No. of the Agreement: S386/19-96100-01

Agreement for the Supply of Software for the IT4Innovations infrastructure

CONTRACTING PARTIES:

VŠB – Technical University of Ostrava
Registered Office: 17. listopadu 2172/15, 708 00 Ostrava – Poruba
Represented by: [redacted] – rector
Company Registration No.: 61989100
Tax Identification No.: CZ61989100
Bank Details: ČSOB, a.s.
Bank Account No.: 100954151/0300
(hereinafter referred to as "**the Customer**")

and

MATERIALS DESIGN S.A.R.L.
Registered Office: 42 avenue Verdier 32120 Montrouge, France
Date of Registration
in the Commercial Register: 01/01/2000
Represented by [redacted]
Company Registration No.: 42483907400038
Tax Identification No.: FR 90424 839074
Bank Details: BNP Agence Le Mans
1, place de la République
72000 Le Mans, France
SWIFT code: BNPAFRPPMAN
IBAN: FR76 3000 4002 2600 0100 7910 375
Bank Account No.: 00010079103
(hereinafter referred to as "**the Supplier**")

concluded this Agreement on the day, month, and year stated below pursuant to the provisions of Section 1746 Article 2 of Act No. 89/2012 Coll., Civil Code, as amended, (hereinafter referred to as "Civil Code")

(hereinafter referred to as "**the Agreement**")

1. INTRODUCTORY PROVISIONS

1.1 The Customer declares that:

1.1.1 they are a legal person, a university-type public higher education institution established in compliance with Act No. 111/1998 Coll., on Higher Education Institution and on Amendments and Supplements to some other acts (the Higher Education Act) as amended and

1.1.2 they comply with all terms and conditions provided by this Agreement and have the power to conclude this Agreement and duly fulfil the obligations laid down herein.

1.2 The Supplier declares that they meet all conditions and requirements stipulated in this Agreement and are entitled to conclude it as well as duly fulfil the obligations laid down herein.

1.3 Following the result of the public procurement procedure titled "MedeA Software Package" (hereinafter referred to as "Public Contract"), the Customer concludes this Agreement with the Supplier in order to implement the project titled "IT4Innovations National Supercomputing Center – path to exascale", reg. No. CZ.02.1.01/0.0/0.0/16_013/0001791.

2. SUBJECT MATTER OF THE AGREEMENT

2.1 The Supplier undertakes to supply the Customer with:

- 2 pcs „single seat" academic license MedeA, which allows full parallel use to 10 users

The MedeA software includes the following modules:

- MedeA Environment,
- Interface builder,
- Amorphous builder,
- Pearson's database,
- Pauling database,
- ICSD a NIST databases.

(hereinafter referred to as "Software").

It comprises the procurement of a floating network licence with technical support. The Supplier undertakes to supply the Software including the provision of a non-exclusive licence, which is granted for the entire duration of the intellectual property rights, namely copyright, to the Software.

2.2 The Supplier also undertakes to provide technical support to the Software at least to the extent of the Public Contract procurement documents for two years.

2.3 The Customer undertakes to accept the Software and pay the price in the amount and under the terms and conditions agreed in this Agreement to the Supplier.

The Contracting Parties agree that not only the Customer but also third parties different from the Customer using the computational resources of the IT4Innovations National Supercomputing Center incorporated under the university institute of IT4Innovations are entitled to use the Software or provided licence, respectively, and technical support.

2.4 The Contracting Parties declare that the Software is a standard software package allowing the producer to grant non-exclusive licences, and thus Section 61 of Act No. 121/2000 Coll., on Copyright and Rights Related to Copyright and on Amendment to certain acts (hereinafter referred to as "Copyright Act") as amended does not apply to it.

2.5 Other terms and conditions for the use of the Software are included in the Licensing terms and conditions comprising Annex 1 of this Agreement.

