

After the amendment of 07.11.2022

EZP.270.72.2022

PROPOSED PROVISIONS OF THE AGREEMENT EZP.271ZP

Concluded on2022 between:

National Center for Nuclear Research with its registered office in Otwock (05-400), ul. Andrzeja Sołtana 7, a research institute registered in the Register of Entrepreneurs of the National Court Register kept by the District Court for the Capital City of Warsaw in Warsaw, XIV Commercial Division of the National Court Register, under the number KRS 0000171393, NIP: 532-010-01-25, REGON: 001024043, BDO: 000004834 hereinafter referred to as the "Awarding Entity".

represented by: [...]

and the tenderer selected as a result of the award of a public contract by open tender - [...] with its registered office in [...], hereinafter referred to as the "Economic Operator", represented by [...]

The Awarding Entity and the Economic Operator, hereinafter referred to collectively as "Parties", and each individually as a "Party", hereinafter referred to as the "Agreement" with the following content:

The Parties unanimously declare that this Agreement has been concluded as a result of a public procurement procedure conducted under the terms of the Act of September 11, 2019. - Public Procurement Law (i.e., Journal of Laws of 2021, point 1129, as amended) (hereinafter referred to as the "Act"), by open tender.

§ 1

SUBJECT OF THE AGREEMENT

1. The subject of the Agreement is the **Design, manufacture and delivery with installation of a helium cooling system for the Polish Free Electron Laser - PoLFEL to the premises of the National Center for Nuclear Research in Otwock**, hereinafter referred to as the "Subject of the Agreement".

2. The Subject of the Agreement includes:

- 1) **Task 1: development**, delivery, installation and commissioning of the helium cooling system based on the TCF50 helium refrigerator (manufactured by Linde Kryotechnik AG) owned by the Awarding Entity and made available to the Economic Operator for this purpose, including:
 - a) development of technical assumptions describing how the TCF50 helium refrigerator will be used and operated in the helium cooling system in the mode necessary to supply the PoLFEL helium distribution system, and how the necessary components for this purpose will be completed;
 - b) development of the detailed design and production documentation;
 - c) execution of refreshing of the TCF50 refrigerator and its adaptation for operation within the PoLFEL helium cooling system by inspecting it, cleaning it, adapting the connections, updating the control system, and completing the necessary mating components;
 - d) delivery and installation of the refreshed TCF50 refrigerator and all mating components at the customer's site;
 - e) commissioning and testing of the helium cooling system based on the TCF50 refrigerator.

A detailed description of the task is included in Appendix 1 to the Agreement in Chapter 18 (points 18.1 through 18.8).

2) **Task 2:** expanding the functionality of the helium cooling system implemented under Task 1 by **development**, delivering, installing and commissioning a complete PolFEL helium cooling system based on a new high-performance helium refrigerator and its integration with the helium cooling system based on the TCF50 refrigerator, including:

- a) development of technical assumptions describing: mode of operation, components, basic mechanical, electrical and cryogenic parameters, control method and principles of cooperation with the TCF50 refrigerator;
- b) development of detailed design and production documentation;
- c) manufacture, commissioning and testing at the Economic Operator's premises of the new helium refrigerator and associated components, in particular including cold and hot compressors, helium de-oiling and gas management system, control system, vacuum pump system, cryogenic process lines (within the helium cooling system) and connection lines and helium recovery system, as well as low and high pressure helium tanks;
- d) delivery of a new helium refrigerator and associated components to the Awarding Entity's premises.
- e) installation and commissioning of the helium cooling system as a system consisting of two refrigerators operating in the following modes:
 - independent, combined operation mode: both refrigerators operate by supplying cooled helium to test facilities connected to each cooler separately.
 - independent, disjoint operation mode: both refrigerators operate alternately supplying cooled helium to test objects connected to each cooler separately.
 - dependent, combined operation mode: both refrigerators work by supplying cooled helium to the same test object.
- f) performance of tests of correct operation of the PolFEL helium cooling system.

A detailed description of the Task is included in **Appendix 1 to the Agreement in Chapter 18 (points 18.1 to 18.8)**.

3. Documentation of the technical design, detailed designs and other documents indicated in Appendix No. 1 to the Agreement (documents indicated in TOM III OPZ - description of the subject of the tender contract, Process design of the PolFEL accelerator helium cooling systems with elements of the technical design, hereinafter referred to as Appendix No. 1 to the Agreement) - must be provided in accordance with the contents of this document - in a manner described in Chapter 16, paragraphs 16.1.3 and 16.2.3.

