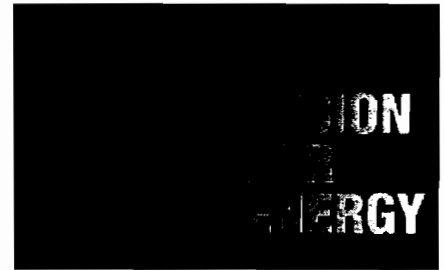


POS. CNR N. 688/15
REP. CNR EN. N. 806A



ACCORDO DI COLLABORAZIONE

TRA

CONSIGLIO NAZIONALE DELLE RICERCHE

E

AGENZIA EUROPEA "FUSION FOR ENERGY"

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**AGREEMENT OF COLLABORATION
F4E-CNR
FOR THE JOINT IMPLEMENTATION OF THE PROCUREMENT
ARRANGEMENT FOR
RESISTIVE WALL MODE CONTROL COIL POWER SUPPLY
FOR THE SATELLITE TOKAMAK PROGRAMME**

between

the **European Joint Undertaking for ITER and the Development of Fusion Energy**, represented by Pietro BARABASCHI, the Head of Broader Fusion Development Department (hereinafter referred to as "Fusion for Energy")

of the one part

and

the **Consiglio Nazionale delle Ricerche (CNR)**, represented by Luigi Nicolais, the President (hereinafter referred to as "the Contributor")

of the other part,

hereinafter referred to individually as the "Party" or both as the "Parties";



HAVING REGARD to the Agreement between the Government of Japan and the European Atomic Energy Community (hereinafter referred to as "Euratom") for the joint implementation of the Broader Approach Activities in the Field of Fusion Energy Research (hereinafter referred to as "BA Agreement"), concluded on 5 February 2007 in Tokyo, and in particular Article 14 thereof that provides for terms and conditions for in-kind contributions;

HAVING REGARD to the exchange of letters between Commissioner Potočnik of 9 March 2006 and 24 April 2006 and Italian Minister for Education, University and Research, Mrs Letizia Moratti, of 31 March 2006 by which Italy (hereinafter referred to as "Voluntary Contributor") confirmed its intention to make voluntary contributions to Euratom for the implementation of the Broader Approach Activities;

HAVING REGARD to the Agreement between the Contributor and Consorzio RFX, represented by Prof. Francesco Gnesotto, the President (hereinafter referred to as "Consorzio RFX") for the development of the Broader Approach Activities under which Consorzio RFX will implement on behalf of the Contributor the Broader Approach Activities defined in this Agreement;

WHEREAS under Article 1(b) of the Council Decision 2007/198/Euratom of 27 March 2007 establishing Fusion for Energy and Article 3(2) of the Statutes attached to that Decision, Fusion for Energy should discharge Euratom obligations for the implementation of the Broader Approach Activities as the Implementing Agency in the context of the BA Agreement;

WHEREAS the Contributor was nominated by Italian Ministry of Education, University and Research to discharge its commitment to make the voluntary contributions to Euratom for the Broader Approach Activities and the Contributor is ready on behalf of Italy to provide the contribution specified in this Agreement to Fusion for Energy subject to the amount of the public funds available from its Government;

WHEREAS at its 9th meeting in Lausanne on 25 October 2011, the Steering Committee on the Broader Approach Activities adopted the annual Work Programme of the Satellite Tokamak Programme that provides for the provision of Resistive Wall Mode Control Coil Power Supply by Euratom;

WHEREAS the Steering Committee on the Broader Approach Activities has endorsed the Common Quality Management System for the JT-60SA Integrated Project Team (hereinafter referred to as "JT-60SA IPT Common Quality Management System");

WHEREAS in order to implement the Euratom commitments for the execution of the JT-60SA project a specific structure has been set up denominated as 'European Home Team for JT-60SA' (hereinafter referred to as "JT-60SA EU Home Team") in the forms of a collaboration among Fusion for Energy and all the contributors to the Broader Approach Activities;

WHEREAS the Contact Persons endorsed the JT-60SA EU Home Team Quality Management System that complements the JT-60SA IPT Common Quality Management System at its meeting of 14 September 2009;

WHEREAS the terms and conditions of the collaboration between Fusion for Energy and the Contributor should be agreed before Fusion for Energy concludes with Japanese Atomic Energy Agency as the Japanese Implementing Agency ("JAEA") the Procurement Arrangement attached in the Annex;

HAVE AGREED AS FOLLOWS.

