Annex F - Draft Agreement on the delivery of an XPS System

model agreement for purchase and delivery ARIV-2018

between

NWO-I\DIFFER

and

[Supplier's Name]

The undersigned:

1. The Netherlands Research Institutes Foundation, represented by DIFFER, for this purpose the Director Prof. Dr. MR. De Baar and Institute manager Dr. M.R. van Breukelen, established at TU/e Science Park, De Zaale 20 (5612 AJ) Eindhoven, hereinafter referred to as "**Buyer**"

and

2. **[contractor's full name and legal form]**, (statutory) having its registered office in [location], represented in this regard by the [Function], Mr. Ms [name], hereinafter referred to as: '**Supplier**",

Buyer and Supplier jointly referred to as "**Parties**",

Whereas:

a) Buyer needs an XPS System for the PLD Research Cluster;

b) a Tender has taken place via the TenderNed tendering platform with tender number 490799 under the Public Procurement Act 2012;

c) the aforementioned electronic Tender contains all relevant documents to be able to issue a Tender;

d) Supplier on [date] has issued an Entry;

e) Buyer has accepted this Registration;

f) The assessment has shown that the Supplier has submitted a tender with the best value for money;

g) [name of company] has sufficiently informed itself of what the Buyer wants to achieve with the assignment;

h) The parties wish to record the resulting legal relationship in writing in an agreement;

i) this Agreement sets out the terms and conditions applicable to all deliveries and services provided by Supplier to Buyer during the term of this Agreement;

agree as follows:

In this Agreement, a number of capitalized terms are used. These terms shall have the meaning given to them in Article 1 of the General Government Procurement Conditions 2018 (ARIV-2018), attached to this Agreement as Appendix 1. In addition, the following terms shall be understood in this Agreement:

Registration:	The Tenderer's offer that has been submitted digitally by means of TenderNed d.d. [date] attribute 490799.
Site Acceptance Test (SAT):	The test (or test process) which will demonstrate that under normal operational conditions the XPS System 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 Tender documents.
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 XPS System within the framework as laid down in this contract.
Tender documents:	All documents drawn up by the Buyer and placed in TenderNed.
Tender:	The digital request for the assignment as described in the Tender Documents as placed by the Buyer on TenderNed with reference [ ].

Words used in the singular shall retain their meaning when used in the plural and vice versa, unless the context of the text clearly indicates otherwise.

Artikel 1. Object of the Agreement

1.1 The buyer hereby purchases the Product, as mentioned in Appendix 4 to this Agreement, of the Supplier, as the Supplier hereby sells the Product to the Buyer, in accordance with the Tender issued by the Supplier on the basis of the Tender Documents, unless otherwise provided for in this Agreement.

1.2 The following documents together constitute the Agreement. To the extent that these documents contradict each other, the aforementioned document shall prevail over the following documents:
1. This document;
2. Summary of Additional Information and Changes (Appendix 1);
3. the ARIV-2018 (Appendix 2)
4. the Tender Documents (Appendix 3);
5. the Subscription issued by the Supplier to the Buyer of [date] with characteristic [ ] (Appendix 4);
6. the other Annexes.

Artikel 2. Entry into force of the Agreement

2.1 This Agreement shall enter into force as of the date of signature of this Agreement by both Parties and shall terminate upon completion of Delivery of the Product including a successful Site Acceptance Test (SAT) as referred to in article 5 of this contract.

Artikel 3. Delivery

3.1 The Product will be delivered in accordance with Buyer, but no later than Q4 2025 to the following delivery address:
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 Buyer immediately in writing, and also to make provision - at the request of Buyer and for their account - to remedy this unsatisfactory situation.

3.3 Buyer guarantees that the location where the XPS System will be placed meets the requirements for the XPS System.

Artikel 4. Software

4.1 On delivery as referred to in article 3 and 5 of this contract Buyer 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 7 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 **<OPTIONAL>** Buyer receives free software updates and upgrades for a period of 2 years (*provided in offering of Supplier*).

4.3 Buyer 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 Buyer is or has become faulty or unreliable, the Supplier will on first request make replacement Software available to Buyer in return for appropriate market terms and rates for up to 15 years from the date of Acceptance referred to in article 5.4 of this contract.

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

Artikel 5. Site Acceptance Test

5.1 The 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.

5.2 The Site Acceptance Test (SAT) will be carried out by both the Supplier and Buyer on site of Buyer. In this Site Acceptance Test, the Supplier demonstrates that the XPS System works properly on site of Buyer according to the description of the Site Acceptance Test in the Tender Documents.

5.3 During the Site Acceptance Test, checks will be made that the XPS System functions properly; Buyer will test the system(s) under normal operational conditions.

5.4 Once the Site Acceptance Test has been completed successfully and the XPS System has been proven fully operational, the system will be approved by Buyer.

5.5 If a successful completion of the Site Acceptance Test cannot be achieved, Buyer will have the right to refuse the XPS System without any cost. In this case, Supplier will refund all payments to Buyer that have already been made.

