

ANNEX VII TO THE CONTRACT F4E-OFC-582
Intellectual Property Rights Rules

1. **DEFINITIONS**

- 1.1. "Intellectual Property" shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and
- (a) have been held in confidence by their owner,
 - (b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,
 - (c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
 - (d) are not available to the receiving party without an obligation concerning confidentiality.
- 1.2. "Information" shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.
- 1.3. "Fair and reasonable conditions" shall mean appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged.
- 1.4. "Background" shall mean Intellectual Property or Information which is held by the contractor prior to its signature of the contract/specific contracts or outside its scope and which is needed for carrying out the Contract/specific contracts, for using the foreground or for using the Goods supplied under this Contract and related specific contracts.
- 1.5. "Foreground" shall mean Information and Intellectual Property whether or not protectable generated in the course of the execution of the present contract under the specific contracts including through subcontracting.
- 1.6. "Dissemination" shall mean the disclosure of the foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of these results in any medium.

2. BACKGROUND

- 2.1. Contractor shall declare its background prior to the signature of the contract and/or the Specific Contracts. The declaration shall provide detailed information on the origin and ownership of the background as well as any legal restrictions relating to its use of which Contractor is aware. The Contractor cannot invoke the ownership of any background which is not clearly identified in the declaration of background. The declaration of the background shall form part of this Contract (Annex C of the contract/ Appendix D of the SC).
- 2.2. In case that background is identified after the signature of a Specific Contract, it can be added to the declaration of the background upon the agreement of Fusion for Energy. Contractor shall justify why the existence of such background could not be invoked prior to the signature of this Contract.
- 2.3. In case the background belongs to a third party and its use was granted to Contractor under a license agreement, Contractor shall obtain from that third party all the rights allowing use of the background in conformity with this agreement and the Annex on Information and Intellectual Property of the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project¹ (hereinafter "ITER Annex on Information and Intellectual Property"). Where a Contractor transfers ownership of background, it shall pass on its obligations regarding that background, as defined in the present contract, to the assignee including the obligation to pass those obligations on to any subsequent assignee.
- 2.4. If all or part of the background is confidential, it must be clearly identified so in the declaration and special additional measures may be agreed between the Contractor and Fusion for Energy to preserve its confidentiality.
- 2.5. The Contractor shall remain the exclusive owner of its own background.

3. ACCESS RIGHTS TO BACKGROUND

- 3.1. The Contractor shall provide a worldwide, non-exclusive, irrevocable, royalty-free licence to Fusion for Energy to the background for the use of the foreground or for the use of the goods supplied under the Specific Contracts.
- 3.2. Except for the case for which F4E has already access to background, the Contractor shall grant on fair and reasonable conditions to any third party nominated by Fusion for Energy for the purpose of fulfilling a contract with Fusion for Energy a licence to use the background if such background is needed for using the foreground or for the use of the goods supplied under the Contract.

¹ Official Journal L 358 of 16.12.2006, p.62

- 3.3. Upon the request from Fusion for Energy the Contractor shall grant, either directly or through Fusion for Energy, to the ITER Organization and/or to ITER Members access rights to its background, including the grant of licenses to such background, under the conditions established in Articles 4.2.2 and 4.2.3 of the ITER Annex on Information and Intellectual Property.
- 3.4. When the background consists of confidential information such as know-how or trade secrets; the Contractor shall use its best efforts to either grant licenses to the background incorporated into the goods supplied under the Contract or to supply such goods to ITER Members under the conditions established in Article 4.2.4 and 4.2.5 of the ITER Annex on Information and Intellectual Property.
- 3.5. The Contractor is encouraged to make its background incorporated into the goods supplied under the Contract available for commercial purposes under the conditions established in Article 4.2.6 of the ITER Annex on Information and Intellectual Property.

4. FOREGROUND

- 4.1. Any foreground generated in the course of the execution of this Contract shall be communicated without delay to Fusion for Energy as laid down in Article 5.1 of this annex and shall become the property of the Contractor subject to the conditions established in Article 5 of this annex.
- 4.2. Fusion for Energy shall have access to the foreground in the form of a worldwide, non-exclusive, irrevocable, royalty-free license with the right to further sub-license and use it to carry out its tasks as established by Article 1.2 of Council Decision 2007/198/Euratom.
- 4.3. All information, documents and results given by or on behalf of Fusion for Energy to the Contractor shall remain the property of Fusion for Energy. The Contractor shall not dispose thereof without prior approval of Fusion for Energy.

5. NOTIFICATION AND PROTECTION OF FOREGROUND

- 5.1. The Contractor shall systematically and in due time report to Fusion for Energy any creation of foreground using the form provided in Appendix E of the Specific Contracts or through any other means agreed by Fusion for Energy. The Contractor will solely become owner of the foreground which has been reported to Fusion for Energy in accordance with this section.
- 5.2. In case the foreground consists of business confidential information, the Contractor shall properly describe and document such business confidential information and shall make available to Fusion for Energy any additional document or information that allows Fusion for Energy to assess its relevance. Unless otherwise agreed between the Contractor and Fusion for Energy, the Contractor shall keep secret such business confidential information in conformity with Article 21 of the Model Contract.
- 5.3. Where patentable foreground is created in the execution of the Contract, Contractor shall file patent applications and obtain patents on its name. Where the Contractor is not willing to protect the

foreground (or only in a limited number of countries) it shall immediately inform Fusion for Energy which may assume the ownership of such foreground on any country not covered by the Contractor's patent application. The Contractor shall fully cooperate with Fusion for Energy in view of the adoption of the adequate protection measures.