Article 1 Purpose

- 1.1 The purpose of the present Agreement of Collaboration (hereinafter referred as 'the Agreement') is to agree on terms and conditions of the joint implementation by the Parties of the Procurement Arrangement for Resistive Wall Mode Control Coil Power Supply (hereinafter referred to as "the Procurement Arrangement").

Article 2 Role of Fusion for Energy

- 2.1 Fusion for Energy forms integral part of the JT-60SA EU Home Team and ensures the coordination of implementation of the Procurement Arrangement and its interfaces with other procurement arrangements in BA Activities.
- 2.2 In particular Fusion for Energy:
 - a. participates in the activities of the Integrated Project Team as defined in the JT-60SA EU HT Quality Management System;
 - b. coordinates and monitors the implementation of the Procurement Arrangement by the Contributor and other contributors designated by other Member States as detailed in the JT-60SA EU-Home Team Quality Management System;
 - c. is responsible for any official communications under the Procurement Arrangement, in particular with JAEA;
 - d. contributes by reimbursing in accordance with Article 9A the cost of the transportation of the component(s) (excluding packaging) referred to in Article 2 of the Procurement Arrangement (hereinafter referred to as the "Components") including the insurance to cover as appropriate the related risks from a place in Europe mutually agreed with the Contributor to the place as set out in Article 5 of the Procurement Arrangement, until an appropriate funding scheme for the transport is agreed between the voluntary contributors and Euratom;
 - e. contributes by paying all the costs of Fusion for Energy personnel including missions and overheads related to the role of Fusion for Energy under the Agreement.

Article 3 Role of the Contributor

- 3.1 The Contributor forms integral part of the JT-60SA EU Home Team by collaborating with Fusion for Energy and other contributors to enable Fusion for Energy to fulfil its obligations under the Procurement Arrangement.
- 3.2 In particular the Contributor :
 - a. delivers the Component(s) to Fusion for Energy in accordance with this Agreement, and in particular Article 9A, the terms and conditions of the Procurement Arrangement and its Annexes attached in the Annex hereto, to the place set out in Article 5 of the Procurement Arrangement;
 - b. fulfils technical and management requirements related to the delivery of Components as specified in the Procurement Arrangement complemented by the JT-60SA EU Home Team Quality Management System;



- c. participates in the activities of the Integrated Project Team including technical integration as defined in the JT-60SA EU-Home Team Quality Management System;
 - d. provides Fusion for Energy with the periodic reports and with other documents specified in the Procurement Arrangement in order to allow Fusion for Energy to ensure its monitoring obligations;
 - e. contributes by paying all the costs for:
 - a. its personnel, missions and associated overheads;
 - b. the delivery of the Component(s) excluding transportation costs to Japan reimbursed by Fusion for Energy in accordance with Article 9A;
 - c. taxes and duties associated with the delivery of the Component(s) in Europe.
- 3.3 The Contributor shall perform the procurement of the goods and services necessary to fulfil his obligations under the Agreement at its own expenses and under its responsibility and in accordance with its own procurement procedures and rules.
- In particular the Contributor:
- a. prepares a Procurement Plan, Schedule and Risk Management Plan for the implementation of the Agreement;
 - b. prepares detailed technical specifications and all the documents necessary for the call for tender;
 - c. issues the call for offers and selects the bidders, evaluates the offers and award the contracts;
 - d. signs the contracts and follows their execution up to the end of the warranty period.
- 3.4 The Procurement Plan, Schedule, Risk Management Plan, the detailed technical specifications and the general requirements for the call for tender shall be transmitted to Fusion for Energy for information prior to the launch of the related call for tender. Such prior information to Fusion for Energy does not exempt the Contributor from its primary obligation under the present Agreement.
- 3.5 Any contract placed by the Contributor for the execution of the Agreement shall contain provisions to allow the Contributor to meet his obligations under the Agreement. The Contributor retains the sole responsibility for the execution of his tasks under the Agreement.

