**CONTRACTUAL CONDITIONS**

*CIG and possible* CUP

*for supplies and services to be attached to the letter of invitation to bid below the threshold*

1. **GOVERNING RULES AND REGULATIONS:**

Execution of this Contract shall be governed by:

* Legislative Decree No. 36 of 31 March 2023 Public Contracts Code in implementation of [article 1 of Law No. 78 of 21 June 2022](https://www.bosettiegatti.eu/info/norme/statali/2022_0078.htm#_beginning), delegating the Government in the field of public contracts (G.U. [Official Gazette] no. 77 of 31 March 2023 - S.O. no. 12);
* Legislative Decree No. 209 of 31.12.2024 'Supplementary and corrective provisions to the Public Contracts Code, pursuant to Legislative Decree no. 36 of 31 March 2023”;
* Law No. 3 of 16 January 2003, concerning ‘Ordinances in the field of public administration’ and, in particular, Article 11(2-bis), pursuant to which ‘Administrative acts, including those of a regulatory nature, adopted by the Administrations referred to in Article 1(2) of Legislative Decree No. 165 of 30 March 2001, which provide for public financing or authorise the execution of public investment projects, are null and void in the absence of the corresponding codes referred to in paragraph 1, which constitute an essential element of the act’;
* (**where applicable, in the case of European funds:** CIPE Resolution No. 63 of 26 November 2020 introducing the implementing regulations of the CUP reform;)
1. **BID VALIDITY:**

The bid must be valid for no less than 180 days.

1. **DEFINITIVE GUARANTEE**

The executor of the contract must provide a "definitive guarantee" in the amount of 5% of the contract amount in the form of a bond or surety in the manner provided for in Article 106(2) of Legislative Decree No. 36/2023.

 *(In duly justified cases the contracting authority may not require a definitive guarantee for the performance of contracts under the threshold).*

The surety bond must expressly provide for the waiver of benefit of prior enforcement of the principal debtor; the waiver of the exception under article 1957, paragraph 2, of the Civil Code, as well as the operability of the guarantee itself within 15 days, upon simple written request by INFN.

The bond is provided as a guarantee for the fulfilment of all obligations of the contract and for the compensation of damages arising from any breach of such obligations, as well as a guarantee for the reimbursement of sums paid in excess to the executor with respect to the results of the final settlement, without prejudice, however, to the possibility of compensation for greater damages to the contractor, and shall cease to have effect only on the date of issuance of the provisional acceptance certificate or the certificate of regular execution.

The Contractor undertakes to keep the guarantee valid and effective for the entire duration of the contract and to reinstate it if INFN makes use of it, within 10 (ten) days of the request. In the event of failure to reinstate the guarantee, the contract shall be considered terminated, without prejudice to compensation for damages.

*(Alternatively, if there are grounds for not requiring the guarantee:* Pursuant to Article 53(4) of Legislative Decree No. 36/2023, the definitive guarantee is not required for the following reasons \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(indicate the reasons as per Article 117(14) of Legislative Decree No. 36/2023))*

1. **TPL INSURANCE:** *(if applicable but recommended for installation activities)*

The company shall be held liable for any wilful or negligent act, including by its own employees, that causes damage to INFN, to INFN staff, to third parties or to third parties' property, and consequently undertakes to pay compensation for all direct or indirect damages, caused or consequential. To this end, the Company must take out a policy against civil liability risks that expressly provides for insurance for direct and indirect damages deriving from the execution of the Contract, with a single ceiling of no less than € ………………………….… based on the provisions of the Technical Specifications *(or different name)*.

1. **DURATION:**

The contract will run for *three years / ..................* from the date of its stipulation.

1. **PAYMENT:**

INFN will pay the net contractual amount to the company. VAT in the amount required by law will be paid in accordance with the split payment provisions of Article 17 ter of Presidential Decree No. 633/1972, as amended. The payment shall be deemed to include all charges, obligations and profits and in any case suitable for the proper performance of the services covered by the contract.