3. PRICE AND PAYMENT TERMS AND CONDITIONS

3.1 The Contracting Parties mutually agree on the total and final price in the amount of 53.500 euro excluding VAT, total price including VAT 64.200 euro (sixty-four thousand two hundred euro).

3.2 The total price must not be exceeded unless the uniform VAT rate is legislatively changed. The total price includes all costs incurred by the Supplier while fulfilling their obligations under this Agreement, i.e. supply of the Software including the licence, technical support, and transport costs, possible taxes, duties, bank charges – non-cash bank transfer payment, other payments, and other relevant costs.

3.3 The Customer undertakes to pay the total price indicated in Article 3.1 based on full invoices issued by the Supplier. The invoice issued by The Supplier must include the project title (IT4Innovations National Supercomputing Center – path to exascale), reg. No. (CZ.02.1.01/0.0/0.0/16_013/0001791), identification of this Agreement and the Software. A signed Acceptance Report as a proof of a completed acceptance procedure related to the Software shall form a part of the invoice. Furthermore, the invoice shall also conform to the requirements for such invoices pursuant to Act No. 563/1991 Coll., on Accountancy, as amended, and pursuant to Act No. 235/2004 Coll., on Value Added Tax, as amended. In case the invoice fails to conform to these requirements, or the price/VAT is incorrectly invoiced, the Customer shall return such invoice for correction without payment within 20 days of the date of its receipt. In such a case, the due term of the invoice in question shall start running again from the date when the corrected or newly issued invoice is received by the Customer. The Supplier shall send the invoice to the address of the Customer by registered mail.

3.4 The invoiced price is due within 30 calendar days from the date of the receipt of the respective invoice by the Customer. The Contracting Parties mutually agree that the obligation to pay the price is fulfilled on the day when the respective amount is debited from the bank account of the Customer stated on the title page of this Agreement.

4. TIME AND PLACE OF THE AGREEMENT PERFORMANCE

4.1 The Supplier undertakes to supply the Software (including the licences), so as it can be used by the Customer within 10 days of the entry into force of this Agreement.

4.2 The Supplier shall be obliged to announce the Software date of supply at least 5 days ahead. Otherwise, the Customer shall not be obliged to accept the Software; in such a case, it cannot be considered infringement of the obligations of the Customer.

4.3 The place of the Software supply shall be the seat of IT4Innovations National Supercomputing Center in Ostrava-Poruba, Studentská street No. 6231/1B, in the campus of the Customer unless otherwise stated in writing by the Customer.

5. SUPPLY TERMS AND CONDITIONS

5.1 The Software shall be supplied at the moment of its acceptance by Customer in the place of the Agreement performance. By acceptance is understood the procedure of verifying successful Software installation on the IT4Innovations systems by running the individual components and verifying their basic functions. As a proof of handing and accepting the Software, the Acceptance Report, which is to be signed by both Contracting Parties, shall be issued. The Customer shall not be obliged to accept the Software in case it does not conforms to the terms and conditions stipulated in this Agreement.

5.2 The Acceptance Report shall include the following:

a) the Software designation including serial and batch number (if there are any), Agreement identification,
b) identification of the Customer and the Supplier,
c) date and place,
d) signature of the Customer and the Supplier.

6. GUARANTEE TERMS AND CONDITIONS

6.1 The Guarantee terms and conditions are governed by the terms and conditions of the producer, which are included in Annex 1 of this Agreement.

7. TECHNICAL SUPPORT

7.1. Technical support is governed by the terms and conditions of the producer, which are included in Annex 1 of this Agreement.

8. AUTHORISED PERSONS

8.1 Each Contracting Party nominates an authorised person or a deputy of an authorised person. The authorised persons shall represent the Contracting Parties in business and technical matters related to the performance of this Agreement.

8.2 The authorised persons are not empowered to lead negotiations, the direct result of which would be any modification of this Agreement or its subject matter.