Article 4 General Rights and Obligation of the Parties

- 4.1 The Parties commit to collaborate and jointly implement with other contributors the Procurement Arrangement by fulfilling their roles referred to in Articles 2 and 3. They engage to work in close cooperation and within the frame of the JT-60SA EU Home Team Quality Management System, to the full exchange of all the information necessary to the effective functioning of

the collaboration and, in particular to establish a coherent and effective system for the sharing of design information and parameters.

- 4.2 In case of substantial changes to the technical specifications during the execution of the Procurement Arrangement, the Parties commit to jointly seek alternative compensative solutions.
- 4.3 Each Party guarantees the access of the other Party to its premises under the limitation of the application of the existing regulations. In particular the Contributor shall ensure that Fusion for Energy personnel, or persons authorised by Fusion for Energy have access to the works premises of the contracted entities for the purpose of witnessing the acceptance tests foreseen in the contracts and reviewing the status of work.

Article 5 Responsible Officers

The Parties shall nominate in writing the representatives responsible for the joint implementation of the Agreement upon its signature.

Article 6 Intellectual Property Rights

The Contributor shall provide access to information and intellectual property to allow Fusion for Energy to fulfil its obligations towards JAEA as set forth under Chapter 5 of the BA Agreement.

The terms “Information” and “Intellectual Property” used hereto are defined in Article 18 and 19 of the BA Agreement.

6.1 Background Knowledge

- 6.1.1 The Contributor shall remain the exclusive owner or shall keep the rights of disposal of Intellectual Property or Information which he owns prior to the signature of the Agreement or outside its scope and which is incorporated in the course of the implementation of the Agreement (hereinafter “the background knowledge”) and the Contributor shall not be restricted by Fusion for Energy in its right to grant access to its background knowledge.
- 6.1.2 The background knowledge identified prior to the signature of the Agreement by the Contributor as necessary for the Contributor to perform its obligations under the Agreement and/or for Fusion for Energy to perform its obligations under the Procurement Arrangement shall be notified to Fusion for Energy by the Contributor upon the signature of the Agreement. Such notification shall provide information about the origin of such background knowledge, its ownership and briefly its description as well as any legal and/or contractual restrictions relating to its use of which the Contributor is aware.
- 6.1.3 Any other background knowledge identified by the Contributor after the signature of the Agreement as necessary for the Contributor to perform his obligations under the Agreement and/or for Fusion for Energy to perform its obligations under the Procurement Arrangement shall be notified to Fusion for Energy as soon as it is identified.



6.1.4 Upon its request, Fusion for Energy shall be granted by the Contributor access rights to the background knowledge for the sole purpose of the use of the foreground referred to in Article 6.2.4. Such access rights shall be provided under the following conditions:

- (i) a worldwide, non exclusive, irrevocable, royalty free license for the sole purpose of fusion research and development if such access rights are necessary for the use of the foreground knowledge referred to in Article 6.2.4.(i).
- (ii) under fair and reasonable conditions to be agreed between the Contributor and Fusion for Energy for any use other than the one referred to in 6.1.4.(i), especially for any commercial and/or industrial use.

6.1.5 If the background knowledge is confidential, it must be marked as such and special measures shall be agreed between the Contributor and Fusion for Energy to preserve its confidentiality. Such measures shall not prevent Fusion for Energy to fulfil its obligations under Article 3 of the Procurement Arrangement.

6.2 Foreground Knowledge

6.2.1 Any results obtained during the design, manufacturing and test of the Component(s) in the implementation of the Agreement (hereinafter “the foreground knowledge”) shall remain in the ownership of the Contributor.

6.2.2 The Contributor shall promptly notify Fusion for Energy any creation of foreground knowledge.

6.2.3 Where the Contributor and Fusion for Energy jointly consider that the foreground has economic or strategic value for Euratom's fusion research and development programme, the Contributor shall provide for its adequate and effective protection.

