

## PROPOSED PROVISIONS OF THE AGREEMENT E.ZP.271[...]2022.ZP

Concluded on .....2022 between:

National Center for Nuclear Research with its seat in Otwock (05-400), ul. Andrzeja Sołtana 7, Poland, a research institute entered in the register of entrepreneurs of the National Court Register kept by the District Court for the city of Warsaw, XIV Commercial Department of the National Court Register, under the number KRS 000017. Warsaw, XIV Economic Department of the National Court Register, under KRS number 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 - [...], hereinafter referred to as the "**Economic Operator**",

represented by:.....

the Awarding Entity and the Economic Operator hereinafter referred to collectively as the "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 (Journal of Laws of 2021, item 1129, as amended) (hereinafter referred to as the "Act").

### § 1

#### SUBJECT OF THE AGREEMENT

1. The subject of the Agreement is the delivery of **12 pcs. of microwave complete three-port ferrite isolators and 3 pcs. of microwave water loads** (the "Subject of the Agreement").
2. The detailed specification of the Subject of the Agreement is specified in Appendix No. 1 to the Agreement.
3. The delivery equipment must be brand new, i.e. unused before the date of delivery and free of any defects and approved for use in the Republic of Poland.
4. The Economic Operator represents that it is entitled to offer and sell each equipment and to make available the documentation supplied with each equipment, without being limited in this respect by the rights of third parties, and that it is entitled to enter into and perform this Agreement.
5. 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 Value Added Tax Act of March 11, 2004 (hereinafter referred to as the "VAT Act") ( if applicable).

## § 2

### CONDITIONS OF EXECUTION OF THE SUBJECT OF THE AGREEMENT

1. The Economic Operator shall execute the Subject of the Agreement on the dates, in accordance with the following schedule
  - a. Delivery of 2pcs of complete three-port ferrite insulators within 11 months from the date of conclusion of the Agreement
  - b. delivery of 10 pieces of complete three-port ferrite insulators and 3 pieces of microwave water loads within 15 months from the date of conclusion of the Agreement .
2. All costs associated with the implementation of the Subject of the Agreement, including transportation, customs duties, packaging and insurance for the time of transportation shall be borne by the Economic Operator. The Economic Operator shall provide with the goods the following documents in printed version and on a USB memory stick type:
  - a) technical description and abbreviated operating instructions - one document for each group of goods is acceptable;
  - b) quality control certificates (measurement report) - for each equipment separately.
3. The Economic Operator declares that the Subject of the Agreement will be new, unused and approved for use in Poland.
4. All costs associated with the execution of the Subject of the Agreement shall be borne by the Economic Operator.
5. The Economic Operator undertakes to manufacture the Equipment on the basis of the current state of knowledge and technical capabilities and with due diligence determined taking into account the professional nature of his business.
6. The Awarding Entity undertakes to cooperate with the Economic Operator to the extent necessary to enable the Economic Operator to fully and properly manufacture each Equipment. In particular, the Awarding Entity undertakes to provide the Economic Operator with all instructions and to remain in constant communication with the Economic Operator.
7. The Economic Operator undertakes to provide remote assistance for any problems with the integration of the Equipment.
8. Persons responsible for the performance 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 .....

9. 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.

### § 3

#### TERMS OF ACCEPTANCE OF THE SUBJECT OF THE AGREEMENT

1. The acceptance protocol 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. The Parties shall allow partial acceptance of the Equipment (each batch of Equipment separately).

2. The final/partial acceptance protocol of the Subject of the Agreement shall include, in particular:

a) Agreement number,

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

c) subject of acceptance and date of its execution,

d) inspection of the Subject of the Agreement by the Awarding Entity,

e) Information on the delivery of the required documents for the delivered equipment.

3. The date of execution of the Agreement shall be the date of transfer of the Subject of the Agreement by the Economic Operator to the carrier, taking into account the deadline specified in § 2 paragraph 1 of the Agreement.

4. The Awarding Entity authorizes the person indicated in § 2 article 8 letter a) to sign the acceptance protocol of the Subject of the Agreement on his behalf.

### § 4

#### WARRANTY

1. The Economic Operator shall provide the Awarding Entity with a warranty for all equipment delivered under the Agreement, for a period of .....months, the warranty shall commence from the date of installation and commissioning or after 12 months of signing of the acceptance protocol referred to in § 3 item 1 of each equipment.

2. If it is necessary to carry out repairs outside the place of use, transportation costs shall be borne by the Economic Operator.

3. Notification of defects will be made by telephone, in writing or by e-mail.

4. The Economic Operator's response time to the Awarding Entity's notification will not exceed 7 days. By the Economic Operator's response, the Parties shall understand the diagnosis of the reported defect and the determination of the period necessary for its removal, not exceeding 90 days.