~~4. The subject of the Agreement will be carried out divided into Tasks:~~

~~**a) Task 1:** Execution of refreshing of the replenishment cooler (provided by the Awarding Entity) and its adaptation to work as part of the Helium Cooling System of the Polish Free Electron Laser - PolFEL by adjusting the connections, and delivery of the necessary intermediate equipment and updating the control system; the task includes installation of the refreshed replenishment cooler in a layout allowing its use to power the CDS for installation, testing and commissioning of components of the PolFEL accelerator. A detailed description of the task is included in **Appendix 1 to the Agreement in Chapter 18 (points 18.1 through 18.8)**.~~

~~**b) Task 2:** Expansion of the functionality of the Helium Cooling System implemented under Task 1 through the delivery and installation of a high-efficiency base cooler together with the necessary auxiliary equipment, in particular including cold and warm compressors, helium de-oiling and gas management system, control system, vacuum pump system, cryogenic process lines (within the Helium Cooling System) and connection lines and helium recovery system, as well as low and high~~

~~pressure helium tanks. The Task also includes the installation and commissioning of the entire System in a system using the scope of Task 1. A detailed description of the Task is included in **Appendix 1 to the Agreement in Chapter 18** (points 18.1 to 18.8).~~

~~54.~~ A detailed description of the equipment covered by the Subject of the Agreement and the scope and manner of performance of the Subject of the Agreement are included in **Appendix No. 1 to this Agreement**.

~~65.~~ The supplied equipment must be brand new, i.e. unused before the date of delivery and free of any defects - **the condition applies only to Task 2**.

~~76.~~ The Economic Operator shall bear full responsibility for non-performance or improper performance of the Subject of the Agreement as a result of the use of improper materials and equipment, in particular, not meeting the requirements, standards, applicable regulations and requirements of the Awarding Entity.

~~87.~~ The Economic Operator declares that he is/is not a VAT payer in the territory of the Republic of Poland.

~~98.~~ The Economic Operator declares that the subject of the Agreement **includes/does not include** the goods and services listed in Appendix No. 15 to the Act of March 11, 2004 on Value Added Tax (hereinafter referred to as the "VAT Act").

§ 2

DEADLINE AND CONDITIONS OF EXECUTION OF THE SUBJECT OF THE AGREEMENT

1. The Economic Operator shall execute the Subject of the Agreement:

a) for Task 1: within 80 weeks from the date of conclusion of the Agreement and

b) for Task 2: up to 120 weeks from the date of conclusion of the Agreement , taking into account the schedule specified in **Appendix No. 1 to the Agreement** - in Chapter 19, in particular Tables 19.1 and 19.2. The Economic Operator shall provide manufacturer's warranty cards for the offered equipment upon acceptance of the Subject of the Agreement.

2. All costs associated with the implementation of the Subject of the Agreement, including transportation, packaging and insurance for the time of transportation shall be borne by the Economic Operator.

3. Persons responsible for the implementation of the Agreement:

a) On the part of the Awarding Entity:....., tel....., e-mail.....

b) On the part of the Economic Operator:....., tel ,..... e-mail.....

4. The Parties agree on the electronic form of communication by sending messages to the persons indicated in paragraph 3 to the e-mail addresses provided.

5. The Economic Operator shall be fully liable to the Awarding Entity for the acts or omissions of the Economic Operator's employees, persons acting on behalf of the Economic Operator or subcontractors, as for their own acts.

6. In the event of a possible discrepancies between the provisions of the documents constituting the content of the procedure and the implementation of the Subject of the Agreement, priority shall be given to the provisions of the document according to the following hierarchy of documents:

- a) Agreement;
- b) Description of the subject of the tender contract (OPZ) together with the specification of the ToR of the tender contract (SWZ);
- (c) Technical and detailed design;
- (d) The Economic Operator's tender offer dated:.....

§ 3

RESPONSIBILITIES OF THE PARTIES

1. The Economic Operator's responsibilities include:

- a) ensuring that the Subject of the Agreement is performed by persons with the necessary licenses and qualifications,
- b) performance of the Subject of the Agreement with due diligence as determined taking into account the professional nature of his business,
- c) perform other duties related to the execution of the Agreement,
- d) conclusion, at his own expense, appropriate civil liability insurance agreements for the term of the Agreement. It applies to civil liability for damage and accidents to employees and third parties arising in connection with the execution of the Agreement - the required sum insured not less than PLN 37,000,000.00, together with providing the Awarding Entity with confirmation of payment of the policy and providing confirmation of its renewal in the event of expiration of the policy during the term of the Agreement without additional request from the Awarding Entity.

2. The Awarding Entity's responsibilities shall include:

- a) verification of the technical documentation (referred to in § 1.2(a) and (b)) and making comments in writing within 14 days from the date of delivery of the documentation to the Awarding Entity,
- b) acceptance of the Subject of the Agreement within 14 days from the date of delivery of the notification of readiness for acceptance to the person indicated in § 2 paragraph 3 point a) by the Economic Operator in writing. Alternatively, the Awarding Entity shall allow the notification of readiness for acceptance of the Subject of the Agreement to be sent to the email of the responsible person specified in § 2.3(a), except that the deadline for notification of acceptance will then be counted from the moment of confirmation of receipt of the email.
- c) payment of remuneration for the completed and accepted Subject of the Contract.

3. The Awarding Entity shall have the right to inspect the design work on an ongoing basis.

§ 4

ECONOMIC OPERATOR'S CAPACITY

(1) The Economic Operator declares that in order to perform the Subject of the Agreement, the Economic Operator shall provide adequate technical resources and personnel with the capabilities, experience, knowledge and required licenses to the extent necessary to perform the Subject of the Agreement, in accordance with the tender submitted by the Economic Operator.