6.2.4 Fusion for Energy shall enjoy access rights to the foreground knowledge under the following conditions:

- (i) a non-exclusive, worldwide, irrevocable and royalty-free license for the purpose of fusion research and development if such results are necessary for the implementation of obligations by Euratom under the BA Agreement and/or by Fusion for Energy under the Procurement Arrangement; or
- (ii) under fair and reasonable conditions to be agreed between the Contributor and Fusion for Energy for any other use than the one referred to in 6.2.4(i), especially for any industrial and/or commercial use.

6.3 Sublicenses

The license granted to Fusion for Energy under Article 6.1.4.(i) and Article 6.2.4 (i) shall include a right to sublicense provided that Fusion for Energy gives prior notice to the Contributor of the concerned background knowledge and/or foreground knowledge the identity of the foreseen sublicense as well as terms and conditions

under which such sublicense is granted and provided that the Contributor is not restricted in its right to grant sublicenses to its background by existing contracts or agreements.

Article 7 Ownership

Before the transfer of the ownership to JAEA the ownership of the Components shall be transferred to Fusion for Energy upon their acceptance by Fusion for Energy in accordance with the relevant provisions set out in the Procurement Arrangement. Fusion for Energy may be assisted in the acceptance by representatives from JAEA and the Project Leader.

Article 8 Personnel

- 8.1 All the personnel assigned by the Contributor for the execution of the Agreement shall remain under his responsibility. The Contributor in particular ensures the payment of his salary, an adequate insurance coverage extended to the operation of personnel outside the Contributor's premises in the execution of this Agreement.
- 8.2 Each Party shall be responsible and bear the costs for the coverage of its own personnel for social security, accidents at work and professional illnesses in accordance with applicable laws and rules. As consequence each Party shall observe and comply with the applicable rules, and bear the insurance costs for the coverage of its own personnel.

Article 9 Warranties

- 9.1 The Contributor agrees that Components to be delivered through his contractor(s) shall be subject to standard commercial warranty and that all applicable rights for exercising active warranties and relevant documentation are transferred to Fusion for Energy.
 - 9.1.1 Where such standard commercial warranties cannot be given, existing warranties of industry for any defect in material or workmanship or non-conformity to the technical specifications are transferred to Fusion for Energy or, upon Fusion for Energy's request, directly to JAEA.
 - 9.1.2 When such transfers are not possible, the Contributor shall upon request of Fusion for Energy exercise the necessary active warranties given by his Contractor(s) until the expiration of such warranties.
- 9.2 Fusion for Energy reserves the right to request an extension of the standard commercial warranty or supply of spare parts at its own cost. For this purpose the Contributor shall use its best effort to introduce in its contracts with his contractors appropriate options to allow for warranties extension and supply of spare parts.
- 9.3 In case of any defect or non-conformity which is not covered by a warranty, the Contributor agrees to consult with Fusion for Energy to find ways for remedying the situation resulting from the defect or the non-conformity.



Article 9A Transportation

- 9.A.1 The Contributor will deliver the components DAT (INCOTERMS 2010) including the necessary documentation. The Contributor will notify Fusion for Energy of the exact date of delivery at least 60 calendar days in advance, The deliveries may be made on any working day during normal working hours of the delivery place.
- 9.A.2 The Contributor will take an appropriate insurance against a risk of loss or damage to the Components during the transportation, unless otherwise agreed with Fusion for Energy.
- 9.A.3 The Contributor will be responsible for clearly labelling the components and providing official documentation that export is in the framework of the BA Agreement and the components are intended for the official activities of Fusion for Energy.
- 9.A.4 The Contributor will ensure that the components to be delivered are safely and properly packaged and handled during transport and fulfils the specific requirements detailed in Annex B of the Procurement Arrangement.
- 9.A.5 The Contributor will ensure that any export licence or authorisation is obtained, if applicable, and will carry out all applicable customs formalities necessary for the export of the components in compliance with Article 13 of the BA Agreement and for their transit through any country.
- 9.A.6 The Contributor will submit to Fusion for Energy a cost estimate of the transportation and the related insurance if applicable together with the scope and schedule of transportation and the cost breakdown prior to any commitment. The cost estimate is subject to a written approval of Fusion for Energy.
- 9.A.7 After the successful completion of transportation of all the Components, the Contributor will submit to Fusion for Energy request for reimbursement of transportation cost and related insurance, if applicable.