1. **CHANGES TO THE CONTRACT DURING EXECUTION:**

Pursuant to Article 120, paragraphs 1 and 3 of Legislative Decree no. 36/2023 as amended by Legislative Decree no. 209/2024, INFN may admit variations to the contract, either upwards or downwards; in the event that the variation is up to a maximum of one fifth of the contractual payment, pursuant to paragraph 9 of Art. 120 of Legislative Decree No. 36/2023, the Company may not assert the right to terminate the contract and undertakes to perform, through the RUP/DEC/DL (Project Manager/Contract Execution Manager/Works’ Manager) submitting the suitably justified changes requested, the services under the same conditions as the main contract. Beyond this limit, the company is entitled to terminate the contract.

1. **EXTENSION OPTION:** *(where appropriate)*

Pursuant to Article 120(10) of Legislative Decree No. 36/2023, INFN reserves the right to exercise the option to extend the contract for a maximum duration of \_\_\_\_\_\_\_\_ *[indicate months/days]* at the prices, terms and conditions set out in the contract *[or, alternatively]* at market conditions where more favourable to the contracting authority. The estimated amount of this option is € \_\_\_\_\_\_\_\_ *[indicate amount]*, net of VAT.

The exercise of this right shall be communicated to the contractor at least \_\_\_\_\_\_\_\_ *[indicate days/months]* before the end of the contract.

In exceptional cases, the ongoing contract may be extended for the time strictly necessary for the conclusion of the procedure to find a new contractor if the conditions set out in Art. 120(11) of the Code are met. In this case, the contractor shall be obliged to perform the services covered by the contract at the same prices, terms and conditions as envisaged in the contract.

1. **TERMS, METHOD AND PLACE OF DELIVERY** *(for supplies)* **/ EXECUTION:** *(for services)****:***

*The supply* must be delivered according to the following schedule *(or other name) ................................................................................*

or according to the better schedule provided in the operator's bid *(if applicable)*.

The supply must be delivered ex works (INFN Facility) at the address *................................. (or other place of delivery, even intermediate, specified by the Sole Project Manager) ...........................................*

*or:*

*The service* must be performed according to the following schedule *(or other name) ................................................................................*

or according to the better schedule provided in the operator's technical offer *(if applicable)*.

The service must be provided at (INFN Facility) at the address .................................(*or other place specified by the Sole Project Manager)...........................................*

1. **SUBCONTRACT:**

The Company may only subcontract the contractual services with the authorisation of INFN, and in accordance with Article 119 of Legislative Decree No. 36/2023, if it has declared this in its estimate.

If the parts to be subcontracted are not specified, subcontracting is prohibited.

The entire performance of the services subject of the contract as well as the prevailing performance thereof may not be subcontracted.

The subcontracting contract shall be filed at least 20 (twenty) days before the effective date of commencement of the performance of the activity subject of the supply/service together with the declarations of the subcontractor certifying the possession of the qualification requirements prescribed by Legislative Decree No. 36/2023 in relation to the subcontracted service and the absence of the reasons for exclusion referred to in Articles 94, 95, 97 *(Article 97 is possible in the case of an economic operator having the form of a consortium referred to in paragraph 3)*and 98 of Legislative Decree No. 36/2023.

Payments to subcontractors shall be made by the contractor, which must send a copy of the invoices paid to the INFN Section of \_\_\_\_\_ / the National INFN Laboratories of \_\_\_\_\_\_ within 20 (twenty) days from the date of each payment.

The successful tenderer and the subcontractor are jointly and severally liable vis-à-vis the Contracting Authority for the performance of the services covered by the subcontract.

 Subcontractors will also have to comply with their obligations under the PNRR regulations, as set out in the bid request.

For anything not expressly envisaged, see Article 119 of Legislative Decree No. 36/2023 as updated by Legislative Decree No 209/2024.

1. **PROHIBITION OF CONTRACT TRANSFER:**

The company is prohibited from transferring the Contract in any form whatsoever, under penalty of invalidation of the transfer.

