

ISTITUTO NAZIONALE DI FISICA NUCLEARE  
CONSIGLIO DIRETTIVO

DELIBERAZIONE N. 14230

Il Consiglio Direttivo dell'Istituto Nazionale di Fisica Nucleare, riunito a Roma in data 29 novembre 2016, alla presenza di n. 33 suoi componenti su un totale di n. 34:

- premesso che l'Istituto collabora da molti anni con il laboratorio tedesco DESY in numerose attività di ricerca e che le Parti intendono proseguire la loro collaborazione scientifica in attività connesse all'utilizzo di FEL, luce di sincrotrone, fisica e tecnologia degli acceleratori fisica delle particelle e astrofisica;
- tenuto conto che il laboratorio LASA di Milano e DESY hanno sviluppato congiuntamente la tecnologia del modulo di accelerazione spare 3.9GHz per XFEL.
- visto lo schema di "Cooperation Agreement between DESY and INFN" e relativo "Appendix 1 to the Cooperation Agreement between DESY and INFN – Contribution to the construction of an European X-FEL spare 3.9 GHz accelerator module", allegato alla presente deliberazione e di essa parte integrante;
- **preso atto che l'approvazione di tale documento comporta per l'Istituto una entrata finanziaria per un importo di Euro 620.000,00 relativa al rimborso dei costi per l'indizione della gara e per la costruzione e test dei componenti del modulo, che sarà accertata con successiva deliberazione di questo Consiglio Direttivo;**
- vista la nota del Direttore della Sezione di Milano, Prof.ssa Chiara Meroni, del 28 ottobre u.s.;
- su proposta della Giunta Esecutiva;
- con n. 33 voti favorevoli;

DELIBERA

- 1) E' approvato lo schema di "Cooperation Agreement between DESY and INFN" e relativo "Appendix 1 to the Cooperation Agreement between DESY and INFN – Contribution to the construction of an European X-FEL spare 3.9 GHz accelerator module", allegato alla presente deliberazione e di essa parte integrante.

# Cooperation Agreement

between

Deutsches Elektronen-Synchrotron DESY  
Notkestraße 85, D-22607 Hamburg  
(in the following called 'DESY')

and

Istituto Nazionale di Fisica Nucleare  
Via Enrico Fermi 40 - 00044 Frascati (Roma) - Italy  
(in the following called 'INFN')

## **Preamble**

The current activities at DESY and at INFN (henceforth referred to as 'Parties') have common educational, scientific and technological goals and thus provide a good foundation upon which to build a mutually beneficial scientific collaboration. Therefore the Parties hereby conclude this Cooperation Agreement.

## **Article 1 Objective and Scope**

- (1) The objective of this Memorandum of Understanding is to establish the legal framework for the cooperation between DESY and INFN.
- (2) The Parties shall cooperate in one or more of the following areas of activity:
  - Accelerator physics and technology
  - The use of synchrotron radiation for basic and applied research
  - The development and use of Free Electron Lasers
  - The development and operation of experiments in the field of particle physics and the analysis of the collected data
  - The development and operation of experiments in the field of astrophysics and the analysis of the collected data
  - Theoretical physics

## **Article 2 Forms of Cooperation**

- (1) The cooperation will be specified in detail in appendices to this Agreement on:
  - Knowledge and know-how,
  - Personnel including students and
  - Equipment.

## **Article 3 Appendices**

- (1) The exact scope of a specific cooperation will be defined in Appendices. Each Appendix includes the object of cooperation, the contributions of the Parties in terms of personnel (time and duration of delegations), finances and material, the time schedule and, if relevant, the structure of the project (project management). Each Appendix shall be subject to the provisions of this Agreement and shall be attached to it as an integral part, it being understood that in case of contradiction or ambiguity, the provisions of the Appendix shall prevail.

#### **Article 4 Guidelines**

- (1) The Parties agree to cooperate and communicate in the most effective way in order to carry out the activities of the collaboration. In their cooperation the Parties will share information and technology in a way that respects and preserves intellectual property rights according to the following articles.

#### **Article 5 Confidentiality**

- (1) The Parties agree that the open exchange of information shall honour the following principles:

The Parties shall treat any information, which is appropriately designated as such, unless otherwise agreed in writing, for the duration of this agreement and for a period of five (5) years thereafter, strictly confidential. The Parties shall take all appropriate steps to safeguard the confidential information. Accordingly, the receiving Party shall not use any such information for any purpose other than in accordance with the terms of the agreement and the receiving Party shall not disclose any such confidential information to any third party, and such information shall neither be reproduced nor duplicated in any form.

- (2) The aforementioned shall not apply to information for which the receiving Party can prove that it had a public nature prior to its communication by the disclosing Party or fell within the public domain after such communication but though not fault of its own; was already in its possession at the time of signature of this Agreement; is received from a third party without any obligation to keep it confidential; is developed by the receiving Party independently outside the scope of this Agreement.

