

Annex 3 waiting room agreement

on Scanning Probe Microscope

between

NWO-I

and

[name of contractor]

The undersigned:

1. The Netherlands Science Research Institutes Foundation, based in Utrecht, represented in this matter by the Institute Manager, dr. M. Fretz, hereinafter referred to as "**Client**", 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: '**Contractor II**',

Client and Contractor II jointly referred to as: "**Parties**",

Whereas:

- a) **[redacted]**;
- b) **[redacted]**;
- c) Client for the execution of **[choice]** a European public procurement procedure initiated, which was published on TenderNed with the accompanying documentation;
- d) Contractor II on the basis of its Tender dated **[date]** finished second in rank;
- e) The Client has awarded the Assignment to **[name of company]** (hereinafter: **Contractor I**) for the duration of **[number]** year with an option to extend the period of **[number]** time **[number]** years and with resolute conditions in the event of non-performance. The start date is **[date]**;
- f) In the event that the Agreement with Contractor I terminates prematurely, the Client reserves the right, without being forced to issue a new tender, to have the Assignment carried out by the party that finished second in rank (Contractor II);
- g) The Contractor has declared itself willing to extend the period of validity of its quotation for the duration of this waiting room agreement and, in the event that the Agreement with Contractor I would end prematurely, to conclude an Agreement with the Client in accordance with the provisions of this waiting room agreement;
- h) Against this background, the parties enter into an Agreement with each other, subject to the following conditions and stipulations;

agree as follows:

Artikel 1. Coming into force

- 1.1 The Client has the right to terminate the Agreement with Contractor I prematurely if Contractor I is unable to provide the requested supplies and/or services in accordance with the tender documents, the concluded Agreement and the quotation issued, or if it does not (properly) comply with it. In that case, after Contractor I is in default, the waiting room agreement can be used.
- 1.2 If, in accordance with the previous paragraph, use is made of the waiting room agreement, an Agreement will be concluded equal to the original Agreement as attached to the document of the request for quotation.
- 1.3 The Client determines whether or not to make use of this waiting room agreement. In the event of premature termination of the Agreement, the Client may also decide to put out to tender again.
- 1.4 Contractor II will maintain its Registration throughout the term of the Agreement. The indexations permitted in the Agreement may be carried out in consultation and after approval of the Client.
- 1.5 In the case of the first paragraph, Contractor II is prepared to commence the execution of the waiting room agreement as soon as possible after signing.
- 1.6 Before the Client actually concludes an Agreement as referred to in the previous paragraph, the Client will assess whether Contractor II still meets the suitability requirements and other requirements set out in the specifications and whether any grounds for exclusion apply to it.
- 1.7 The following documents are part of the waiting room agreement as attachments:
Appendix: Draft agreement;
Attachment: Information Notice dated [date];
Attachment: Descriptive document d.d. [date] attribute [redacted];
Attachment: Registration of Contractor II d.d. [date] attribute [redacted];
Attachment: Applicable terms and conditions of purchase ARIV 2018.

To the extent that these documents contradict each other, the aforementioned document shall prevail over the one mentioned below. Within the specifications, the Information Memorandum prevails.

Artikel 2. Validity of the waiting room agreement

- 2.1 This waiting room agreement is entered into for the duration of 12 months, starting from [date] and terminates by operation of law at the end of this period without notice being required.
- 2.2 This waiting room agreement can be terminated with immediate effect if:
 - a) Contractor II has been declared bankrupt or has applied for a moratorium;
 - b) Contractor II fails to comply with its obligations regarding the payment of social security contributions and payroll tax, or fails to do so in full;
 - c) The business of the Contractor II is liquidated or taken over or when a substantial part of the Contractor's assets is seized;
 - d) Contractor II ceases its current business or can reasonably no longer be considered capable of fulfilling its obligations under this waiting room agreement;
 - e) If Contractor II no longer meets the suitability requirements and other requirements, or if a ground for exclusion, as mentioned in the invitation to tender and in the European Single Procurement Document, applies.

Met opmerkingen [RB1]: Will the validity of the offers also be 12 months then?

Met opmerkingen [FZ2R1]: By signing this waiting room agreement: yes

Artikel 3. Investment

- 3.1 There will be no set-off between Contractor II and the Client of the investments made by the parties for the purpose of this waiting room agreement.

Artikel 4. Governing Law and Disputes

- 4.1 This waiting room agreement is governed by Dutch law.
- 4.2 Disputes arising from this waiting room agreement, insofar as they fall within the jurisdiction of a court, will be submitted in the first instance to the competent court of the District Court in Amsterdam.

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

Place:
Date:

Place:
Date:

dr. M. Fretz
Institute Manager

[name]