8.3 The Contracting Parties mutually agree to authorise the following persons:

a) on behalf of the Customer:

[redacted]

b) on behalf of the Supplier:

[redacted]

8.4 The Contracting Parties are entitled to replace the authorised persons. However, they are obliged to notify the other Contracting Party about such modification in writing.

9. SANCTIONS PROVISIONS

9.1 In case of delay in supplying the Software under Articles 4.1 and 4.2 of this Agreement, the Supplier undertakes to pay the contractual penalty of 0.3 % of the total amount excluding VAT for each day of delay.

9.2 In case of delay of the Customer in paying the invoice, the Supplier is entitled to require payment of statutory interest for delay in payment.

9.3 The invoiced contractual penalties and interest for delay in payment are due within 30 days from the date of receipt of the written invoice by the respective Contracting Party. The Contracting Parties agree that the obligation to pay is fulfilled on the day when the respective amount of the contractual penalty or interest for delay in payment is debited from the bank account of the respective Contracting Party and sent to the bank account, which shall be included in the written invoice for contractual penalty or interest for delay in payment.

9.4 The contractual penalty under this Agreement shall not be counted for compensation of the damage suffered on the account of infringement of the obligations stipulated in this Agreement, and these claims shall be made independently of one another in full amount.

9.5 The Customer shall be entitled to count the contractual penalties against the claim of the Supplier for payment of the total price.

10. OTHER PROVISIONS

10.1 Under the terms and conditions stipulated by this Agreement and in compliance with instructions given by the Customer as well as by exercising due commercial care, the Supplier undertake to make this Agreement public on the profile of the Customer in compliance with the Public Procurement Act.

11. VALIDITY AND EFFECTIVENESS OF THE AGREEMENT

11.1 This Agreement shall come into force as of the day of its signature by the Contracting Parties and become fully effective as of the day of its publishing in the Register of Contracts in compliance with the relevant provisions of Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Disclosure of These Contracts and the Register of Contracts (Act on the Register of Contracts), as amended (hereinafter referred to as "Act on the Register of Contracts") provided that this Agreement requires to be published in the Register of Contracts under this Act. Otherwise, the Agreement becomes fully effective as of the day of its signature by the Contracting Parties.

11.2 Each Contracting Party is entitled to withdraw from the Agreement only for the reasons stipulated by this Agreement.

11.3 The Customer is entitled to withdraw from this Agreement

- 11.3.1 in case of late delivery of the Software by the Supplier longer than 20 days from the delivery term agreed upon in this Agreement,
- 11.3.2 if it is provided for in the Applicable licensing and other terms and conditions in Annex 1 of this Agreement
- 11.3.3 if the Supplier lose legal capacity to duly fulfil obligations under this Agreement during its effective period, which means that they lose the right laid down in Article 1.2 of the Agreement.

11.4 The Supplier is entitled to withdraw from this Agreement in case of delay in payment for the delivery under this Agreement longer than 60 days.

11.5 Each Contracting Party is entitled to withdraw from this Agreement in writing if

- 11.5.1 the other Contracting Party is declared bankrupt, they themselves submit an insolvency proposal for commencing insolvency proceedings, or the insolvency proposal is declined on the grounds that their total assets are insufficient in payment for the costs of the insolvency proceedings (as amended by Act No. 182/2006 Coll., on Insolvency and Methods of Its Resolution (Insolvency Act)); or
- 11.5.2 the other Contracting Party enters into liquidation process.

11.6 Effects of withdrawal from the Agreement come into force as of the date when the written withdrawal notification is received by the other Contracting Party or as of the later date stated in the written withdrawal notification.

11.7 Termination of this Agreement shall not affect the provisions of this Agreement, the concept of which implies that they shall remain to exist even after expiration of this Agreement, for example, contractual penalties claims if they arise before termination of this Agreement.

12. FINAL PROVISIONS

12.1 The rights and obligations not covered by this Agreement are governed by Czech Law, namely by the Civil Code and Copyright Act, with exclusion of the Conflict-of-Law Rules. The Contracting Parties also undertake to respect the rules of the Research, Development and Education Operational Programme.