1. **CONTRACTOR'S OBLIGATIONS:**

The Company undertakes to perform the services covered by the contract, as described in detail in the documentation of the award procedure, according to the methods and times set out therein, employing all the facilities and personnel necessary for their completion, as set out in the Technical Specifications *(or different name)* and in the other documents relating to this award.

The company undertakes to comply with all obligations arising from applicable laws and regulations concerning remuneration, social security and assistance.

The Company also undertakes to comply with occupational safety regulations pursuant to Legislative Decree No. 81/2008, as amended.

The Company undertakes, insofar as compatible, to ensure that its employees and collaborators observe the Code of Conduct on anti-corruption for INFN staff, published in the "Transparent Administration" section of the INFN institutional site. In the event of a serious breach of the provisions contained herein, INFN reserves the right to terminate the contract.

The Company undertakes to comply with the provisions set forth in Article 53 (16-ter) of Legislative Decree no. 165/2001, as amended and supplemented, concerning the conferral of appointments or employment contracts to former INFN employees, under penalty of the obligation to return any unlawfully received and ascertained remuneration during execution of the procurement.

The company undertakes to apply the CCNL [National Collective Labour Agreement] indicated in the bid request or in the bid presented subject to it declaring that the contract it applies guarantees the same protection for employees, and prepare a declaration of equivalence pursuant to Art. 11, paragraph 4 of Legislative Decree No. 36/2023, drawn up in accordance with the criteria set out in Article 4 of Annex I.01 to Legislative Decree No. 36/2023 as amended and supplemented;

**if applicable, in the case of service contracts]** The company also undertakes to comply with the obligations arising from the social clauses as set out in Art. 57 and Annex II.3 of Legislative Decree No. 36/2023, including ensuring equal generational, gender and labour inclusion opportunities for disabled or disadvantaged persons and the stable employment of the staff employed, taking into account the type of intervention.

**[if applicable, in the case of service contracts****.** **If it is a non-PNRR grant, do not include as the same obligations are already in place]** In the event of the award of the contract, it also undertakes to ensure that both youth and women make up at least 30% of the hires necessary for the execution of the contract or for the development of related or instrumental activities.

1. **ENERGY AND ENVIRONMENTAL SUSTAINABILITY:**

Pursuant to Article 57(2) of Legislative Decree No. 36/2023, the Company undertakes to perform the services covered by the tender in compliance with the minimum environmental criteria adopted by the Ministry of the Environment within the framework of the Action Plan for the environmental sustainability of consumption in the public administration sector.

1. **CERTIFICATE OF SATISFACTORY EXECUTION:**

In accordance with the provisions of Article 50(7) of Legislative Decree No. 36/2023 and Article 38 of Annex II.14, the Sole Project Manager shall check the proper execution of all the services rendered with respect to what was agreed upon and with the criteria established *(if specified)* in the Technical Specifications *(or different name).*

The Sole Project Manager shall issue the certificate of regular execution no later than \_\_\_\_\_\_\_*(note: maximum three months)* from the date of completion of the services covered by the contract.

1. **INVOICING AND PAYMENTS:**

Invoices, to be issued in electronic format, must be transmitted via the Revenue Agency's Interchange system using the Unique Identifier: \_\_\_\_\_\_\_\_\_\_\_\_

* Pursuant to Law No. 136/2010 as amended, the COMPANY undertakes, *(****If applicable****:* also towards any subcontractors), to guarantee the traceability of financial flows relating to this contract (CIG no. ....... and CUP no.\_\_\_\_\_\_\_ under penalty of termination of the contract.

Payment will be subject to the ex officio verification of the regularity of the Company's contributions and to the checks provided for in Article 48 bis of Presidential Decree No. 602/1973, as amended and supplemented, by the National Laboratories of \_\_\_\_\_/Section of \_\_\_\_\_\_ of the INFN.

Payment will be made within 30 (thirty) days of the adoption of each S.A.L. (state of progress of the supply/services). The company will be authorised in writing by the Sole Project Manager to issue an invoice in electronic format.

