**DESIGNED PROVISIONS OF THE AGREEMENT….**

Concluded on …………….. 2023 between:

National Center for Nuclear Research based in Otwock (05-400), 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 Capital City of Warsaw in Warsaw, 14th Commercial Division of the National Court Register, under KRS number 0000171393, NIP: 532-010-01-25, REGON: 001024043, BDO: 000004834, hereinafter referred to as the "Ordering Party", represented by:

………………………………………………………………………………………………………………………………………………

and the bidder selected as a result of awarding a public contract in the basic mode without conducting negotiations (Article 275 point 1 of the PPL Act). – […], hereinafter referred to as the "Contractor", represented by:

……………………………………………………………………………………………………………………………… ………………

The Ordering Party and the Contractor are hereinafter jointly referred to as the "Parties" and each individually as the "Party",

hereinafter referred to as the "Agreement" with the following content:

The Parties unanimously declare that this Agreement was concluded as a result of a public procurement procedure conducted on the terms set out in the Act of September 11, 2019 - Public Procurement Law (Journal of Laws of 2023, item 1605, as amended) (hereinafter referred to as the "Act").

**§ 1**

**SUBJECT OF THE AGREEMENT**

1. The subject of the Agreement is delivery of FMC Carrier electronic boards in the MTCA.4 standard for the PolFEL project
2. The detailed specification of the Subject of the Agreement is set out in Annex No. 1 to the Agreement - Volume III SWZ - Description of the subject of the contract
3. The delivered Devices/materials must be brand new, i.e. unused before the date of delivery and free from any defects and approved for use in the Republic of Poland.
4. The Contractor declares that he is entitled to offer and sell each Device/material and make available the documentation provided with each Device, without being limited in this respect by the rights of third parties, and that he is entitled to conclude and perform this Agreement.
5. The Contractor declares that the Subject of the Agreement includes/does not include goods and services listed in Annex No. 15 to the Act of March 11, 2004 on tax on goods and services (hereinafter referred to as the "VAT Act") (if applicable).

§ **2**

**TERMS OF PERFORMANCE OF THE SUBJECT MATTER OF THE AGREEMENT**

1. The contractor will complete the entrusted delivery **no later than December 31, 2023 (due to the end of project financing)**
2. The condition for acceptance is the acceptance protocol signed without any comments by the Ordering Party.
3. All costs related to the implementation of the Subject of the Agreement, including transport costs, customs duties, packaging and insurance during transport, are borne by the Contractor. The Contractor will provide the following documents together with the Devices in printed or electronic form:
4. A document describing the functionality of the plate, including a block diagram, voltage values ​​of selected interfaces (including FMC), information about the possible board configuration (e.g. jumper settings), if such settings are necessary for the proper operation of the device
5. A list of FPGA chip pinout assignments.
6. All costs related to the implementation of the Subject of the Agreement shall be borne by the Contractor.
7. The Ordering Party undertakes to cooperate with the Contractor to the extent enabling it to fully and properly perform the subject of the order. In particular, the Ordering Party undertakes to provide the Contractor with all instructions and to remain in constant communication with him.
8. The Contractor undertakes to provide remote assistance with any problems with the integration of Devices/materials.
9. Persons responsible for the implementation of the Agreement:
10. On the part of the Ordering Party ………………telephone…………, e-mail……….………….
11. From the Contractor's side: ………………………, phone number…………, e-mail……….………….
12. The Contractor shall be fully liable to the Ordering Party for the actions or omissions of the Contractor's employees, persons acting on its behalf or subcontractors, as well as for its own actions.

**§ 3**

**CONDITIONS OF ACCEPTANCE OF THE SUBJECT OF THE AGREEMENT**

1. The acceptance protocol of the Subject of the Agreement is to be prepared in accordance with the requirements set out below, signed by the Parties or by the Ordering Party and sent to the Contractor.
2. The final/partial acceptance report of the Subject of the Agreement should include in particular:
3. agreement number,
4. data of the Ordering Party and the Contractor,
5. The subject of acceptance and the date of its execution,
6. Inspection of the Subject of the Agreement by the Ordering Party,
7. Information regarding the delivery of required documents to the delivered devices.
8. The date of execution of the Agreement is considered to be the date of signing the acceptance protocol without objections by the Ordering Party, taking into account the deadline specified in § 2 section 1 of the Agreement.
9. The Ordering Party authorizes the person indicated in § 2 section 7(a) to sign the acceptance report of the Subject of the Agreement on his behalf.