12.2 In the event of the disappearance of the Supplier without their legal successor, the Customer is entitled to further use of the Software in question under this Agreement.

12.3 This Agreement may be modified or amended by the Contracting Parties only in the form of written, upward numbered amendments signed by the authorised representatives of the Contracting Parties.

12.4 The Contracting Parties agree that in case of discrepancy between the provisions laid down in the Annexes and in this Agreement, the provisions in the Annexes shall prevail.

12.5 Where any of the provisions of this Agreement is regarded as invalid, ineffective, or of soft-law character, the rest of the Agreement shall not be affected thereby. In this case, the Contracting Parties undertake to change such invalid, ineffective, or soft-law provisions for provisions, which shall fulfil, in terms of the content, the purpose followed by such invalid or soft-law provisions.

12.6 The Supplier cannot transfer their rights and obligations under this Agreement to any third party.

12.7 All disputes between the Contracting Parties arising from or relating to the provisions of this Agreement shall always be first settled by an amicable mutual agreement. If the amicable settlement is not made within a reasonable time, any of the Contracting Parties shall have the right to submit the matter in dispute to be decided by a competent court with territorial jurisdiction and proper venue. Pursuant to Section 89a of Act No. 99/1963 Coll., Civil Procedure Code, as amended, the competent court with territorial jurisdiction and proper venue is considered to be the ordinary court of the Customer.

12.8 This Agreement is concluded by the Contracting Parties in electronic form, the Agreement being considered an original only if it is in electronic form and at the same time equipped with electronic signatures of the representatives of the Contracting Parties.

12.9 Annex 1 - Applicable licensing and other terms and conditions included in the tender (when such licensing and other terms and conditions are issued by the producer/ holder of the Software licence) forms an integral part of this Agreement.

12.10 The Contracting Parties declare that the Agreement including its Annexes contains no business secrets as defined in Section 504 of the Civil Code, and that the Agreement including its Annexes may thus be made public in the Registry of Contracts as defined in the Act on the Register of Contracts.

12.11 The Contracting Parties consistently declare that they are aware of all legal consequences arising from this Agreement and agree with all its provisions.

In Ostrava	In Montrouge
....	....
VŠB – Technical University of Ostrava	**Materials Design S.A.R.L.**
[redacted]	[redacted]
rector	Co-manager

ANNEX 1: Academic Software License Agreement for The Technical University of Ostrava

This License Agreement is proof of license. Please treat it as valuable property.

1. Grant of License

**** see special licensing terms in attachment A**

The product licensed contains the MedeA® environment and various modules of MedeA®, which provide access to functionality on a computer. Appendix A contains a list of the modules together with the number of seats or users for each module that you have licensed. Some of the modules that you have licensed may have additional terms, which will be attached to this document as appendices. Together the MedeA® environment and the licensed module will be referred to as the Software. The Software is protected by copyright laws and international copyright treaties as well as other intellectual property laws and treaties. The Software is licensed and sublicensed not sold. Materials Design, Inc. ("Licensor") grants Licensee the following rights to the Software under license on behalf of itself and, for some modules, under sublicense as detailed in the appendices.

The Licensee acquires hereunder a non-exclusive license and/or a non-exclusive sublicense (hereinafter collectively referred to as "License") for the use of the Software. Appendix A gives a list of the specific modules licensed and for each the number of Seats or Named Users licensed. A license for a "Seat" allows installation on a single specified computer, which may be used by any number of Users, but only one at a time may use the software, i.e. it may not be shared simultaneously by using e.g. remote logins. A "User" is a single individual that works within, or is a student in, the same academic research group as Licensee. A license for a "Named User: allows a single User to use the Software on any number of computers. A license for a Seat or Named User may be transferred from time to time to another computer or Named User for a valid reason, such as replacement or upgrade of a computer, reassignment of a User to different work. Valid reasons are determined solely and exclusively by Licensor. At no time may more Seats of any module be used than the number of Seats given in Appendix A. At no time may more Named User Licenses be used for a module than given in Appendix A. This License does not allow the use of the Software by external collaborators working at other companies or entities.