The request for payment shall be accompanied by:

- (i) Relevant invoice (in euro) and
- (ii) Copy of the relevant invoices for the transportation service and insurance if applicable and evidence of a full payment thereof by the Contributor and
- (iii) Copy of the evidence that the components were successfully delivered and
- (iv) The bank account where the payment shall be made denominated in euro.

In order to be eligible the cost referred to in the request for payment needs to be:

- (i) Incurred during the duration of this Agreement;
- (ii) Necessary for the implementation and the achievement of transportation and related insurance;

- (iii) Identifiable and verifiable (in particular being recorded in the accounting records of the Contributor)
- (iv) Reasonable, justified and comply with the requirements of sound financial management;
- (v) Charged to Fusion for Energy solely to the amount of the accounted invoices excluding internal expenses of the Contributor;
- (vi) Within the ceiling of the cost estimate approved by Fusion for Energy.

The Contributor recognize that Fusion for Energy is exempted from all taxes and duties, including value added tax (VAT) pursuant to the provisions of Article 3 and 4 of the Protocol on the Privileges and Immunities and completes accordingly the necessary formalities with the relevant authorities to ensure the exemptions from taxes and duties, in particular VAT.

Fusion for Energy will approve or disapprove the request of payment and its accompanying documents within 30 calendar days after its receipt. In case of disapproval Fusion for Energy will inform the Contributor without delay about the reasons of the disapproval.

Fusion for Energy will reimburse the cost to the Contributor within 45 working days from the approval of the request and its accompanying documents.

- 9.A.8 Fusion for Energy may, at any time during the implementation of the action and up to five years after the end of the action, arrange for financial audits to be carried out by external auditors or by Fusion for Energy in relation to the transportation and insurance cost reimbursed by Fusion for Energy under this Article.

The European Court of Auditors shall have the same rights as Fusion for Energy, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

In addition, OLAF may carry out on-the-spot checks and inspections for the protection of the financial interests of Fusion for Energy and the European Communities against fraud and other irregularities, in accordance with Regulation (Euratom, EC) No. 2185/96, Regulation (EC) No. 1073/1999, Regulation (Euratom) No. 1074/1999.

Article 10 Liabilities

- 10.1 Each Party renounces the right to claim compensations against the other Party and other contributors for damages caused in the execution of the Agreement, unless damages were caused by gross negligence or intentional misconduct of the other Party or other contributor.
- 10.2 Fusion for Energy shall hold harmless the Contributor for any damage suffered by the latter as a result of claims by JAEA unless damages were caused by gross negligence or intentional misconduct of the Contributor. Fusion for Energy shall assist the Contributor in any such claim procedure.
- 10.3 The Contributor shall hold harmless Fusion for Energy for any damage suffered by the latter as a result of claims by the Contributor's contractors



unless damages were caused by gross negligence or intentional misconduct of Fusion for Energy. The Contributor shall assist Fusion for Energy in any such claim procedure.

- 10.4 Each Party shall compensate for the damages caused by himself or its own personnel to third parties other than contributors in the execution of the Agreement.

Article 11 Insurance

The Parties shall if possible take out insurance against risks and damages relating to the performance of their role under the Agreement or shall make their reasonable endeavours to ensure that such insurance is taken out by their contractors and suppliers.

In case of the Component(s) to be transferred back to the Contributor, Fusion for Energy shall make its best efforts that JAEA takes out usual insurance covering damage(s) caused to or by such Components as long as those Component(s) remain under the responsibility of JAEA.

