Draft Agreement with respect to:

The purchase of an PLD Research Cluster Basis

Characteristic:
Date: 09-11-2023
Drawn up by: Camilio Delfgaauw & Rene Schoonen

Agreement

The undersigned:
A. **The Institutes Organization of NWO (NWO-I) / DIFFER**,
having its principal place of business in Utrecht and having its registered office at De Zaale 20, 5612 AJ in Eindhoven, duly represented in this matter by:

[name], [function]

and

B**. [name Supplier]**
having its principal place of business in [city] and having its registered office at [address] duly represented in this matter by:

[name], [function]

state that they have agreed as follows:

1. Definitions

In this contract, the following terms are used with an initial capital letter. These terms have the following meanings:

1.1 ***Acceptance***: The approval of the PLD Research Cluster Basis referred to in article 7 of this contract.

1.2 ***Annexes***: Appendices to this contract which form part of this contract. The terms and conditions referred to in this contract are stated in this contract and in the Annexes.

1.3 ***Delivery***: The supply of the PLD Research Cluster Basis to the location of DIFFER.

1.4 ***Defect***: The failure to comply or comply fully with the agreed specifications as included in Annex I and II, or any other failure of the PLD Research Cluster Basis to function properly.

1.5 ***Documentation***: The Documentation relating to the PLD Research Cluster Basis to be supplied by the Supplier to DIFFER.

1.6 ***Equipment***: The Equipment and other peripherals to be delivered by the Supplier under this contract, inclusive of the associated Materials and Documentation.

1.7 ***Installation:*** Installing the PLD Research Cluster Basis in such a way that the system functions in accordance with the agreed specifications.

1.8 ***Implementation*****:** the service consisting of parameterisation or otherwise structuring, setting up and preparing the Equipment and/or Software, including the Installation and the integration thereof, for the purpose of taking into use.

1.9 ***License***: The entitlement of DIFFER to use the Software in accordance with the stipulations of this contract.

1.10 ***Materials/Components***: The resources required for the Use, Acceptance, Installation, Implementation and Modification of the PLD Research Cluster Basis, not including tools and test materials.

1.11 ***PLD cluster line***: The Equipment, Software, Materials/Components, necessary wiring and Documentation referred to in this contract and the Annexes.

1.12 ***Purchase Price***: The payment to be paid by DIFFER to the Supplier under this contract for the PLD Research Cluster Basis together with the work and services to be performed in consequence of this contract.

1.13 ***Site Acceptance Test*** (SAT): The test (or test process) which will demonstrate that under normal operational conditions the PLD Research Cluster Basis meets and will continue to meet the agreed specifications and comply with the guaranteed properties as

referred to in this contract, this according to the description of the SAT in the Invitation to Tender.

1.14 ***Software***: All standard software and specific software which shall be made available by the Supplier and which is necessary for the satisfactory functioning of the PLD Research Cluster Basis within the framework as laid down in this contract.

1.15 ***Working Days***: Calendar days during business hours (8.00 - 17.30 hours), excluding weekends and public holidays, on which the agreed work is to be carried out.

2. Subject of the Contract

2.1 The Supplier hereby sells to DIFFER and DIFFER hereby purchases from the Supplier a PLD Research Cluster Basis as specified in Annex I, II and III.

2.2 The Supplier shall deliver the PLD Research Cluster Basis to DIFFER and arrange for the Installation, Implementation and a successful Site Acceptance Test of the systems in accordance with the terms and conditions of this contract and its associated Annexes.

2.3 In addition, the training of personnel from DIFFER in the management and use of the PLD Research Cluster Basis is also included as scope of the delivery.

2.4 The following documents shall form an integral part of this Agreement:

- Invitation to Tender for PLD Research Cluster Basis issued by DIFFER datum ……., reference …….. Including al Annexes.
- Memorandum of Information, for the PLD Research Cluster Basis tender issued by DIFFER.
- Supplier's Offer regarding the PLD Research Cluster Basis issued by DIFFER, dated ….
- The General Government Terms and Conditions for Purchase 2018 (ARIV-2018)
- General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI-2018)
- General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022)

In the event of contradiction between the documents forming part of this Agreement, the following order of precedence shall apply:

1. Agreement
2. Memoranda of Information
3. Invitation to Tender
4. ARIV-2018, ARVODI-2018, ARBIT-2022
5. Contractor's Bid

In the event of conflict, the DIFFER contract and the general conditions of purchase shall prevail over the Bid, letters and other documentation submitted by the Supplier

2.6 Each of the Parties will designate (a) contact(s), who will be in charge of the communication relating to the contract.
DIFFER contact will be: ……
The Supplier contact is: ……..