## § 5

### PRICE AND PAYMENT TERMS

1. The Parties agree that for performance of the Subject of the Agreement referred to in § 1, the Economic Operator shall be entitled to a total net remuneration in the amount of PLN...../EUR/USD, plus 23% VAT (if applicable), i.e. gross.

of which:

for 12 pcs. ferrite insulators net in the amount of PLN...../EUR/USD, plus VAT 23% (if applicable) i.e. gross..... PLN/EUR/USD (in words:.....PLN/EUR/USD),

for 3 pcs. water loads net in the amount of PLN...../EUR/USD, plus VAT 23% (if applicable), i.e. gross..... PLN/EUR/USD, (in words: .....PLN/EUR/USD),

2. Payment will be made as follows:

a) 30% of the amount of remuneration to the Economic Operator: PLN/EUR/USD (in words: ) - as an advance payment of the price, payable within 30 days from the date of conclusion of the Agreement, upon receipt of the advance invoice,

b) 60% of the Economic Operator's remuneration: PLN...../EUR/USD (in words:..... ) after sending the final inspection protocol at the Economic Operator's premises (FAT), payable within 30 days of receipt of the protocol, upon receipt of the invoice,

c) the remaining 10% of the remuneration, after delivery to the Awarding Entity's premises and signing of the protocol of acceptance of the Subject of the Agreement by the Awarding Entity without reservations, payable within 30 days of receipt of a correctly issued invoice.

3. The Parties shall allow partial payments after acceptance of each batch of Equipment, according to unit prices from the Economic Operator's price form (Volume IV).

4. 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 "Split Payment Mechanism") provided for in the VAT Law (if applicable).

5. The Economic Operator declares that the bank account indicated by the Economic Operator to which payment of the remuneration due to the Economic Operator under the Agreement is to be made:

- is an account allowing payment under the Split Payment Mechanism (if applicable);
- is an account included in the list of entities (hereinafter referred to as the "List") maintained by the Head of the National Fiscal Administration referred to in Article 96b of the VAT Act (if applicable)

6. In the event that the bank account indicated by the Economic Operator does not meet the conditions specified in point 6, the Awarding Entity's delay in making payment on the date 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 (if applicable).

7. The Economic Operator, in accordance with the Law of 9 November, 2018 on Electronic Invoicing in Public Procurement, Concessions for Works or Services and Public-Private Partnership, shall have the ability to send structured electronic invoices electronically through the Electronic Invoicing Platform. The Awarding Entity has an account on the platform <https://brokerpexpert.efaktura.gov.pl> PEF No: NIP 532-010-01-25.

The Awarding Entity does not allow sending and receiving through the platform other structured electronic documents, except for correction invoices.

8. The original invoice must be sent electronically to the following address: ..... and in the case of an invoice in paper form to be delivered to the registered office of the National Center for Nuclear Research ul. Andrzeja Sołtana 7, 05-400 Otwock (office).

## § 6

### 1. AMENDMENTS TO THE AGREEMENT

#### 2.

Pursuant to Art. 455 para. 1 item. 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) a change in applicable regulations affecting the performance of this Agreement, including a change in the amount of the remuneration resulting from a change in the VAT rate,
- b) a change in 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;

- c) change of the deadline for realization 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 relationship linking 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 Agreement shall 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; the Parties allow, inter alia, the possibility of amending the Agreement in the event of circumstances hindering or preventing the implementation of the Agreement in connection with the occurrence of Covid -19 or the war in Ukraine.

2. The above provisions of paragraph 1(b) 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. Pursuant to Article 436 para. 4(b) of the Act, 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 10 October, 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 4 October, 2018 on employee capital plans (Journal of Laws, item 2215, and of 2019, item 1074 and 1572)

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

## § 7

### CONTRACTUAL PENALTIES

1. The Economic Operator shall pay contractual penalties to the Contracting Authority:

a) for delay in execution of the delivery of the Subject of the Agreement or a batch thereof, in the amount of 0.5% of the net remuneration referred to in § 5 section 1 of this Agreement, for each commenced day of delay, calculated from the day following the expiration of the deadline for delivery,

b) for delay in performance under warranty or guarantee in the amount of 0.5% of the net remuneration, referred to in § 5 paragraph 1 of this Agreement, for each started day of delay, calculated from the next day after the deadline for performance,

c) for withdrawal from the Agreement for reasons attributable to the Economic Operator in the amount of 10% of the net remuneration referred to in § 5 paragraph 1 of this Agreement.

2. The Economic Operator authorizes the Awarding Entity to reduce the remuneration referred to in § 5 paragraph 1 of this Agreement by the amount of the accrued contractual penalties.

3. The sum of contractual penalties may not exceed 15% of the total net remuneration referred to in § 5 paragraph 1 of the Agreement,

4. Payment of contractual penalties by the Economic Operator shall not deprive the Awarding Entity of the right to claim damages on general rules, if the contractual penalty does not cover the damage caused.

5. The Awarding Entity shall pay statutory interest for late payment of remuneration.

## § 8

### FINAL PROVISIONS

1. The Economic Operator shall 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.

2. The Parties declare that the personal data indicated in the Agreement shall 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.

3. In matters not covered by the Agreement, the provisions of the Public Procurement Law and the Civil Code shall apply.

4. Any amendments to the Agreement shall be made in writing (in the form of an Appendix) under pain of nullity, with the proviso that the change of data indicated in § 2 item 8 does not require an Appendix.

5. 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.

6. The Agreement has been drawn up in two identical copies , one copy for each Party.

**ECONOMIC OPERATOR**

**AWARDING ENTITY**