**§ 4**

**GUARANTEE OF PROPER PERFORMANCE OF THE AGREEMENT**

1. The Contractor grants the Ordering Party a warranty for all devices/materials delivered under the Agreement for the period of **12 months**.
2. The warranty starts from the date of signing the acceptance protocol referred to in § 3 section 1 of each Device/material.
3. If the repair needs to be carried out outside the place of use, the transport costs are borne by the Contractor.
4. Notification of the defect will be made by telephone, in writing or by e-mail.
5. The Contractor's response time to the Ordering Party's notification will not exceed 7 days. By the Contractor's response, the Parties understand the diagnosis of the reported defect and the determination of the period necessary for its removal, not exceeding 60 days.

**§ 5**

**PRICE AND PAYMENT TERMS**

1. The Parties agree that for the performance of the Subject of the Agreement referred to in § 1, the Contractor is entitled to remuneration in the amount of net\*/VAT\*/gross\*(\*delete as appropriate): ………………………………………………………………………..
2. Payment will be made as follows:

a) up to 30% of the amount of remuneration for the Contractor: PLN …………../ (in words: …….) - as an advance payment on account of the price, payable within 30 days from the date of conclusion of the Agreement and upon receipt of the an advance invoice and security for the advance payment granted, in accordance with paragraph 9 below.

b) up to 50% of the remuneration for the Contractor: PLN ……………… (in words: …….) after sending the final inspection report at the Contractor's registered office (FAT), payable within 30 days of receiving the acceptance report by the Ordering Party signed without any comments by the Ordering Party, and after receiving an invoice for this part of the remuneration,

c) other remuneration, after delivery to the registered office of the Ordering Party and signing of the acceptance protocol of the Subject of the Agreement by the Ordering Party without reservations, payable within 30 days of receipt of a correctly issued invoice.

3. The Ordering Party reserves the right to regulate the remuneration due to the Contractor under the Agreement, under the split payment mechanism (hereinafter referred to as the "Split Payment Mechanism") provided for in the provisions of the VAT Act (if applicable).

4. The Contractor declares that the bank account indicated by him to which the payment of the remuneration due to him under the Agreement is to be made:

- is an account enabling payment under the Split Payment Mechanism (if applicable);

- is an account included in the list of entities (hereinafter referred to as the "List") kept by the Head of the National Tax Administration, referred to in Article 96b of the VAT Act (if applicable)

5. If the bank account indicated by the Contractor does not meet the conditions specified in section 6, the Ordering Party's delay in making payment within the time specified in the Agreement, resulting from the Ordering Party's inability to pay using the Split Payment Mechanism or to an account included in the List, cannot constitute the basis for any claims for the Contractor, and in particular does not entitle the Contractor to demand from the Ordering Party interest or compensation for late payment (if applicable).

6. The contractor, in accordance with the Act of November 9, 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership, has the option of sending structured electronic invoices electronically via the Electronic Invoicing Platform. The Ordering Party has an account on the platform https://brokerpefexpert.efaktura.gov.pl PEF number: NIP 532-010-01-25. The Ordering Party does not allow sending or receiving other structured electronic documents via the platform, with the exception of corrective invoices.

7. The original invoice should be sent electronically to the following address:............................., and in the case of a paper invoice, deliver it to the headquarters of the National Center for Nuclear Research, Andrzeja Sołtana 7, 05-400 Otwock (office).

8. Monetary receivables arising from this Agreement are subject to payment by transfer to the Contractor's account number ……………………………………

9.

10. Before paying the advance payment, the Contractor will provide security for the advance payment. The security for the refund of the advance payment will be a bank or insurance guarantee, irrevocable and unconditional, payable at the first request of the Ordering Party, regardless of the validity, enforceability and effectiveness of the Agreement, including regardless of any objections that the Contractor or any other person may have against the Ordering Party for any reason, or security in the form of indicated in paragraph 442(3) of the PPL Act. The beneficiary of the security is the Ordering Party. The security costs are borne by the Contractor. The Contractor undertakes to ensure that the Security remains binding during the period of execution of the Agreement. The Contractor undertakes to immediately inform the Ordering Party about actual or legal circumstances that have or may affect the binding force of the security and the ability and scope of the Ordering Party to exercise the rights arising from it. During the period of execution of the Agreement, the Contractor may change the form of security to one or more forms referred to in the provisions of the Act, provided that the change in the form of security will be made while maintaining the continuity of the security and without reducing its amount.

