methods of creation, industrial design, discoveries produced within this Contract and for which the rights vest in the Union and thereby the Union has acquired the ownership in accordance with Article II.10 may be used in the following way:

- i) distribution:
  - publishing in paper copies
  - publishing in electronic form as downloadable/non-downloadable file
  - making available on internet
  - broadcasting
  - public presentation or display
  - communication through a press information services
  - inclusion in widely accessible databases or indexes
  - in any form and by any method existing at this date and in the future
  - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
  
- ii) storage:
  - in paper format
  - in electronic format
  - in original format (sculpture, maquette etc.)
  
- iii) archiving in line with the applicable document management rules
  
- iv) modifications made by the Commission or by a third party:
  - shortening
  - making a summary
  - modification of the content
  - technical changes to the content:
    - necessary correction of technical errors
    - adding new parts or functionalities
    - changing functionalities
    - providing third parties with additional information concerning the result (e.g. source code)
  - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - extracting a part or dividing into parts
  - use of a concept or preparation of a derivative work
  - digitisation or converting the format for storage or usage purposes
  - translate, subtitle, dub
  
- v) language versions:
  - working languages of EC
  - official languages of EU
  - languages used within EU
  - languages of candidate countries
  - [*other languages*]
  
- vi) use for own purposes:
  - making available to the staff of the Commission



- making available to the persons and entities working for the Commission or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
  - installing, uploading, processing
  - arranging, compiling, combining, retrieving
  - making a copy, reproducing
- vii) allow use of results by third parties:
- for commercial or non commercial purposes
  - against payment, without payment or against fulfilment of other conditions
  - assignment in full or in part
  - giving a licence
  - for a particular period or unlimited in time]

[This list may be further specified in the Specific Contract]

Where the Commission becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within [two weeks]. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

### **I.9.2 Pre-existing rights, intermediaries, creators' rights**

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Commission at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the Union and thereby under the terms of the Contract be effectively transferred to the Union, as provided for in Article I.9.1.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights [together with delivery of the final report at the latest] [together with presentation of relevant result] [*specify other earlier stage*]. The latter should be fulfilled by presentation of [the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with [annex A1] [annexes A1 and A2]] [and] [the following information and documents:

- Name and version number of the software product
- Title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify origin easily

- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer
- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor
- Text of the disclaimer notice

In case parts of the results were created by employees of the Contractor, documentary evidence shall be provided as to how the creators' or authors' rights were transferred to the Contractor, i.e. a copy of the relevant agreement or extract from the employment contract should be provided.

### **I.9.3 Partial vesting of rights (pre-existing or not pre-existing)**

In case the partial vesting of particular rights to the results was envisaged in the tender specification and the offer, the Contractor shall list precisely at the moment of delivery of the final report at the latest all materials, information, IT tools, methodology and any other results or parts of the result to which third persons have rights, even if originally owned by the Contractor, or for which the right is not to be unconditionally given to the Union. For every listed item the Contractor shall describe precisely the scope of pre-existing rights and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the Union.

The information obligation refers also to the intention of using any listed item referred to in the first paragraph for which the rights are already entirely or partially owned by the Union. This obligation is in addition to the duty to disclose pre-existing rights referred in Article I.9.2.

## **SIGNATURES**

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

For the Commission,  
[forename/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

## **II – GENERAL CONDITIONS**

### **ARTICLE II.1 – PERFORMANCE OF THE CONTRACT**

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract

under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.12.

## **ARTICLE II.2 – LIABILITY**

- II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2.** The Contractor shall be liable for any loss or damage sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

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

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

**II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3.** The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

**II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract.

## **ARTICLE II.4 – CONFIDENTIALITY**

**II.4.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.4.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

## **ARTICLE II.5 – DATA PROTECTION**

- II.5.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.
- II.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.5.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- II.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- II.5.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
    - aa) unauthorised reading, copying, alteration or removal of storage media;
    - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - ac) unauthorised use of data-processing systems by means of data transmission facilities;
  - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - c) record which personal data have been communicated, when and to whom;
  - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
  - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
  - f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.6 – SUBCONTRACTING**

- II.6.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.6.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.6.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.20.

