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: doc. Mgr. Vít Vondrák, Ph.D., director of IT4Innovations
Company Registration No.: 61989100
Tax Identification No.: CZ61989100
Bank Details: ČSOB, a.s.
Bank Account No.: [redacted]
(hereinafter referred to as "**the Customer**")

and

Schrödinger, LLC

Registered Office: 101 SW Main St. Suite 1300 Portland, OR 97204
Date of Registration in the Commercial Register: 03/27/2002 State of Delaware, USA
Represented by Cony D'Cruz
Company Registration No.: LLC File #3505681 Duns # 07-858-2982
Tax Identification No.: 95-4284541
Bank Details: US Bank, 555 SW Oak Street, Suite 400 Portland, OR 97204
Bank Account No.: [redacted]
(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 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.

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 "Nákup softwaru Schrödinger" (Purchase of software Schrödinger) (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 license Schrödinger MS Suite – 20 tokens and MS Maestro - 20 pcs (hereinafter referred to as "Software").

It comprises the procurement of a floating network licence with technical support for two years. 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.

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 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 "16.000,00 USD" excluding VAT, total price including VAT "16.000,00 USD" (US entity does not collect VAT.)

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 15 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

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.

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

12.6 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.

12.7 This Agreement shall be drawn up in triplicate with the Supplier and the Customer receiving one copy and two copies, respectively.

12.8 Annex 1 - Applicable licensing and other terms and conditions included in the tender forms an integral part of this Agreement.

12.9 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.

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

In ____________ on ____________

In New York, NY on 8/2/2019

....	................[redacted]
VŠB – Technical University of Ostrava	**Schrödinger, Inc.**
doc. Mgr. Vít Vondrák, Ph.D. director of IT4Innovations	[redacted] Chief Business Officer

Annex 1: Applicable licensing and other terms and conditions – Quote 38317.

SCHRODINGER®

Schrödinger, LLC
101 SW Main Street, Suite 1300
Portland, OR 97204
Phone: +1 503 299-1150
Fax: +1 503 299-4532

Price Quotation: 38317
Date: 9-July-2019
Offer Expires: 9-August-2019
Payment Terms: Net 30

Licensee: Technical university of Ostrava
[redacted]

Account Manager: [redacted]

Quantity	Item	Term	Amount
	Materials Science Suite		
20	Tokens for interchangeable library including Canvas, Desmond, Desmond GPU, Epik, Jaguar, Jaguar pKa, LigPrep, MacroModel, MS CG, MS Combi, MS Transport, QikProp, Quantum Espresso Interface, Strike	2 years from date of delivery	
20	MS Maestro Floating Licenses	2 years from date of delivery	
	Subtotal		16,000.00
1	KNIME Access License	2 years from date of delivery	0.00
1	OPLS3 Force Field Access License	2 years from date of delivery	0.00
	Total		**USD 16,000.00**

- Software shall be installed solely on machines located at Licensee's facilities in Ostrava, Czech Republic.

DS
CD

- To accept this Price Quotation, please e-mail or fax a Purchase Order to your Account Manager no later than the expiration date above. For details on payment methods and order processing, please see schrodinger.com/salespolicies.
- **Please include our Price Quotation number (38317) on your Purchase Order.**
- Payment Methods: Bank Wire Transfer or Check.
- Payment information for wire transfer:
  Bank: US Bank, 555 SW Oak Street, Suite 400 Portland, OR 97204
  Account name: Schrodinger, LLC
  Account number: 153691371725
  Bank routing number: [redacted]
  SWIFT Code: [redacted]
- Licensee's use of the Items above is governed by the terms and conditions of the Schrödinger End User License Agreement available online atschrodinger.com/salesagreements and which are incorporated herein by reference (the 'Agreement').
- This Price Quotation, together with the SOW (if any), Purchase Order, and the Agreement, constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, concerning its subject matter. In the event of any inconsistency among this Price Quotation, the SOW (if any), Purchase Order, and the Agreement, the controlling provisions shall be determined by reference to the following order: (i) SOW (if any), (ii) Price Quotation, (iii) Agreement and (iv) Purchase Order.