2.7 Both parties will arrange for a suitable replacement in the case of emergencies (e.g. illness). The Supplier may only involve its personnel or third parties in the performance of the contract after express consent has been given by DIFFER.

3. Delivery Location

3.1 The Delivery Location of the PLD cluster line is:

DIFFER
De Zaale 20, 5612 AJ Eindhoven
The Netherlands

3.2 If at any time the Supplier becomes aware that the environment referred to does not meet or no longer meets the requirements set by the Supplier or if it is foreseeable that this will be the case, Supplier is obliged to warn DIFFER immediately in writing, and also to make provision – at the request of DIFFER and for their account – to remedy this unsatisfactory situation.

3.3 DIFFER guarantees that the location where the PLD Research Cluster Basis will be placed meets the requirements for the PLD Research Cluster Basis.

4. Software

4.1 On delivery as referred to in article 6 of this contract DIFFER will receive from the Supplier a nonexclusive, non-transferable right of use for an unlimited time to the Software, including the associated Documentation and Materials, in return for the payment referred in article 9 of this contract. The Licence(s) cannot be cancelled by the Supplier. Further, the right of use is not tied to any location.

4.2 DIFFER receives free software updates and upgrades for a period of .. years. (provided in offering of supplier)

4.3 DIFFER is entitled to copy the Software provided and the associated documentation for back-up purposes. References to property rights and copyrights may not be removed in this process.

4.4 If Software has been lost or in the opinion of DIFFER is or has become faulty or unreliable, the Supplier will on first request make replacement Software available to DIFFER in return for appropriate market terms and rates for up to 15 years from the date of Acceptance referred to in article 7.3 of this contract.

4.5 The Supplier is responsible for the Implementation of the Software.

5. Delivery, Installation and Implementation

5.1 The Supplier will deliver the PLD Research Cluster Basis "Delivered Duty Paid" (Incoterms 2010) to DIFFER and shall unload the PLD Research Cluster Basis (at his own risk) from the truck, and shall transport the PLD Research Cluster Basis , install and implement it at the Delivery Location, excluding taxes.

5.2 The Supplier will confirm delivery to be no later than …….

5.3 After delivery of the PLD Research Cluster Basis, the Supplier will begin with the Installation and Implementation in a time that both parties mutually agree on.

5.4 As soon as the Installation, Implementation and a function test have been completed in the opinion of both parties, a Site Acceptance Test will be done.

6. Site Acceptance Test

6.1 Site Acceptance Test (SAT) is to commence within thirty (30) days following the Delivery, and is to be completed within sixty (60) days following Delivery. Notwithstanding any other provision to the contrary, if SAT is not commenced or is not completed within these periods through no fault of the Supplier, the PLD Research Cluster Basis shall be deemed accepted and to have achieved SAT. If DIFFER is not satisfied with the Suppliers response to a particular issue, DIFFER may escalate to the Suppliers Senior Management to gain their direct involvement, action plan and timeline for resolution and, as appropriate under the

particular circumstances, the parties may discuss in good faith the possible removal and replacement of the defective PLD Research Cluster Basis , undiminished DIFFER rights as stipulated in article 9 of this contract.

6.2 The Site Acceptance Test will be carried out by both the Supplier and DIFFER on site of DIFFER. In this Acceptance Test the Supplier demonstrates that the PLD cluster line works properly on the site of DIFFER according to the description of the Site Acceptance Test in the Invitation to Tender.

6.3 During the Site Acceptance Test, checks will be made that the PLD Research Cluster Basis functions properly; DIFFER will test the system(s) under normal operational conditions.

6.4 Once the Site Acceptance Test has been completed successfully and the PLD Research Cluster Basis has been proven fully operational, the system will be approved by DIFFER.

6.5 If a successful completion of the Site Acceptance Test cannot be achieved, DIFFER will have the right to refuse the PLD Research Cluster Basis without any cost.