#### **Article 6 Knowledge**

- (1) Information disclosed under this Agreement by one Party to the other Party shall not create any proprietary right in respect of such information for the receiving Party.
- (2) Subject to such restrictions as may apply, each Party shall make available to the other Party, free of charge, in writing or in any other appropriate form, its relevant knowledge, whether protected or not, for the exclusive purpose of its use, by the other Party only, in joint activities under this Agreement.
- (3) Knowledge generated in the performance of joint activities under this Agreement can be used by both Parties for internal research and educational purposes on a royalty-free basis unless otherwise agreed.
- (4) The Parties agree not make knowledge of the other Party available to third Parties without the other Party's prior written consent. It is understood that such consent shall be subject to the explicit acknowledgment of DESY and INFN intellectual property rights in the knowledge or any work based thereon, such acknowledgement to figure in all documents communicated to third Parties.

- (5) The providing Party provides no warranty, including but not limited to those of fitness for purpose and non-infringement of intellectual property rights held by third Parties, in respect of intellectual property made available by it to the other Party under this Agreement, and the receiving Party shall hold the providing Party free and harmless from any liability arising from its use (including, if permitted, any sub-licensing) of such intellectual property.

## **Article 7**

### **Property Rights**

- (1) Intellectual property is knowledge protected under intellectual property law by patent rights, copyrights and similar rights. Intellectual property includes but is not limited to inventions, technical data and software as well as applications for protection the same.
- (2) Title in intellectual property developed solely by a Party in the performance of joint activities under this Agreement shall be vested in that Party, who shall grant a free, non-exclusive license to such intellectual property to the other Party, for the exclusive purpose of its use, by the other Party only, under this Agreement. The right to use the intellectual property for third-party research is subject to the prior written consent of the providing Party.
- (3) Should activities within the scope of this Agreement lead to the creation of joint intellectual property, the Parties will decide in advance in collaborative contracts or appropriate written arrangements for the protection and allocation as to the ownership and disposition of those rights. In any event, they shall grant to each other a free, non-exclusive license to such intellectual property for the exclusive purpose of its use, by the receiving Party only, under this Agreement, as well as for the latter's internal research purposes.
- (4) Each Party shall retain all rights to its existing intellectual property and to any developments of such intellectual property, where such developments are made outside the scope of this Agreement or are within the scope of this Agreement, but are made solely by that Party to its own pre-existing intellectual property without any input, guidance or recommendation from the other Party.

## **Article 8**

### **Publications**

- (1) In accordance with the principle of providing open access to information, the Parties strive to jointly publish the results of the cooperation
- (2) In so far as the Parties do not publish the work results together, publications by one Party involving results developed by the other Party shall be subject to the latter's prior written consent. Such consent shall not unreasonably be withheld.
- (3) All publications shall acknowledge the collaboration between the Parties, including, if so requested by a Party, the persons having taken part in the development of the results, which form the object of the publication.

## **Article 9 Personnel**

- (1) Subject to detailed agreement, each Party shall make its personnel available to the other Party if so required for collaboration. Such personnel shall during their association with the other Party remain employed by the sending Party. The sending Party shall be exclusively responsible for health, accident insurance and general liability insurance for such personnel. The sending Party shall hold the receiving Party free and harmless from any liability in this respect, including as may arise in case of failure to keep any part of the insurance cover defined above in place during the association.
- (2) The receiving Party provides assistance in finding adequate housing for the delegates.
- (3) The cost of each delegation shall be borne by the delegating Party, unless specifically agreed otherwise.
- (4) During their association the personnel shall be subject to the safety and other regulations in effect at the receiving Party. The receiving Party shall be entitled to refuse access or remove from its site any personnel which fail to comply with applicable regulations or in the event of other important reasons.

## **Article 10 Equipment**

- (1) Equipment sent by one Party to the other Party for the purpose of the cooperation shall remain the property of the sending Party unless otherwise agreed. Cost of transportation shall, unless otherwise agreed, be borne by the receiving Party. The receiving Party shall act as importer and be responsible for all formalities, including customs, import excise tax etc. More details will be agreed upon in appendices.

## **Article 11 Liability**

- (1) Except in case of gross negligence or wilful misconduct or as may result from the application of Article 5, Article 6 or Article 7 of this Agreement, each Party shall bear its own loss and damage in connection with this Agreement. It is understood however that except as may result from the application of Articles 5, 6 or 7 of this Agreement, no Party shall be liable to the other Party for any indirect or consequential loss or damage.
- (2) Notwithstanding anything stated in this Article, each Party shall hold the other Party free and harmless from any liability for loss or damage caused by the former Party to third parties.

**Article 12  
Disputes**

- (1) The Parties shall do their utmost to settle amicably any differences and difficulties which may arise during the cooperation.

**Article 13  
Duration**

- (1) This agreement shall enter into force upon its signature by the Parties. Its initial duration shall be five years, which shall be renewed if, after a review process between the Parties, the Parties agree in writing to renew it. It can be terminated by joint agreement or by one Party giving the other six (6) months prior written notification. Articles 5, 6, and 7 of this Agreement shall survive its termination.