The final payment (of the last instalment) or the one-off payment (typically for the supply of goods) will be made following the certificate of regular execution provided for in Article 14 of these contractual conditions.

Payment shall be made by bank transfer to a dedicated current account of which the Company undertakes to ensure traceability pursuant to Law no. 136/2010 as amended.

The payment will also be subject to the verification of the regularity of the company's contributions and taxes. The split payment mechanism is applicable pursuant to Article 17-*ter* of Presidential Decree 622/1972 (Art. 1 Decree-Law No. 50/2017).

The company undertakes to promptly notify INFN of any changes in bank details, exonerating INFN, in the absence of such notification, from any liability for payments made, even if such changes are published in accordance with the law.

1. **PRICE REVIEW:**

In accordance with Art. 60 and Annex II.2 bis of Legislative Decree No. 36/2023 as amended, starting from the second contractual year the prices shall be revised upwards or downwards to an extent not exceeding the difference between the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ISTAT index available at the time of the survey and the corresponding value in the month of the award decision.

Price revisions are recognised if particular conditions of an objective nature lead to upward or downward variations of more than 5% of the total amount, operating to the extent of 80% of the value exceeding the 5% variation applied to the services to be performed.

Price reviews may only be requested once per annum.

The Sole Project Manager will monitor the development of the indices referred to in Article 60 of the Code with a frequency not exceeding the frequency of updating the revision indices referred to above, in order to assess whether the conditions for the activation of the price revision clauses exist.

1. **PENALTIES:**

In the event of non-fulfilment or inexact or delayed fulfilment of the contractual obligations, a penalty of ......‰ *(choose an amount between 0.5 per thousand and 1.5 per)* of the contractual amount shall be applied for each day of delay with a maximum of 10%, according to the criteria detailed in the Tender Specifications *(or other name).*

The fixing of penalties does not preclude any further damages or termination of the contract if the amount of the penalties reaches the amount of the final guarantee.

*(Note for the contracting authority: the percentage is to be determined taking into account the extent of the consequences of delay – Art.* *126)*

1. **TERMINATION FOR NON-PERFORMANCE AND WITHDRAWAL:**

In the event of non-performance of the contractual obligations *or in the event that \_\_\_\_\_\_\_ (indicate possible events upon the occurrence of which INFN would have an interest in terminating the contract automatically)*, INFN reserves the right to terminate the contract pursuant to and in accordance with art. 1456 of the Civil Code by written notice to be sent by registered letter with return receipt, or by other unilateral means of transmission having effective force upon receipt, with 20 (twenty) days' notice.

INFN's rights to compensation for any further damages and to the forfeiture of the surety guarantee shall in any event remain unaffected.

INFN also reserves the right to terminate the contract without time limit if any of the conditions set forth in Article 122 of Legislative Decree No. 36/2023 occur.

In all cases of termination of the contract, the contractor shall only be entitled to payment for works or services properly performed. In the cases of termination provided for in subsections 1(c) and (d)(2), (3) and (4) the provisions of Art. 122(6) of Legislative Decree No. 36/2023 shall apply.

Pursuant to Article 123(1) of Legislative Decree No. 36/2023, INFN also reserves the right to unilaterally withdraw from the contract at any time by means of a formal notice to the contractor and with at least 20 (twenty) days' notice.

In the event of withdrawal, the contractor shall be entitled to payment for the services or supplies performed as well as for the value of the useful materials in stock in the case of services and supplies, plus one-tenth of the amount of the services or supplies not performed, calculated in accordance with Appendix II.14 of the Code.

1. **WARRANTY:** *(Note to the contracting authority: only for supplies and materials used in completion of the contract)*

For the goods covered by the contract, pursuant to arts. 1490 and 1495 of the Civil Code, the Company shall provide a suitable guarantee, not less than 12 months from the date of issuance of the certificate of regular execution, and undertakes to replace at its own responsibility those parts of the supply that, due to defective workmanship and/or quality of material, are unsuitable or defective, as well as to perform all consequent services.