7. Purchase Price

7.1 The Purchase Price for the PLD Research Cluster Basis , including all costs is as follows: …….. without tax (21%)

7.2 The Purchase Price is inclusive Delivery DDP, Design, Fabrication, Installation, Training and Education of employees of DIFFER, Guarantees, any additional costs for traveling and accommodation, as well as all costs in order to meet the demanded requirements as mentioned in the Invitation to Tender and additional wishes offered by the Tenderer in his Offer, excluding taxes.

7.3 The prices and rates agreed in this contract, including the Annexes, are fixed.

8. Payment

8.1 The Supplier will charge the Purchase Prices referred to in article 8 of this contract to DIFFER.
Separate invoicing is in three installments:
- On issuing of the contract against bank guarantee on charge for the Supplier: 40% of the Purchase Price.
- After delivery of the PLD Research Cluster Basis at DIFFER: 40% of the Purchase Price;
- When the completed installation, Site Acceptance Test and user training has been completed successfully: 20% of the Purchase Price.

8.2 DIFFER will pay the amounts owed by it under this contract to the Supplier within 30 days of receipt and approval of the relevant invoice.

9. Warranty

9.1 The Supplier warrants to DIFFER that the PLD Research Cluster Basis will be free of Defects for a period of one (1) year, to commence upon on final Acceptance.
Supplier assumes no liability under the above warranties for equipment or system failures resulting from

(a) abuse, misuse, modification or mishandling;

(b) damage due to forces external to the machine including, but not limited to, flooding, power surges, power failures, defective electrical work, transportation,

foreign equipment/attachments or DIFFER-supplied replacement parts or utilities or services such as gas;

(c) improper operation or maintenance, contrary to the user/maintenance instructions by the Supplier and/or Documentation; or

(d) failure to perform preventive maintenance in accordance with the Suppliers recommendations (including keeping an accurate log of preventive maintenance).

The above warranty is expressly in lieu of any other express or implied warranties, including the warranty of merchantability and fitness for a particular purpose. The Suppliers obligation under the foregoing warranty is limited to repairing or replacing the defective PLD cluster line, at the Suppliers option. Replacement parts will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days, whichever is longer.

9.2 The Suppliers further guarantees that for a period of at least ten years after Acceptance it will be possible to supply parts and components or equivalent interchangeable, functionally equivalent equipment for the PLD Research Cluster Basis at appropriate market terms and rates, to be further agreed at the time.

9.3 The Supplier guarantees Free software updates and upgrades for a period of .. years.

9.4 During the guarantee period referred to in article 9.1 of this contract, the services will be provided continuously by the Supplier, on working days. For this purpose, the Supplier will have free access to the PLD Research Cluster Basis, subject to the internal regulations of DIFFER.

9.5 The Supplier undertakes that upon receipt of a written or telephone report of a Defect, it will, as promptly as possible, take measures, to remedy such Defect in the shortest possible time.

10. Liability

10.1 Notwithstanding any provision to the contrary, in no event shall either party be liable for consequential damages, for anticipated or lost profits, incidental, indirect, special or punitive damages (undiminished DIFFER rights as stipulated in article 5.2 of this contract), loss of time, loss of use, or other losses, even if advised of the possibility of such damages. Except for personal injury or property damage claims, in no event will Seller's liability in connection with the Goods or services sold hereunder exceed the amounts paid to the Supplier by DIFFER for the particular good or service.

11. Patent Rights and Royalties

11.1 The Supplier shall indemnify DIFFER for intellectual property infringement claims and proceedings, provided that DIFFER:

(a) promptly notifies the Supplier in writing of the claim and

(b) allows the Supplier to control, and cooperates with the Supplier in, the defense and any related settlement negotiations. In the event of an intellectual property infringement claim, the Supplier, at its option, may obtain a license to enable DIFFER to continue to use the goods, may modify the goods or may replace it with one that is functionally equivalent. If the Supplier determines that none of these alternatives is reasonably available, DIFFER agrees to return the goods to the Supplier upon the Suppliers written request, in which case the Supplier will credit DIFFER with an amount equal to the price paid for such good less a reasonable amount for depreciation. The Supplier shall not be liable for any claim based on

(i) anything DIFFER provides which is incorporated into the goods,
(ii) the Suppliers modification of the goods or the use there of other than in its specified operating environment, or
(iii) the combination, operation or use of the goods with goods provided by other manufacturers or other goods not provided by the Suppliers as a system.