2. The Economic Operator represents that he has the knowledge and experience required to perform the Subject of the Agreement.

3. The Economic Operator declares that a third party [...], whose resources in terms of technical or professional capabilities the Economic Operator relied on when submitting his tender to confirm fulfilment of the conditions for participation in the public procurement procedure, will perform the Subject of the Agreement to the extent of [...], i.e. to the extent that the technical or professional capabilities of the third party have been declared to perform the Subject of the Agreement for the purpose of the public procurement procedure. If the Economic Operator ceases to perform the Subject of the Agreement in the above scope by [...], for any reason, the Economic Operator shall be obliged to replace this entity with another entity having resources at least equal to those which formed the basis for demonstrating the Economic Operator's fulfilment of the conditions of participation in the public procurement procedure with the participation of the third entity, after obtaining the consent of the Awarding Entity.

§ 5

TERMS OF ACCEPTANCE OF THE SUBJECT OF THE AGREEMENT

1. Acceptance shall be aimed at handing over to the Awarding Entity the Subject of the Agreement (or task), constituting the agreed subject of acceptance, after checking the compliance of its performance with the Agreement. Prior to notification of readiness for acceptance, the Economic Operator undertakes to provide the Awarding Entity with all documents necessary to assess the correctness of performance of the Subject of the Agreement in the scope subject to acceptance.

2. The protocol of partial/final acceptance of the Subject of the Agreement is to be written in accordance with the requirements below and signed by the Parties or by the Awarding Entity and sent to the Economic Operator.

3. The acceptance protocol of the Subject of the Agreement should include, in particular:

a) the Agreement number,

b) data of the Awarding Entity and the Economic Operator,

c) Subject of the Agreement and acceptance and the date of its execution,

d) information on the correctness of execution of the Subject of the Agreement/task by the Economic Operator,

e) information on the provision of manufacturer's warranty cards for the delivered equipment,

f) in the case of final acceptance, delivery of the Economic Operator's warranty card for the entire Subject of the Agreement.

4. The Awarding Entity shall have the right to submit remarks on the Subject of the Agreement/task submitted for acceptance. They should be provided to the Economic Operator in writing or by e-mail within 14 days from the date of notification for acceptance. The remarks should include, in particular:



a) a list of reservations

b) a request to the Economic Operator to remove the reservations or irregularities within the time limit set by the Awarding Entity.

5. The date of performance of the Agreement/task shall be the date of signing the final/partial acceptance protocol of the Subject of the Agreement by the Awarding Entity without reservations, taking into account the deadlines specified in § 2 paragraph 1 of the Agreement.

6. The Awarding Entity authorizes the person indicated in § 2 paragraph 3 letter a) to sign the protocol of acceptance of the Subject of the Agreement on his behalf.

§ 6

QUALITY GUARANTEE OF THE SUBJECT OF THE AGREEMENT

1. The Economic Operator shall grant the Awarding Entity, for all equipment supplied under the Agreement and for the entire system constituting the subject of the Agreement, a warranty for a period ofmonths counting from the date of signing the protocol of final acceptance of the Subject of the Agreement without reservations.

2. The Economic Operator declares:

a) months of limited warranty, understood as the obligation to carry out repair as a result of failure, using the Economic Operator's infrastructure, the Economic Operator's human resources and spare parts owned by the Awarding Entity. The limitation of the warranty in this case does not include damage caused by latent defects arising from the stages of production, installation and commissioning. (If applicable - subject to the Economic Operator's declaration in the non-price criteria form);

b) months of unlimited warranty, understood as the obligation to carry out repair as a result of the occurrence of failure, using the Economic Operator's infrastructure, the Economic Operator's human resources and spare parts owned by the Economic Operator.

3. The Economic Operator shall repair defects in the Subject of the Agreement at the place of use. If it is necessary to carry out the repair outside the place of use, the cost of all elements of the defect removal process, in particular transportation, disassembly and reassembly, and insurance for the duration of repair of individual components, shall be borne by the Economic Operator.

4. Notification of the defect will be made through a dedicated electronic communication channel (user support hotline, email account, telephone number), which does not exclude reporting defects by phone, email as well as in writing. If it is not possible to contact the Economic Operator in the aforementioned manner, a written notification sent to the last address of the Economic Operator known to the Awarding Entity is acceptable.

5. The Economic Operator undertakes to take action to remove the defect in accordance with the following conditions:

a) the response time will not exceed 72h. By response for this type of action, the Parties understand remote repair in cooperation with the Awarding Entity, using electronic channels of communication - calculated as the time that elapses from the sending of the notification (user support hotline, email account, telephone number) to the receipt of the first response regarding the proposal of how to remove the defect. Replies confirming acceptance of the request or expressing willingness to provide assistance will not be considered as fulfilment of this obligation.



b) Arrival of the service team: the response time will not exceed 7 calendar days. By response for this type of action, the parties understand the time that elapses from the date of receipt of confirmation (Awarding Entity's support hotline, email account, telephone number) of the inability to remove the defect using dedicated electronic communication channels, to the date of arrival of the Economic Operator's representative to remove the defect.