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2. Copyright

The Software (including any images, "applets," photographs, data and text incorporated into the Software) is owned or sublicensed by Licensee protected by United States and other nations copyright laws, and international treaty provisions. Therefore, Licensee must treat the Software like any other copyrighted material (e.g., a book or musical recording). Licensee may for its own use (a) install the Software on platforms according to the number of Licenses acquired and (b) make copies of the Software solely for backup or archival purposes. Licensee may not copy the Software for any other purpose. Licensee may not copy the electronic documentation accompanying the Software, other than to provide copies to the licensed Users referred to in Section 1 above, except with prior written permission from Licensor.

3. Other Rights and Limitations

The Software contains trade secrets and, in order to protect them, Licensee may not reverse-engineer, de-compile or disassemble the Software except to the extent that the foregoing restriction is expressly prohibited by applicable law. Licensee may not modify, adapt, translate, sublicense, assign, loan, resell for profit, distribute or network the Software, disk or related materials or create derivative works based on the Software or any part thereof.

4. No Rental/Transfer

Licensee may not by license or sublicense, or any other means, rent, lease or transfer the Software or any use thereof.

5. Dual-Media Software

Licensee may receive the Software in more than one medium. Regardless of the type or size of medium Licensee receives, Licensee may use the Software only as described in this Agreement.

6. Restrictions & Controls imposed by the USA

Licensee acknowledges that any Software purchased from Licensor is subject to U.S. and other export control laws that prohibit or restrict (i) transactions with certain persons and (ii) the type and level of technologies and services that may be exported. The Licensee is responsible for its own compliance with laws and regulations governing export and shall ensure that persons allowed access to the Software are properly authorized to receive such access. If the Licensee cannot ensure each person given access to the Software meets the requirements of the preceding sentence, the Licensee shall not allow disclosure to any such person without first obtaining, at Licensee's sole cost and expense, all necessary export licenses and other governmental authorizations required for the granting of such access.

7. Maintenance and Software Updates

The Software is licensed on either an ANNUAL or PERPETUAL basis.

Annual licenses include software maintenance and software updates for the period of 12 months from the commencement of the License.

Perpetual licenses also include software maintenance and software updates for the period of 12 months from the commencement of the License. After the 12 month period expires, if Licensee desires, further maintenance and software updates may be acquired by paying the then prevailing annual maintenance fees to Licensor.

Maintenance includes Software installation support and maintenance of the Software's base functionality. Software updates may include "bug fixes", updated and new functionality. Licensor reserves the right to set release dates for bug fixes and updates according to its own internal development schedules.

8. Knowledge of Agreement

Licensee acknowledges that, in providing Licensee with the Software, Licensor relies upon Licensee to read this Agreement, understand it and agree to be bound by its terms.

9. Citing the Software

The discount provided for an Academic license is made on the condition that all published works derived from results obtained using the MedeA software must cite the Software. See Attachment B for how to cite the Software and for other conditions associated for citing the Software in publications.

10. No Warranty

NO WARRANTIES. Licensorexpressly disclaims any warranty for the software. The software and any related documentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. Licensee assumes the entire risk arising from the use or performance of the software.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. In no event shall Licensor or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profit, business interruption, loss of business information or any other pecuniary loss) arising out of the use of or inability to use the software product, even if Licensor has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to licensee.