## **ARTICLE II.7 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties.

## **ARTICLE II.8 – ASSIGNMENT**

- II.8.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.
- II.8.2.** In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

## **ARTICLE II.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

- II.9.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Articles I.8 and II.5 shall apply.
- II.9.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.9.3.** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by

the Contractor shall require prior written authorisation from the Commission and, if so requested, shall mention that it was produced within a contract with the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

- II.9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

## **ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

- II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union, which may use them as described in the Contract. All the rights shall be vested on the Union from the moment the results were delivered and accepted by the Commission.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union.

The payment of the fee under Article I.3 is deemed to include all forms of use by the Union of the results as set out in Article I.9.

The above vesting of rights in the Union under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

- II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.

- II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the Union in line with Article I.9.2, and hereby grants the



Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.

**II.10.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

**II.10.6** The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.

**II.10.7** The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

**II.10.8** If the Commission so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.

**II.10.9.** By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

**II.10.10.** By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.

**II.10.11.** The Contractor shall indemnify and hold the Union harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Union's use of the works and in relation to which the Contractor has granted the Union user rights.

## **ARTICLE II.11 – FORCE MAJEURE**

**II.11.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not

due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

**II.11.2.** Without prejudice to Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.11.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

**II.11.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II.12 – LIQUIDATED DAMAGES**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages per calendar day of delay according to the following formula:  $0.3 \times (V/d)$

$V$  is the amount specified in Article I.3.1;

$d$  is the duration specified in Article I.2.3 expressed in days.

The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **ARTICLE II.13 – SUSPENSION OF THE CONTRACT**

Without prejudice to the Commission's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Commission may suspend execution of the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The

Commission shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

#### **ARTICLE II.14 – TERMINATION BY THE COMMISSION**

**II.14.1.** The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period

following receipt of the formal notice, remains in serious breach of his contractual obligations.

**II.14.2.** In case of force majeure, notified in accordance with Article II.11, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

**II.14.3.** Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

**II.14.4. Consequences of termination**

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

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

**ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

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

**ARTICLE II.15 – INVOICING AND PAYMENTS**

**II.15.1. Pre-financing guarantee:**

Where required by Article I.4.1 or if the pre-financing is over €150.000, the Contractor shall provide a financial guarantee in the form of a bank

guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

#### **II.15.2. Interim payments and payment of the balance:**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to the Commission a formal request for payment accompanied by the following documents which are provided for in the Special Conditions.

If providing a progress report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations or information it contains.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new progress report shall likewise be subject to the above provisions.

#### **II.15.3. Payment currency and costs:**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Commission are borne by the Commission,

- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

## **ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.16.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.16.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Commission may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.16.3.** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

## **ARTICLE II. 17 – TAXATION**

**II.17.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

**II.17.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

**II.17.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for

performance of the Contract are exempt from taxes and duties, including VAT.

**II.17.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## **ARTICLE II.18 - REIMBURSEMENTS**

**II.18.1.** Where provided by the Special Conditions or by Annex II, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

**II.18.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

**II.18.3.** Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

**II.18.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.

**II.18.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

**II.18.6.** Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made.

## **ARTICLE II.19 – RECOVERY**

- II.19.1.** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.
- II.19.2.** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.19.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II.20 – CHECKS AND AUDITS**

- II.20.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- II.20.2.** The Commission or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.20.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.



## ANNEX [A1]

### Statement of Contractor concerning right to delivered result

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the Contract ENER/D2/2012-518 warrants that the Contractor holds full right to the delivered synthesis on the economics of the nuclear energy which is free of any claims, including claim of the creators who transferred all their rights and [were fully paid] [will be paid as agreed within *[complete]* weeks from [delivery of this statement.] [receipt of confirmation of acceptance of the work].

Date, place, signature

## **Annex [A2]**

### **Statement of creator / intermediary in delivery**

of the [*title of the result*]  
within the Framework Contract number [*complete*]  
Specific Contract No [*complete*]

concluded between the European Commission and [*name of the contractor(s)*]

I, [*insert name of the authorised representative of the intermediary*] representing [*insert name of the intermediary*] state that I am the right holder of: [*identify the relevant parts of the result*] [*which I created*] [*for which I received rights from [insert name]*].

I am aware of the above contract, especially Articles I.9, II.10 and point [*insert reference*] of the Request for Service and I confirm that I transferred all the relevant rights to [*insert name*].

I declare that [I received full remuneration.] [I agreed to receive remuneration by [*insert date*]].

[I also confirm that I do not oppose my name being recalled when the results are presented to the public and confirm that the results can be divulged.].

Date, place, signature