6. The maximum time limit for repairing the defect shall not exceed 30 calendar days from the date of reporting the defect.

7. In the event of occurrence during the warranty or guarantee period of a failure or incompatible with the technical specification operation of the helium cooling system, which is the subject of the Agreement, causing direct or indirect damage to the infrastructure or operation of other installations coexisting with the subject installation, in particular, PoFEL accelerator systems such as cryomodules, vacuum pumps or electron beam diagnostic systems, regardless of the rights of the Awarding Entity under the terms of the warranty and guarantee, the Awarding Entity may appoint an expert with appropriate technical expertise in the field of helium cryogenic systems, in order to clearly assess the causes of the failure. The Awarding Entity reserves the right to charge the Economic Operator with the costs of the expert's report if the Economic Operator is found to be at fault.

8. In the event of the circumstances indicated in paragraph 7, the Awarding Entity and the Economic Operator may also appoint experts on coexisting installations in order to assess the impact of the failure of the helium cooling system on coexisting installations, to assess the extent of the damage, the effects of the damage, valuation of the damage found to have occurred as a result of the failure of the helium cooling system. The assessment will be the basis for claims for the damage caused against the Economic Operator.

9. By "**coexisting installations**" is understood, in particular, installations directly connected, adjacent, located in the immediate vicinity, in one technical communication path, as well as installations on which the helium cooling system has a direct or indirect impact on their technically correct functioning.

10. The Economic Operator's liability under paragraphs 7 and 8 shall be limited to the amount of the total Remuneration specified in § 7, paragraph 1. The above, however, does not deprive the Awarding Entity of the right to seek compensation on general terms, if the amount indicated in § 7, paragraph 1. does not cover the damage caused.

11. The Subject of the Agreement reported by the Awarding Entity for defect removal before the expiration of the warranty period, shall be subject to repair under the principles described in paragraphs 1 - 9 above.

12. The warranty period shall correspond at least to the period indicated in Article 568 § 1 of the Civil Code. In the case of granting a quality guarantee for the Subject of the Agreement (based on the tender evaluation criterion), above the period indicated in Article 568 § 1 of the Civil Code, the warranty shall be equal to this period.

§ 7

PRICE AND PAYMENT TERMS

1. The Parties agree that for the performance of the Subject of the Agreement referred to in § 1, the Economic Operator is entitled to the total net remuneration in the amount of PLN (EUR/USD), including:

- a) for the completion of Task 1 in the amount of PLN (EUR/USD) net,
- b) for the completion of Task 2 in the amount of PLN (EUR/USD) net.

Payments in successive stages in Task 1 and Task 2 are presented in the table below:

No	Stages	Value [PLN (EUR/USD)].	Confirmation of acceptance of stage
Task 1, including:			
1.	Technical design	up to 10% of the gross remuneration indicated in paragraph 1(a), but not more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Technical Design" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.3.
2.	Detailed design	up to 15% of the gross remuneration indicated in paragraph 1(a), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Detailed design" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.4.
3.	Production	up to 10% of the gross remuneration indicated in paragraph 1(a), but not more than the value for a given phase indicated in the price list form increased by applicable VAT	A detailed description of the acceptance conditions for the "Production" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.5
4.	Delivery	up to 25% of the gross remuneration indicated in paragraph 1(a), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Delivery" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.6.
5.	Installation	up to 20% of the gross remuneration indicated in paragraph 1(a), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Installation" stage is described in Appendix 1, i.e. Description of the Subject of the Tender Contract in Chapter 18.7.
6.	Commissioning and acceptance	the fraction of the gross remuneration indicated in paragraph 1(a) missing up to 100%.	A detailed description of the acceptance conditions for the "Commissioning and acceptance" stage is described in the Appendix to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.7
Task 2, including:			
1.	Technical design	up to 10% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Technical Design" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.3.
2.	Detailed design	up to 15% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Detailed design" stage is described in Appendix 1 to the Agreement, i.e. OPZ in Chapter 18.4.
3.	Production (Part A)	up to 5% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Production" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.5.

4.	Delivery (Part A - to the extent provided for in interaction with the subject of Task 1)	up to 12% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Production" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.6.
5.	Installation	up to 13% of the gross remuneration indicated in paragraph 1(b), not	Detailed description of acceptance conditions for the "Production" phase
	(Part A – in the scope provided for the interaction with the subject of Task 1 and its commissioning and integration)	more, however, than the value per stage indicated in the price form plus applicable VAT	is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.7.
6.	Production cont. (Part B)	up to 5% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Production" stage is described in Appendix 1 to the Contract, i.e. Description of the Subject of the Tender Contract in Chapter 18.5.
7.	Delivery cont. (Part B)	up to 13% of the gross remuneration indicated in paragraph 1(b), but not more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Delivery" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.6.
8.	Installation cont. (Part B)	up to 12% of the gross remuneration indicated in paragraph 1(b), but no more than the value for a given stage indicated in the price form plus the applicable VAT	A detailed description of the acceptance conditions for the "Installation" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.7.
9.	Commissioning and acceptance	the fraction of the gross remuneration indicated in paragraph 1(b) missing up to 100%.	A detailed description of the acceptance conditions for the "Commissioning and acceptance" stage is described in Appendix 1 to the Agreement, i.e. Description of the Subject of the Tender Contract in Chapter 18.8. 18.8.