Artikel 6. <OPTIONAL> Warranty *(provided in offering of Supplier)*

6.1 The Supplier warrants to Buyer that the XPS System 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 or Buyer-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;
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 XPS System, 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.

6.2 The Supplier further guarantees that for a period of at least ten years after Acceptance it will be possible to supply parts or components or equivalent interchangeable, functionally equivalent equipment for the XPS System at appropriate market terms and rates, to be further agreed at the time.

6.3 During the guarantee period referred to in article 6.1 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 XPS System, subject to the internal regulations of Buyer.

6.4 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.

6.5 Buyer is not allowed to make larger / significant modifications to the XPS System, only after written approval by Supplier. If Buyer makes modifications to the XPS System without written approval, the warranty is void for consequences which are directly related to these modifications.

6.6 In exemption to article 6.5, the Supplier had been notified in the Tender Documents of planned modifications. In case of planned modifications Supplier will be informed when these modifications will be performed and has the opportunity to take precautions to keep the warranty.

Artikel 7. Price and other financial provisions

7.1 The agreed Price for the Product is: € [amount] (Excl. VAT). The price refers to all Products to be supplied under this Agreement and any associated materials and documentation, such as instructions for use and the like.

7.2 The agreed price is unalterable for the duration of this Agreement.

7.3 Payment will be made as follows:
- 50% of the total amount for the Product after signing this Agreement, as soon as the Supplier has submitted the bank guarantee referred to in Article 12.1 of the ARIV-2018. This bank guarantee will provide security for 50% of the total amount for the Product and shall be returned to the bank after the Acceptance of the Product as referred to in article 5.4 of this Agreement. The amount of this warranty shall in no way limit Supplier's liability under this Agreement;
- 40% of the total amount for the Product after delivery of the Product;
- 10% of the total amount for the Product after final acceptance of the Product.

7.4 Supplier invoices Buyer electronically by sending an XML or a PDF file to: factuur@differ.nl.

Invoices should always have a purchase order number, a clear description of the products and/or services supplied, and the date of the, according to the Tax and Customs Administration, invoice. Invoices that do not comply with the regulations will not be processed.

Artikel 8. Contacts

8.1 Contact person for Buyer is: [name].
Contact person for Supplier is: [name].

8.2 Contrary to the provisions of Article 6.2 of the ARIV-2018, the aforementioned contact persons do not bind their Party.

Artikel 9. Instruction

9.1 The Supplier will train and instruct Buyer. The training and instruction will be performed during the supervision of the execution of the installation, implementation and putting into operation of the XPS System.

9.2 On request of Buyer, 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 installation, implementation and Acceptance by Buyer of a written offer based on appropriate market terms and rates, to be further agreed at the time.

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

Artikel 10. Documentation

10.1 The Supplier shall provide Buyer with sufficient Documentation on the properties and use options of the XPS System, including those of its component parts. The Documentation must be such that it gives a full, complete and detailed description of the XPS System, including the associated equipment and software and their functions.

10.2 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 Buyer that the Documentation contains incorrect information or is otherwise incomplete, inadequate or outdated.

Artikel 11. Other Terms and Conditions

11.1 This Agreement is exclusively governed by the General Government Procurement Conditions 2018 (ARIV-2018), insofar as this Agreement does not deviate from them. The applicability of (possible) general and special terms and conditions of the Supplier is excluded.

11.2 The other rights and claims referred to in Article 13.3 of the ARIV-2018 may be exercised as an alternative to or in addition to the rights and claims set out in Article 13.2.

11.3 In addition to Article 14 of the ARIV-2018, the Supplier indemnifies the Buyer against any claims by third parties for compensation for damage as a result of the failure as referred to in that article.

Artikel 12. Statement of Integrity

12.1 The Supplier declares that it has not offered, given, caused to be offered or caused to be given any benefit to Buyer's Personnel in order to obtain the order. Nor will he do so in order to induce persons employed by the Buyer to perform or refrain from performing any action.

Artikel 13. Final provision

13.1 Deviations from this Agreement are only binding insofar as they have been expressly agreed between the Parties in writing.

13.2 By signing this Agreement, all any verbal and written agreements previously made by the Parties regarding the order(s) placed in accordance with this Agreement for the Delivery of the Product will lapse.

Thus agreed, recorded in duplicate on [number] pages text and signed by:

Place: Date:	Place: Date:
Dutch Institute for Fundamental Energy Research (DIFFER),	**[name and legal form of contractor],**
Prof. Dr. M.R. De Baar Director	[name]
Dr. M.R. van Breukelen Institute manager	[name]

Attachment(s):

Appendix 1	Summary of Additional Information and Changes
Appendix 2	ARIV-2018
Appendix 3	The Tender Documents
Appendix 4	The Subscription issued by the Supplier to the Buyer of [date] with characteristics [reference]
Appendix 5	The other Annexes