- 5.4. Patent applications relating to foreground shall include the following statement to indicate that said foreground was generated with the assistance of financial support from Fusion for Energy:

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

- 5.5. Where the Contractor decides to abandon protected foreground whether completely or only in certain countries, it shall immediately inform Fusion for Energy which may assume the ownership of that foreground and shall then take on the obligations regarding the granting of access rights to the foreground.
- 5.6. In case the Contractor files patent applications related to the subject matter of the Contract within a period of twenty-four months after its completion, the content of the application shall be considered as foreground unless the Contractor demonstrates that it has been created independently and outside the scope of the Contract. Any such filing arising after the completion of the Contract shall be notified to Fusion for Energy including sufficient references to enable Fusion for Energy to trace the origin of the patent application.
- 5.7. If employees or other personnel working for the Contractor are entitled to claim rights on the foreground, the Contractor shall ensure that it is possible to exercise those rights in a manner compatible with the Contractor's obligations under this Contract and it does not hamper the rights of Fusion for Energy.

6. USE OF THE FOREGROUND

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

6.3. In the case of non-nuclear applications, the Contractor shall inform Fusion for Energy prior to the grant of licenses inside or outside the territories of the members of Fusion for Energy.

6.4. Fusion for Energy may object to the granting of a license regarding the foreground to third parties if it considers that this is not in accordance with defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.

7. TRANSFER OF THE FOREGROUND

7.1. The Contractor may transfer the ownership of such foreground to any legal entity, subject to prior written consent of Fusion for Energy. Fusion for Energy shall enjoy a right of pre-emption which can be realised within three months from the notification of the proposed transfer.

7.2. Fusion for Energy may object to the transfer of the foreground under the same conditions as the ones stipulated in Article 6.4 of this annex.

7.3. Where the Contractor transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with the Model Contract.

8. PERMITS, LICENCES AND COPYRIGHTS

8.1. The Contractor shall be responsible for obtaining all permits, licences and copyrights required for the implementation of the Contract under the laws and regulations in force at the place(s) at which the works under the Contract are to be carried out.

8.2. If the Contractor is unable to obtain any of the permits, licences and copyrights referred to above, he shall forthwith inform Fusion for Energy, which after consultation with the Contractor and with due regard to the effect of this situation upon the works, shall decide whether all or any of the works are to be discontinued.

9. MANAGEMENT OF INTELLECTUAL PROPERTY

9.1. Fusion for Energy and the Contractor shall communicate to each other any information concerning intellectual property rights which may impede performance of the Contract or the exploitation of its results. Whenever performance of the Contract or the use of its results involves the use of intellectual property belonging to a third party the Contractor shall indemnify Fusion for Energy against any action for infringement, which may be brought against Fusion for Energy. This obligation does not apply to the Contractor when Fusion for Energy requests the use of a particular Intellectual Property assets belonging to a third party.

- 9.2. At the first indication of any action and in particular at the lodging of a claim by a third party, even after performance of the Contract, the Party implicated shall notify the other Party thereof without delay, whereupon both Parties shall act jointly and shall exchange all information and evidence which they may possess or obtain.
- 9.3. Items supplied by the contractor, or any part thereof, covered by an intellectual property owned by the Contractor, or in respect to which he possesses a licence, shall not prevent Fusion for Energy from repairing or causing repairs to be made to such a supply by whomsoever it may think fit, if the Contractor, after being asked by Fusion for Energy, cannot make the repairs himself within a reasonable time limit and at a reasonable price.

10. USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

- 10.1. Without prejudice to Article 4.3 of this annex, the Contractor hereby expressly authorises Fusion for Energy to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article 9 of the Contract shall apply.
- 10.2. Unless otherwise provided by the Special Conditions, Fusion for Energy shall be entitled to distribute or publish documents or information supplied in performance of the Contract. If the decision is taken not to publish the documents or information supplied, the Contractor may not have them directly or indirectly distributed or published elsewhere without prior written authorisation from Fusion for Energy.
- 10.3. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless Fusion for Energy has specifically given prior written authorisation to the contrary.

11. DISSEMINATION

- 11.1. Contractor shall not carry out any dissemination activities without the prior written agreement of Fusion for Energy.
- 11.2. Contractor shall notably guarantee that any dissemination activity is compatible with the tasks and activities of Fusion for Energy, the protection of Intellectual Property and confidentiality obligations and with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.
- 11.3. At least 45 calendar days prior notice of any dissemination activity shall be given to Fusion for Energy, including sufficient information on the planned dissemination activity and the data envisaged to be disseminated. Following notification, Fusion for Energy may object within calendar 15 days of the

notification to the envisaged dissemination activity. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests. The Contractor and Fusion for Energy may agree on a different procedure.

11.4. Any dissemination of information relating to this Contract by Contractor shall include the following statement: "*This [work, document, publication, etc...] has been carried out in the context of [refer to the name of the project/contract] which has been funded with support from Fusion for Energy. The opinions expressed are those of Contractor only and do not represent Fusion for Energy's official position.*".

11.5. Fusion for Energy shall guarantee that any dissemination activity is compatible with the protection of Intellectual Property and confidentiality obligations and with the defence interests of the Member States within the meaning of Article 24 of the Euratom Treaty.

12. SURVIVAL OF RIGHTS AND OBLIGATIONS

The rights and obligations of the Contractor and Fusion for Energy arising out of the application of the Article 11 of this Contract shall subsist after the completion or termination of the Contract until such time as the as the information acquired through it falls into the public domain or as the relevant Intellectual Property rights expires, irrespective of whether the protection of foreground was actually granted at the moment of expiry of the contract, or whether it is still pending application.