2. The net amount of remuneration shall be increased by the applicable 23% VAT and shall amount to the total gross amount, or the VAT due on the amount of remuneration shall be paid by the Awarding Entity to the account of the appropriate Tax Office in the event that the Awarding Entity has a tax obligation in accordance with the provisions on VAT.

3. The remuneration shall include all activities, costs and expenses of the Economic Operator necessary for comprehensive preparation and timely execution of the Agreement, in particular, but not limited to: the price of the Subject of the Agreement, installation, commissioning, testing, transportation, packaging and insurance costs for the time of transportation, training of the Awarding Entity's personnel and performance of obligations under the warranty/guarantee, as well as costs not included and not provided for by the Awarding Entity, but necessary for execution of the Subject of the Agreement due to the intended purpose of the agreement.

4. The Awarding Entity shall allow partial invoicing, i.e. after completion of individual stages concerning Task 1 and Task 2, of the Subject of the Agreement listed in paragraph 1a and 1b above on the basis of partial acceptance protocols, to be paid in accordance with the payment table indicated above.

5 The Awarding Entity shall pay the amount due to the Economic Operator bank account, by bank transfer, within 30 days from the date of submission to the Awarding Entity of a correctly issued invoice in accordance with the payment table indicated above. The date of payment shall be the date on which the Awarding Entity's bank account is debited.



6. The invoice shall be issued on the basis of an unqualified signed by the Awarding Entity- the protocol of partial or final acceptance of the Subject of the Agreement, respectively, in accordance with § 5 of the Agreement.

7. In the event that the Economic Operator is registered as an active taxpayer of tax on goods and services, the Awarding Entity reserves the right to pay the remuneration due to the Economic Operator under the Agreement, under the split payment mechanism (hereinafter referred to as the "Split Payment Mechanism") provided for in the provisions of the Act of March 11, 2004 on tax on goods and services (hereinafter referred to as the "VAT Act").

8. The Economic Operator represents that the bank account indicated by the Economic Operator into which payment of the consideration due to the Economic Operator under the Agreement is to be made (applies to Economic Operators registered in Poland):

a) is an account allowing payment under the Split Payment Mechanism;

b) is an account included in the list of entities (hereinafter referred to as the "List") maintained by the Head of the National Tax Administration referred to in Article 96b of the VAT Act.

9. In the event that the bank account indicated by the Economic Operator does not meet the conditions specified in paragraph 8, the Awarding Entity's delay in making payment within the period specified in the Agreement, resulting from the Awarding Entity's inability to pay using the Split Payment Mechanism or to the account on the List, shall not constitute the basis for any claims by the Economic Operator, including, in particular, shall not entitle the Economic Operator to demand from the Awarding Entity interest or compensation for late payment.

10. Invoices may be issued in writing and sent to the address, or in electronic form and sent to the e-mail address

11. The Economic Operator, in accordance with the Law of November 9, 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership, has the option to send structured electronic invoices electronically through the Electronic Invoicing Platform. The Awarding Entity has an account on the platform <https://brokerpefexpert.efaktura.gov.pl> PEF No: NIP 532-010-01-25. The Awarding Entity does not allow sending and receiving other structured electronic documents via the platform, except for correction invoices.

§ 8 COPYRIGHTS

1. The Documentation constituting the subject of the Agreement shall be subject to the protection provided for in the Law on Copyright and Related Rights.

2. The Economic Operator declares that it will be entitled to copyright in the project documentation produced under the Agreement, and that the Awarding Entity's use of the documentation will not infringe any intellectual property rights of third parties. Otherwise, the Economic Operator agrees to pay all damages and costs in connection with the pursuit of such claims by third parties against the Awarding Entity.

3. The Economic Operator shall transfer to the Awarding Entity, as part of the remuneration referred to in § 7 of the Agreement, without time and territorial limitations, the author's economic rights to the works created as part of the execution of the Agreement, upon signing the final acceptance protocol.





4. As part of the remuneration specified in § 7 of the Agreement, the Economic Operator shall transfer to the Awarding Entity the right to authorize the exercise of derivative copyrights to any works developed .

5. as part of performance of the Agreement, i.e. the right to authorize the disposal and use of such derivative works.

6. The transfer of copyrights and the right to authorize the exercise of derivative rights shall entitle the Awarding Entity to dispose of and use the aforementioned works in the following fields of exploitation:

a) concerning recording and reproduction - production of copies of works by a specified technique, including printing, reprography, magnetic recording and digital technique;

b) concerning circulation of the original or copies on which the work has been fixed - marketing, lending or leasing of the original or copies;

c) concerning dissemination of works in a manner other than specified in point b) - public performance, exhibition, display, reproduction, as well as broadcasting and re-broadcasting, as well as making the work available to the public in such a way that everyone can have access to it at a place and time of their own choosing,

d) use of the works at the stage of the tender procedure for the execution of the works and at the stage of the execution of the works,

e) use of works or any parts thereof for presentation, combining fragments with other works,

f) introduction into computer memory or into a multimedia network, including the Internet,

g) any processing of works including for adaptations, modifications of documentation.