**§ 6**

**CHANGES TO THE AGREEMENT**

1. Based on Article 455(1) para. 1 of the Act, the Ordering Party provides for the possibility of making changes to the provisions of the concluded Agreement in the following cases and under the following conditions:
2. change in applicable regulations affecting the implementation of this Agreement, including a change in the amount of remuneration resulting from a change in the VAT rate,
3. change of the date of execution of the Subject of the Agreement in the following cases

- downtime and delays not attributable to the Contractor, having a direct impact on the timeliness of delivery; the change consists in extending the deadline by the period of downtime and delays;

- other interruptions in delivery resulting from reasons beyond the control of the Contractor; the change consists in extending the deadline by the period of interruptions;

c) change of the deadline for the implementation of the Subject of the Agreement - in the event of force majeure, by which, for the purposes of these proceedings, the Parties understand an event external to the legal bond between the Parties, of a nature beyond the control of the Parties, which the Parties could not avoid or prevent while exercising due diligence. In particular, the following shall be considered as force majeure, conditioning a change to the Agreement: flood, fire and other natural disasters, pandemic, epidemic, riots, strikes, terrorist attacks, warfare, sudden breakdowns in weather conditions, sudden interruptions in electricity supply, radiation or contamination; The Parties allow, among others: the possibility of changing the Agreement in the event of circumstances that hinder or prevent the implementation of the Agreement due to a disruption in the supply chain.

2. The above provisions of section 1(b) constitute a catalog of changes to which the Ordering Party may consent, without at the same time constituting an obligation for the Ordering Party to give such consent.

**§ 7**

**CONTRACTUAL PENALTIES**

1. The Contractor will pay the Ordering Party contractual penalties:

a) for delay in the delivery of the Subject of the Agreement in the amount of 0.5% of the gross remuneration referred to in § 5 section 1 for each commenced day of delay, counted from the day following the expiry of the delivery deadline, the total penalty limit may not exceed 10% of the gross remuneration referred to in § 5 section 1,

b) for delay in the provision of guarantee or warranty benefits in the amount of 0.5% of the gross remuneration referred to in § 5 section 1, for each commenced day of delay, counted from the day following the expiry of the deadlines specified in § 4 section 5 of the Agreement, the total penalty limit may not exceed 10% of the gross remuneration referred to in § 5 section 1,

c) for withdrawal from the Agreement for reasons attributable to the Contractor in the amount of 10% of the remuneration specified in § 5 section 1 of this Agreement gross,

d)

2. The Contractor authorizes the Ordering Party to deduct contractual penalties and reduce the remuneration referred to in § 5 section 1 of this Agreement, by the amount of contractual penalties charged.

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

4. Payment of the contractual penalty by the Contractor does not deprive the Ordering Party of the right to seek compensation on general terms if the contractual penalty does not cover the damage caused.

5. The Ordering Party will pay statutory interest for late payment of remuneration.

**§ 9**

**FINAL PROVISIONS**

1. The Contractor cannot, without the prior written consent of the Ordering Party, under pain of nullity, transfer the rights and obligations arising from the Agreement to a third party, in particular: transfer receivables, assign, transfer, sell and pledge receivables arising from this Agreement to a third party.
2. The Parties declare that the personal data indicated in the Agreement will be processed with due care pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, and the processing of the above-mentioned personal data is necessary for the purposes of the legitimate interests pursued by the Parties.
3. In matters not regulated by the Agreement, the provisions of the Public Procurement Law and the Civil Code shall apply.
4. Any changes to the Agreement must be made in writing (in the form of an annex) under pain of nullity, provided that any change to the data specified in § 2 section 8 does not require an annex.
5. The Parties undertake to resolve any disputes that may arise in connection with the implementation of the Agreement amicably through negotiations. In the event of disagreement, disputes will be resolved by the court having jurisdiction over the registered office of the Ordering Party.
6. The Agreement was drawn up in two identical copies, one copy for each Party.

**THE CONTRACTOR THE ORDERING PARTY**