12. Confidentiality

12.1 The Supplier undertakes that he shall not - and that he shall take every reasonable precaution to see that his employees do not - cede, grant, dispose of or give in any way whatsoever to any third party information and/or know-how, whether in part or in whole, transmitted by or obtained from the other party (whether orally or in writing), and undertake to take appropriate measures that these data shall not be divulged, without the other party's prior consent in writing, except in so far as the data necessarily have to be disclosed with respect to information and/or documentation required for sub-contractors and in handbooks for the customers or for reasons of acquisition.

12.2 All information obtained about the other party's production capabilities, rates of production, customers and similar material originating from such party shall be kept confidential by the receiving party.

12.3 These requirements of confidentiality shall survive expiration and/or termination of the contract.

13. Instruction

13.1 The Supplier will train and instruct DIFFER. The training and instruction will be performed during the supervision of the execution of the Installation, Implementation and putting into operation of the PLD cluster line.

13.2 On request of DIFFER, the Supplier will train and assist the qualified technicians for the daily maintenance of the systems during the supervision of the execution and after the Installation and Implementation. The Supplier shall be compensated for any training and assistance after the Installation and Implementation and after acceptance by DIFFER of a written offer based on the prices and (hour)rates laid down in the specification of the price as added to the tender of the Supplier.

13.3 The Supplier will be responsible that qualified engineers will be present at all times training and instructions are given according to the agreed schedule.

14. Documentation

14.1 The Supplier shall provide DIFFER with sufficient Documentation on the properties and use options of the PLD Research Cluster Basis, including those of its component parts. The Documentation must be such that it gives a full, complete and detailed description of the PLD Research Cluster Basis, including the associated Equipment and Software and their functions.

14.2 Included in the documentation, DIFFER shall receive detailed CAD drawings in NX or .stp file format of each of the main components of the PLD Research Cluster Basis and of the full assembly of the PLD Research Cluster Basis. These files shall be editable such that DIFFER can add and integrate components that are not part of the scope of the Contract in a later development stage. For those components for which such drawings would reveal Tenderer specific non-patented IP, the Tenderer is allowed to provide a contour envelop model. In case any design

changes occur after the formal approval of the design, the drawings shall be updated and shared with DIFFER.

14.3 The Supplier shall ensure that the Documentation supplied by it is replaced, changed or amended as quickly as possible at its expense if it should appear at any time during the use of the systems by DIFFER that the Documentation contains incorrect information or is otherwise incomplete, inadequate or outdated.

15. Termination of the contract or Rescheduling

15.1 If the Supplier is in default under this contract on account of the failure to perform or observe any obligation on its part under this contact, DIFFER shall by notice in writing to the Supplier, terminate this contract in whole or in part without prejudice to any right of action or remedy that has accrued or that may accrue in favor of either party.

15.2 Where the default is capable of being remedied, DIFFER shall not exercise its rights of termination unless it has first given to the Supplier notice in writing specifying the default and requiring the Supplier to remedy it within a reasonable time period, not less than sixty (60) days and the default is not remedied within the time allowed.

15.3 If the Supplier:

(a) goes into liquidation or a receiver or receiver and manager or mortgagee's or charge's agent is appointed; or

(b) becomes bankrupt or enters into a scheme of arrangements with creditors, DIFFER may, by notice in writing, terminate this contract without prejudice to any right of action or remedy that has accrued or that may accrue in favor to either party.

16. Applicable Law and Disputes

16.1 The contracts between the parties are governed by Dutch law.

16.2 In case of proceedings, these will always take place at the District Oost-Brabant, located at Eindhoven.

Signed in duplicate in:

Eindhoven, DATE	……
Dutch Institute for Fundamental Energy Research (DIFFER)	**……**
……..	…….
Title: ……	Title: ……

INDEX OF ANNEXES

(to the Agreement for the purchase of the PLD Research Cluster Basis)

Annex I Invitation to Tender for the PLD Research Cluster Basis issued by the DIFFER
reference …. tender number ……. Including all Annexes.

Annex II Memorandum of Information, …….. for the PLD Research Cluster Basis tender issued by the DIFFER

Annex III Supplier's Offer regarding the PLD Research Cluster Basis issued by the DIFFER, dated ……..

Annex IIII The General Government Terms and Conditions for Purchase 2018 (ARIV-2018)

All these ANNEXES are separately available to both parties.