7. Transfer of copyrights in accordance with this paragraph shall also include the right to use, benefit from and dispose of any development of the Subject of the Agreement made by the Awarding Entity, on the order of the Awarding Entity or with the consent of the Awarding Entity without the need to obtain the consent of the Economic Operator.

8. In the period from the delivery of the works to the Awarding Entity until the signing of the final acceptance protocol by the Parties, the Economic Operator shall permit the Awarding Entity to use the works in the fields of exploitation indicated in paragraph 5 as part of the remuneration referred to in § 7 of the Agreement.

9. Upon transfer of copyrights to the Awarding Entity, the ownership of the copies on which the works have been recorded shall pass to the Awarding Entity as part of the remuneration specified in paragraph 7.

§ 9

PERFORMANCE BOND

1. The Economic Operator declares that prior to conclusion of the Agreement, he has submitted an unconditional performance bond in the form of [...] in the amount of 2.5% of the total remuneration specified in § 7 point 1, i.e. in the amount of PLN [...] (in words: PLN [...]) (EUR/USD)), increased by due Vat tax, i.e. in the amount of PLN [...] (in words: PLN [...]) (EUR/USD)), for the period of completion of the Subject of the Agreement (hereinafter referred to as the **Performance Bond**). The Performance Bond shall be provided in the same currency as the concluded Agreement.



2. The purpose of the Performance Bond shall be to secure and possibly satisfy the Awarding Entity's claims for non-performance or improper performance of the Agreement by the Economic Operator, including the Awarding Entity's claims under the guarantee or warranty (in particular, among others, those arising from the need for the Awarding Entity to remove defects in the Subject of the Agreement as part of substitute performance) and claims under contractual penalties.
3. The Awarding Entity shall be the beneficiary of the Performance Bond.
4. The costs of the Performance Bond shall be borne by the Economic Operator.
5. The Awarding Entity undertakes to return the Performance Bond to the Economic Operator in the amount of 70%, within 30 days from the date of final acceptance of the Subject of the Agreement.
6. The Awarding Entity shall leave an amount not exceeding 30% of the Performance Bond for claims under warranty for defects or guarantee.
7. The amount referred to in paragraph 6 above, shall be returned no later than on the 15th day after the expiration of the warranty or guarantee period.
8. During the period of performance of the Agreement, the Economic Operator may change the form of the Performance Bond to one or more of the forms referred to in the provisions of the Law, provided that the change in the form of the Security shall be made while maintaining the continuity of the Performance Bond and without reducing its amount.
9. The Performance Bond shall remain at the disposal of the Awarding Entity and shall remain valid for the period specified in the Agreement.
10. If there is no reason for realization of the Performance Bond in whole or in part, it shall be returned to the Economic Operator in whole or in part, respectively, within the time limits referred to in paragraphs 5 and 7. The Performance Bond provided in cash shall be returned together with the amount of interest resulting from the agreement of the Awarding Entity's bank account in which it was kept, less the costs of account maintenance and bank commission for transferring funds to the Economic Operator's account.
11. The Awarding Entity may seek satisfaction from the Performance Bond if any amount due to the Awarding Entity from the Economic Operator in connection with non-performance or improper performance of the Contract is not paid within 30 days from the date of receipt by the Economic Operator of a written demand for payment.
12. If the period of validity of the Performance Bond provided in a form other than money is shorter than the required period of its validity, the Economic Operator shall be obliged to establish a new performance bond no later than 30 days before the expiration of the existing Performance Bond.
13. If the Economic Operator does not submit a new performance security to the Awarding Entity within the period specified in paragraph 12, the Awarding Entity shall change the form of performance bond to a performance bond in cash, by withdrawing the amount from the existing Performance Bond.
14. In the event of a change or failure to meet the deadline for performance of the Agreement, the Economic Operator providing Performance Bond in a form other than money shall be obliged to extend the expiration date of the Performance Bond provided accordingly.

§ 10

AMENDMENT TO THE AGREEMENT



1. Pursuant to Article 455 paragraph 1 point. 1 of the Act, the Awarding Entity provides for the possibility of amending the provisions of the Agreement in the following cases and under the following conditions:

a) change of the date of execution of the Subject of the Agreement in the following cases:

- stoppages and delays not caused by the Economic Operator, having a direct impact on the timeliness of delivery; the change consists in extending the deadline by the period of stoppages and delays;
- other interruptions in the execution of the delivery, arising for reasons beyond the Economic Operator's control; the change consists in extending the deadline by the period of the interruptions that occurred;
- by agreement of the Parties in the case described in paragraph 5 of this section. In particular, on the basis of a request submitted by the Economic Operator in the case of an increase in the scope of execution of the subject of the Agreement. The request with objective justification shall be submitted by the Requesting Party.

b) change of the date of execution of the Subject of the Agreement - in case of occurrence, case of force majeure, by which, for the purposes of these procedure, the Parties understand an event external to the legal bond connecting the Parties of a nature independent of the Parties, which the Parties could not avoid or prevent with due diligence. Force majeure, conditioning the amendment of the Contract, will be considered in particular: flood, fire and other natural disasters, pandemic, epidemic, riots, strikes, terrorist attacks, acts of war, sudden collapse of weather conditions, sudden interruption of electricity supply, radiation or contamination;

c) the possibility of amending the Agreement in the event of circumstances that hinder or prevent the execution of the Agreement due to the occurrence of Covid -19.