11. Governing Law/Arbitration

This License Agreement is governed by the laws of the State of Delaware, excluding its conflicts of law principles. If this product is acquired outside of the United States, the applicable law of the jurisdiction in which the software product was acquired may apply. Any controversy or claim arising out of or relating to this License, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules [including the Emergency Interim Relief Procedures], and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Licensor:

Materials Design S.A.R.L
42 avenue Verdier
92120 Montrouge
France

In: Montrouge

Date: 5 March 2019

Licensor:

Licensee:

Technical University of Ostrava
17. listopadu 2172/15
708 00 Ostrava – Poruba
Czech Republic

In:

Date:

Licensee:

Attachment A:
Modules Licensed

****Special Licensing Terms** :

1. The equivalent of a floating network license shall be provided with technical support.

2. Academic Czech third parties different from the Technical University of Ostrava using the computational resources of the IT4Innovations National Supercomputing Center incorporated under the university institute of IT4Innovations are entitled to use the Software or provided licence, respectively, and technical support.

Module	**Annual or Perpetual?**	**# of Seats**	**# of Users**
MedeA® Environment including the MedeA GUI, MedeA Analysis, MedeA Builders, MedeA JobServer and TaskServer, MedeA InfoMaticA, MedeA COD GUI, MedeA LAMMPS GUI and MedeA Forcefield	Perpetual	2	10
MedeA® Interface Builder	Perpetual	2	10
MedeA® Amorphous Builder	Perpetual	2	10
MedeA® Pearson Database	Perpetual	2	10
MedeA® Pauling Database	3-year access	2	10
MedeA® NCD	3-year access	2	10
MedeA® ICSD	3-year access	2	10

Attachment B: Citing the Software in Publications

1. Licensee is directed to cite the use of MedeA® software suite in all publications that result from its use. Citation should be in the following form or similar thereto: "Results obtained using the MedeA® software environment[1]."

   "[1]MedeA® version 2.23. MedeA® is a registered trademark of Materials Design, Inc., Angel Fire, New Mexico, USA."

2. Licensee is directed to cite the following when publishing results derived from the MT module in MedeA®:

   "Y. Le Page and P. Saxe, Phys. Rev. B 63, 174103 (2001)."

3. Licensee is directed to cite the following when publishing results derived from the UNCLE module in MedeA®:

   "D. Lerch, O. Wieckhorst, G.L.W. Hart, R.W. Forcade and S. Müller: "The UNiversal CLuster Expansion or 'UNCLE' code is utilized for constructing cluster expansions for arbitrary lattices with minimal user-input", Modelling Simul., Mater. Sci. Eng. 17 (2009) 055003."

4. Licensee is directed to cite the following when publishing results derived from VASP:

   "The calculations have been performed using the ab-initio total-energy and molecular- dynamics package VASP (Vienna ab-initio simulation package) developed at the Institut für Materialphysik of the Universität Wien[2,3].

   "[2]G. Kresse and J. Furthmüller, Phys. Rev. B 54, 11169 (1996)."

   If the PAW potentials are used, reference will be made in the following form or similar thereto:

   "[3]G. Kresse and D. Joubert, Phys. Rev. 59, 1758 (1999)."

   If special features implemented in VASP have been used, reference should be made to the relevant publications as listed on the VASP website.

Attachment C: Additional Terms for the Use of VASP

Licensor sublicenses VASP on behalf of the Universität Wien ("the UW"). If the Licensee has licensed MedeA-VASP or any other modules that employ VASP the following terms apply to the License, in addition to those in the main part of the License.

1. If the Licensee uses the VASP code for benchmarking, numbers must be kept confidential and the results of the benchmark tests must not be published or communicated to third parties without written permission of the University of Vienna. After receiving written permission of the University of Vienna, benchmarks may be performed by external staff if the Licensee can ensure that access to the code is for a limited period and limited to persons involved in the benchmarking. The Licensee must also ensure that the external staff will remove all copies of the code after benchmarking.
2. **NO WARRANTIES.** The UW expressly disclaims any warranty for VASP. VASP and any related documentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. Licensee assumes the entire risk arising from the use or performance of the software.
3. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** In no event shall the UW or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profit, business interruption, loss of business information or any other pecuniary loss) arising out of the use of or inability to use the software product, even if the UW has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to licensee.