**Article 14  
Changes, Language**

- (1) Changes of this agreement and all amendments and appendices to this agreement have to be agreed upon in writing and shall be signed by the Parties. This also applies to an amendment of the form requirement.
- (2) In case of query, the English version of this agreement prevails.

Hamburg,

Deutsches Elektronen-Synchrotron DESY

Istituto Nazionale di Fisica Nucleare INFN

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Prof. Dr. Helmut Dosch

Prof. Fernando Ferroni

Chairman of the Board of Directors

President

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Christian Haringa

Director of Administration

**Appendix n. 1 to the Collaboration Agreement**  
**between the**  
**Istituto Nazionale di Fisica Nucleare,**  
**and the**  
**Deutsches Elektronen-Synchrotron DESY**  
**Contribution to the construction of an European XFEL spare 3.9 GHz**  
**accelerator module**

The

**Istituto Nazionale di Fisica Nucleare**

hereinafter referred to as "INFN",

located at:

Via Enrico Fermi 40

00044 Frascati (Roma)

VAT-ID: IT04430461006

represented by its President:

Prof. Dr. Fernando Ferroni

and the

**Deutsches Elektronen-Synchrotron DESY,**

hereinafter referred to as "DESY",

located at:

Notkestraße 85,

22607 Hamburg,

Germany,

VAT-ID: DE118714904

represented by:

its Directorate,

hereinafter collectively referred to as the "**Parties**",

have agreed upon the following provisions:



## **PREAMBLE**

WHEREAS, the LASA laboratory of the INFN Sezione di Milano (hereinafter “INFN Milano”), with the group coordinated by Prof. Carlo Pagani together with DESY has developed the technology of the 3.9 GHz European XFEL accelerator module,

WHEREAS, DESY as coordinator of the European XFEL Accelerator has taken over the responsibility for the procurement and construction of a spare 3.9 GHz accelerator module, required for the commissioning and operation phase,

WHEREAS, DESY has agreed to contribute the mentioned 3.9 GHz spare module as part of the In-Kind contribution *Commissioning – Urgent Spares*,

WHEREAS, DESY and INFN Milano have tested and commissioned the first 3.9 GHz accelerator module of the European XFEL in a common effort,

NOW, THEREFORE, in consideration of its responsibility as coordinator of the Accelerator Consortium, DESY asks INFN Milano to use the common intellectual property and support the procurement as well as the construction of the spare module by supervision and active participation in the work, and agrees to refund the activities in accordance with the terms set forth below.

## **Article 1**

### **REIMBURSEMENT OF COSTS**

- (1) INFN Milano cost, including labour and financial efforts related to travel, assembly and commissioning campaigns taking place at the component vendors and at DESY, the provision of a number of ancillary components (as, but not limited to, cavity antennas, string and module assembly tooling, string beamline components) and all consumables associated to the components fabrication supervision and testing is estimated to be

**620 000 €.**

- (2) The aforementioned cost does include only activities related to the above mentioned work. The estimate was used and confirmed as part of the DESY in-kind proposal covering the European XFEL Commissioning.

## **Article 2**

### **OBLIGATIONS OF THE PARTIES**

- (1) It is agreed that DESY shall reimburse INFN Milano a lump sum of 620 000 € (six-hundred-twenty-thousand Euro) for supporting the procurement as well as the construction and testing of the components of the spare module and the system technical commissioning to its specifications by supervision and active participation in the work.
- (2) The supply of services by INFN Milano to DESY (which is a taxable entity established and liable to VAT in Germany) falls into the scope of German Value Added Tax (VAT) according to provisions of the Council Directive 2006/112/EC - article 44. DESY is liable for the German VAT through the reverse charge mechanism (Directive 2006/112/EC article 194, 196). The debit note by the INFN to DESY shall not be charged of any Italian VAT. The following information shall be clearly indicated on each invoice: “Intra-community supply of services according to article 194, 196 EU VAT Directive – Recipient is liable for VAT, reverse charge procedure.
- (3) DESY will pay the amount in full at the date of signature of the Agreement, upon

receiving a corresponding debit note from INFN.

### Article 3

#### FINAL PROVISIONS

- (1) This Agreement becomes effective from the date of signature and terminates with the technical commissioning of the spare module system at the AMTF facility in DESY .
- (2) If the whole or any part of any provision of this Agreement is void or unenforceable, the other provisions of this Agreement and the rest of the void or unenforceable provision will continue in force, and the validity and enforceability of that provision will not be affected.
- (3) Any amendment shall be the subject of a supplementary written agreement. All documents relating to this Agreement shall be composed in English.
- (4) General coordinators for the entire content of this Appendix n. 1 are Prof. Carlo Pagani for INFN and Elmar Vogel for DESY.

Established in Hamburg on \_\_\_\_\_ (date) in duplicate.

**Signed** for and on behalf of

**INFN**

**DESY**

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Professor Fernando Ferroni  
President of INFN

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Professor Dr Helmut Dosch  
Chairman of the DESY Board of Directors

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Christian Haringa  
Director of Administration