2. The above provisions of paragraphs 1(a) and 1(c), 4(b), 4(c), 4(d), and 5 constitute a catalogue of changes to which the Awarding Entity may agree, without constituting an obligation on the part of the Awarding Entity to give such consent.

3. In the event of the occurrence of the situation specified in paragraph (1) letters a and c and paragraph (4) letters b, c, d, of this paragraph, the Economic Operator shall be obliged to notify the Awarding Entity in writing at the email address specified in § 2, paragraph (3) letter a, of this fact, together with the justification of the basis for the change and the presentation of evidence and costing in terms of paragraph (4) letters b, c, d.

4. Pursuant to Article 436 para. 4(b) of the Law, the Awarding Entity shall introduce the possibility of changing the remuneration in the event of a change in:

a) the rate of value added tax and excise tax,

b) the amount of the minimum wage for labour or the amount of the minimum hourly rate, established on the basis of the Act of October 10, 2002 on the minimum wage for labour,

c) the rules for being subject to social insurance or health insurance, or the amount of the premium rate for social insurance or health insurance,

d) the rules for collecting and the amount of payments to employee capital plans, as referred to in the Act of October 4, 2018 on employee capital plans (Journal of Laws, point 2215, and of 2019, point 1074 and 1572)

- if these changes will affect the Economic Operator's performance costs.





5. In addition to the changes specified in paragraph 4, the Awarding Entity shall allow an additional possibility to amend the Agreement pursuant to Article 455 paragraph 2 of the Act. The request with objective justification shall be submitted by the Requesting Party.

a) The request referred to above shall be submitted by the Economic Operator at least 5 days prior to the expiration of the contract term.

6. The change in remuneration due to the changes described in paragraph 4 of this section shall include supplies and work performed after the effective date of the provisions governing the above changes.

7. Pursuant to Article 439 of the Act - the Parties allow a change in the amount of the Economic Operator's remuneration, i.e. indexation by the value of the price index for goods and services, published in the Announcement of the President of the Central Statistical Office. The change in the amount of the Economic Operator's remuneration will come into effect no earlier than from the next calendar month following the month in which the Announcement of the President of the Central Statistical Office was published in 2023. The Party initiating the change should submit a request containing a demand for a change in the amount of the remuneration, except that the change in the amount of the remuneration will take effect from the month in which the aforementioned request was submitted. When submitting the request, the Economic Operator shall submit documents confirming the reasonableness and direct impact of the occurred changes on the cost of contract execution. None of the Parties to the contract will be entitled to change the amount of the Economic Operator's remuneration in the event that the price increase index of goods and services does not exceed 7%. The Awarding Entity stipulates that the maximum value of the change in the amount of remuneration that it allows as a result of the application of the provisions on the principles of introducing changes to its amount - is 5% of the amount of the total remuneration referred to in §7 point 1.

§ 11

CONTRACTUAL PENALTIES

1. The Economic Operator shall pay contractual penalties to the Awarding Entity:

a) for delay in execution of the Subject of the Agreement/Task in the amount of 0.05% of the total net remuneration/remuneration for a given Task, referred to in §7 point 1 of this Agreement, for each commenced day of delay, calculated from the next day after the deadline for execution,

b) for delay in case of performance under warranty or guarantee in the amount of 0.02% of the total net remuneration/remuneration for a given Task referred to in § 7 section 1 of this Agreement, for each commenced day of delay, calculated from the next day after the expiration of the performance deadline specified in § 6 section 6,

c) in the event of exceeding the electronic response time to the failure indicated in § 6.5(a), during the warranty period, in the amount of 0.02% of the total net remuneration for each commenced next 12 hours of delay,

d) in case of exceeding the time of personal response to the failure indicated in § 6.5 letter b, during the warranty period in the amount of 0.02% of the total net remuneration for each started next 6 hours of delay,

e) in the event of exceeding the time limit for removal of objections or irregularities reported by the Awarding Entity under § 6 paragraph 5 letter b, in the amount of 0.02% of the total net remuneration



referred to in § 7 paragraph 1 of this Agreement, for each started day of delay, calculated from the next day after the deadline set by the Awarding Entity,

f) for withdrawal from the Agreement for reasons attributable to the Economic Operator in the amount of 8% of the total remuneration referred to in § 7 paragraph 1 of this Agreement.

2. The Economic Operator authorizes the Awarding Entity to reduce the remuneration referred to in § 7 paragraph 1 of this Agreement by the amount of the accrued contractual penalties.

3. The sum of contractual penalties shall not exceed 10% of the total net remuneration referred to in § 7 paragraph 1 of this Agreement.

4. Payment of contractual penalty by the Economic Operator shall not deprive the Awarding Entity of the right to seek compensation on general terms, if the contractual penalty does not cover the damage caused.