1. [IF APPLICABLE - Specify starting date and content according to specifications] **COMMERCIAL SUPPLY GUARANTEE:**

The COMPANY undertakes to guarantee the supply under this contract for the duration of \_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_).

1. **EXECUTION OF THE CONTRACT:**

The role of Sole Project Manager is entrusted to Mr/Ms .........., an INFN employee at the INFN Section of ......

1. **CORPORATE COMPOSITION:**

The company undertakes to notify INFN of any changes in the company composition of more than 2% (two per cent) with respect to what was communicated at the time the bid was submitted, pursuant to and for the purposes of the provisions of Prime Ministerial Decree no. 187/1991. Failure to comply with this obligation shall result in the automatic termination of the procurement contract, subject to compensation for any damages suffered by INFN.

1. **CONTRACTUAL EXPENSES:**

 The Contract is concluded pursuant to Article 18 of Legislative Decree No. 36/2023.

Pursuant to Article 18(10) of Legislative Decree no. 36/2023, the company shall pay the one-off stamp duty when the contract is signed and in proportion to its value, according to the amounts indicated in Annex I.4 of the Code, by online procedure, using Form ‘F24 with identifying elements’ (F24 ELIDE), or virtually, pursuant to Article 15 of Presidential Decree no. 642/72 Revenue Agency Authorisation no. \_\_\_\_\_\_ of \_\_\_\_\_\_\_\_.

1. **JURISDICTION:**

For any disputes between the Parties concerning the procurement contract, the Court of Rome shall have exclusive jurisdiction.

1. **PROCESSING OF PERSONAL DATA:**

Personal data shall be collected and processed in accordance with EU Regulation 2016/679 and Legislative Decree No. 196/2003 as amended and supplemented exclusively for the purposes of this procedure and as indicated in the information notice available at <https://www.ac.infn.it/informative_privacy.html>.

The COMPANY declares that it has been informed about the processing of the data collected in execution of this document and that it has informed and acquired, if necessary, the relevant consent from the data subjects whose personal data are provided within the scope and for the purposes of this document.

In the performance of this document, the COMPANY and its staff, as authorised to process personal data, undertake to comply with the provisions of EU Regulation No. 2016/679 and Legislative Decree No. 196/03, as amended and supplemented, and to process only data that is functional, necessary and pertinent to the performance of this document in a lawful and fair manner, within the limits of the object and purpose described for the same.

The COMPANY must guarantee that the personal data being processed will be handled within the EU and that no transfer of the data to a third country will take place except under the conditions laid down in the Regulation.

[Where applicable: in the event of appointment as data controller] The COMPANY undertakes to accept the appointment as Data Processor and to observe the obligations contained in the document entitled "Contract for the Appointment of the Data Processor" which, once signed, shall form an integral part of this document.

**Data Controller**: Istituto Nazionale di Fisica Nucleare
Email: presidenza@presid.infn.it

**Data Protection Officer**:
E-mail: dpo@infn.it

**30.** **CONFIDENTIALITY:** (*where appropriate*)

The Contractor shall be obliged to keep confidential the data and information, including those passing through the data processing equipment, of which it comes into possession or, in any case, has knowledge, not to disclose them in any way or form whatsoever, and not to use them for any purpose other than what is strictly necessary for the execution of this contract. In particular, it should be noted that all confidentiality obligations will be respected even in the event of termination of the current relationship with INFN and in any case for five years following the termination of the contractual relationship. The obligation referred to in the preceding paragraph shall also apply to all material originating in or prepared in executing this contract. The obligation of confidentiality does not apply to data that are or become public knowledge. The Contractor shall be responsible for proper observance by its own employees, consultants and resources, as well as by its subcontractors, if any, and their employees, consultants and resources, of the aforementioned secrecy obligations. In the event of non-compliance with the obligations of confidentiality, INFN shall have the right to declare this contract legally terminated, it being understood that the Contractor shall be obliged to indemnify all damages that the Authority may suffer. The Contractor may quote the essential terms of this contract, in cases where this is a necessary condition for the Contractor's participation in tenders and contracts, subject to prior notice from INFN.

 The Single Project Manager