Article 12 Force majeure and special circumstances

- 12.1 A Party shall not be considered in breach of the Agreement if such breach is caused by *force majeure* which is an unforeseeable and irresistible event beyond his control that renders impossible the fulfilment of the Party's role under the Agreement. Such Party will notify the other one of *force majeure* without delay. If the consequences of the *force majeure* would impede the implementation of the Agreement and are not overcome by the Party within 1 month after such notification, the Parties shall immediately seek for measures to overcome these circumstances. The Contributor shall in particular with the support of Fusion for Energy define remedial actions and take all necessary measures to minimize delay and limit any possible damage.
- 12.2 In case of special circumstances other than an event of *force majeure* that impede or could impede the proper implementation of the Agreement by the Contributor including the lack of the necessary governmental funding, the Contributor shall immediately inform Fusion for Energy. The Contributor shall in particular with the support of Fusion for Energy define remedial actions and take all necessary measures to minimize delay and limit any possible damage.
- 12.3 When the *force majeure* or special circumstances are of such nature that the Parties are unable to find common acceptable measures to overcome them, Fusion for Energy shall report this matter including its consequences, remedial actions and possible costs impact to its Governing Board and Euratom, and the Contributor to its Government.

Article 13 Entry into force, duration and termination

- 13.1 The Agreement shall enter into force upon signature by the Parties and shall remain in force for the duration of the Procurement Arrangement unless terminated upon written agreement of the Parties especially in case no remedy to the circumstances referred to in Article 12 has been found and that the situation would have severe implications on the implementation of the Procurement Arrangement.
- 13.2 In case of termination, the Contributor and Fusion for Energy shall consult to decide on the best conditions to ensure the orderly collection and due preservation of all items and documents generated by him and his contractors in forms suitable to the continuation and completion of activities and if necessary the Contributor and Fusion for Energy shall agree other modalities to allow a continuation of the activities without delays.

Article 14 Confidentiality

- 14.1 When transferring information of the Contributor to JAEA or the JT-60SA Project Leader marked as confidential in accordance with the BA Agreement, Fusion for Energy shall ensure the confidential treatment of the information by JAEA and the JT-60SA Project Leader.
- 14.2 The transfer of confidential information of the Contributor by Fusion for Energy to other third parties than JAEA and JT-60SA Project Leader is subject to a prior written consent of the Contributor.

Article 15 Settlement of disputes

- 15.1 All questions or disputes between the Parties concerning the interpretation or implementation of the Agreement shall be amicably settled by consultation and negotiation between the Parties.
- 15.2 If the Parties are unable to amicably settle their dispute by consultation or negotiation, they will refer the matter to Euratom and the Contributor's Government with the request to resolve such dispute.
- 15.3 In the event of failure to settle such dispute by above means within a reasonable time, the Court of Justice of the European Communities shall have a jurisdiction to settle the dispute in accordance with Article 9(1) of the Council decision 2007/198/Euratom establishing the Fusion for Energy.

Article 16 Amendments

- 16.1 Amendments to the Agreement shall be made only in writing and shall enter into force upon signature by the Parties.
- 16.2 The JT-60SA EU HT Quality Management System may be modified by written agreement of the Responsible Officers nominated in accordance with Article 5 at any time during the duration of the Agreement.

Article 17 Annexes

The following Annexes are integral part of the Agreement:




**Procurement Arrangement for the supply of the Resistive Wall Mode Control Coil
Power Supply for the Satellite Tokamak Programme**

Article 18 Precedence

In case of a contradiction or conflict, the provisions of the BA Agreement and the Procurement Arrangement shall have precedence over this Agreement.

Done in English, in three originals,

For the Contributor:

Name: Uigi Nicolais
Function: President of CNR
Place: Roma
Date: 23/02/15
Signature: 

For Fusion for Energy:

On delegation of Pietro BARABASCHI

Name: Enrico DI PIETRO
Function: Delegated Head of BFD
Department
Place: Garching
Date: 10 February 2015

Signature: 

For acceptance:

For the Consorzio RFX:

Name: Francesco GNESSO
Function: President of Consorzio RFX
Place: Padova
Date: 18/02/2015
Signature: 