§ 12

WITHDRAWAL FROM THE AGREEMENT

1. The Awarding Entity shall be entitled to withdraw from the Agreement if the Economic Operator:

a) for reasons attributable to the Economic Operator, fails to perform the Agreement or performs it improperly and, despite a written or e-mail request to the Economic Operator by the Awarding Entity to resume performance or proper performance of the Agreement within the designated period of time, fails to comply with the Awarding Entity's request,

b) without justifiable cause, has interrupted the performance of the Agreement for a period of more than 5 working days and, despite a written or email request to the Economic Operator by the Awarding Entity, has not resumed performance of the Agreement within 5 working days from the date of delivery of the request,

c) for reasons attributable to the Economic Operator, has not commenced performance of the Agreement, or remains in delay with the performance of the Agreement to such an extent that compliance with the deadline specified in § 2 is doubtful,

d) has entrusted the performance of part of the work under the Agreement to subcontractors, in accordance with the procedure, reserved as key tasks with the obligation of personal performance by the Economic Operator.

e) has assigned the Agreement or a part of it without the consent of the Awarding Entity.

2. In the event of a material change of circumstances resulting in the performance of the Agreement not being in the public interest, which could not have been foreseen at the time of entering into the Agreement, or further performance of the Agreement may jeopardize the vital interest of state security or public safety, the Awarding Entity may withdraw from the Agreement within 30 days of becoming aware of these circumstances. In the case referred to in the preceding sentence, the Economic Operator may claim only a portion of the Remuneration due to him for the performance of a part of the Subject of the Agreement.

3. The declaration of the authorized Party on withdrawal from the Agreement shall be in writing reserved under pain of nullity. The declaration should indicate the circumstances justifying the withdrawal from the Agreement. The declaration should be sent to the other Party by registered mail



The authorized Party may exercise its right of withdrawal under this paragraph within 20 days from the date of becoming aware of the circumstances justifying withdrawal from the Agreement.

4. Within 3 days from the date of withdrawal from the Agreement, the Parties shall draw up a protocol of inventory of work in progress as of the date of withdrawal. In the event that the Economic Operator is absent, the Awarding Entity shall be entitled to make the inventory unilaterally, without setting an additional deadline.

5. The Awarding Entity shall pay the Economic Operator the remuneration due for the performance of a part of the Subject of the Agreement, according to the prices as of the date of withdrawal, less the contractual penalties charged by the Awarding Entity. The protocol of inventory of work in progress referred to in paragraph 4 shall be the basis for the Economic Operator to issue an invoice for the portion of the Remuneration due to the Economic Operator for the performance of a part of the Subject of the Agreement.

§ 13 FINAL PROVISIONS

1. The Economic Operator may not, without the prior written consent of the Awarding Entity, under pain of nullity, transfer the rights and obligations under the Agreement to a third party, in particular: transfer of receivables, assignment, transfer, sale and pledge of receivables under this Agreement to a third party.

a) If a Consortium is acting as the Economic Operator, a request to the Awarding Entity for consent to the above must be submitted by all members of the Consortium.

2. In implementation of the provision of Article 4c of the Law of March 8, 2013 on Prevention of Excessive Delays in Commercial Transactions, the Awarding Entity declares that it has the status of a large entrepreneur within the meaning of Article 4(6) of this Law.

3. The Parties declare that the personal data indicated in the Agreement will be processed with due diligence on the basis of the Regulation of the European Parliament and of the Council (EU) 2016/679 of April 27, 2016 on the protection of natural persons in relation to the processing of personal data and on the free flow of such data and the repeal of Directive 95/46/EC, and the processing of personal data indicated above, is necessary for the purposes arising from the legitimate interests pursued by the Parties.

4 In matters not covered by the Agreement, the provisions of the above-mentioned laws shall apply: Public Procurement Law and the Civil Code.

5. Any changes to the Agreement shall be in writing (in the form of an Appendix) reserved under pain of nullity, with the proviso that the change of data indicated in § 2 paragraph 3 does not require an Appendix.

6. The Economic Operator shall bear full responsibility for non-performance or improper performance of the Subject of the Agreement.

8. Disputes that may arise in connection with the implementation of the Agreement, the Parties undertake to resolve amicably through negotiations. In the absence of an agreement - disputes will be settled by the court having jurisdiction over the Awarding Entity's seat.





9. Any correspondence relating to the Agreement shall be conducted in the Polish language, or in English.

10. The Agreement has been drawn up in four identical copies, two copies for each Party, in Polish and English. In case of conflict Polish version shall prevail.

11. The Economic Operator's Tender and the Appendix to the Agreement shall constitute an integral part thereof.

§ 14

1. Integral part of the Agreement are the following :

- Appendix No. 1: Detailed description of the subject of the Agreement, constituting VOLUME III of the IDW of the ToR - (Process Design of the Helium Cooling System of the PoFEL accelerator with elements of technical design);
- Appendix no. 2: Economic Operator's Tender
- Appendix no. 3: GDPR clause

AWARDING ENTITY

ECONOMIC OPERATOR