Management indemnity agreement

(the „Agreement “)

parties

1. XXX;
2. XXX;
3. XXX;
4. XXX;
5. XXX;
6. XXX;
7. XXX;
8. **Masarykova univerzita**, a public university established by Act No. 50/1919 Coll., on Foundation of the Second Czech University, with its registered office in Brno, Žerotínovo náměstí 617/9, Postal Code 602 00, Czech Republic, Reg. No.: 00216224;
9. **Vysoké učení technické v Brně** a public university established by Decree of 19 September 1899, on Foundation of a Czech School of Higher Technical Education in Brno, with its registered office in Brno, Veveří, Antonínská 548/1, Postal Code 602 00, Czech Republic, Reg. No.: 00216305;
10. XXX;
11. XXX;
12. XXX;
13. XXX;
14. XXX;
15. XXX;
16. XXX;
17. XXX;
18. XXX;
19. XXX;
20. XXX;
21. XXX;
22. XXX;

(jointly the “**Sellers**”)

and

1. XXX;

(the “**Sellers’ Claims Representative**”)

and

1. XXX;
2. XXX;
3. XXX;
4. XXX;
5. XXX;

(jointly the „Eligible Managers” and jointly with the Sellers the “**Parties**”)

Preamble

1. The company XXX (the “**Company**”) entered into an agreement with each of the Eligible Managers on the participation of the Eligible Managersin the Company's Management Motivation Scheme (the “**MMS Agreement**”), as amended by subsequent amendments, subject of which is the obligation of the Company to pay each Eligible Manager a monetary compensation in exchange for support in the growth of, and value creation by the Eligible Managersof, the Company in the event that the Sellers decide to sell all or a majority of their shares in the Company to a third party investor (the “**Exit Event**”). Under the MMS Agreements, the Eligible Managers agreed that the Premium (as it is defined below) will be due to the Eligible Managers under the same payment terms and conditions as are those agreed by the Sellers with a third party investor, including a participation in a compensation of possible liability claims against the Sellers which may arise in connection with the Exit Event.
2. The Sellers as the shareholders of the Company wish to sell 100% of their shares in the Company to XXX (the “**Buyer**”). This transaction qualifies as the Exit Event within the meaning of the MMS Agreements. In this connection, the Sellers and the Buyer concluded a share purchase agreement (the “**SPA**”), which is attached as Annex 1 to this Agreement. The SPA was concluded and, therefore, the Exit Event occurred on 5 November 2020 (the “**Closing**” and the “**Closing Date**”).
3. Along with this Agreement and subject to Closing, each of the Eligible Managers and the Company executed an agreement on termination of the management motivation scheme (the “**Termination Agreement**”) based on which each of the Eligible Managers has agreed to a specific amount of the Premium to be paid by the Company to the respective Eligible Manager after the Closing in full settlement of their claims resulting from the MMS Agreement (with respect to each Eligible Manager the“**Premium**”). On the basis of the Termination Agreement, each Eligible Manager will be provided with the *netto* amount of the Premium (i.e., after all necessary deductions, social security contributions and tax withholdings) (with respect to each Eligible Manager the “**Net Premium**”).
4. Due to the fact that:
	1. the Sellers maximum liability under the SPA is XXX; however
	2. the Premium (and therefore, the Net Premium) with respect to XXX is calculated from XXX;

the Parties acknowledge and agree that with respect to XXX, the value of the Net Premium for the purposes of indemnification set out in this Agreement shall amount to *netto* amount of the Premium (i.e., after all necessary deductions, social security contributions and tax withholdings), multiplied by a coefficient of XXX, so that the ratio of liability of said Eligible Mangers does not exceed ratio of liability of the Sellers under the SPA.

1. Along with this Agreement, the Parties and XXX (the “**Escrow Agent**”) entered into an escrow agreement under which the Escrow Agent will administer certain portion of each Eligible Manager’s Net Premium to secure the potential funding for indemnification of the Sellers pursuant to this Agreement (the “**Escrow Agreement**“).

# ESCROW OF THE RETENTION AMOUNT

* 1. Each Eligible Manager shall pay the amount equal to XXX of their Net Premium (each Eligible Manager’s “**Retention Amount**”) to the escrow account managed and maintained by the Escrow Agent under the Escrow Agreement within five (5) business days after the Net Premium has been received by the respective Eligible Manager.
	2. Should any of the Eligible Managers be in default with the obligation set out in Article 1.1, such defaulting Eligible Manager shall pay the Sellers’ Claims Representative a contractual penalty of 0.5% of the defaulting Eligible Manager’s Net Premium per any commenced day of such default.

# REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

* 1. Each Eligible Manager hereby represents and warrants (in Czech: *ujišťuje*), in accordance with such Eligible Manager’s Pro Rata Share as specified in Annex 2 to this Agreement (the “**Eligible Manager’s Pro Rata Share**”), to Sellers that each of the Company Representations set out in ARTICLE II of the SPA (*Representations and Warranties Concerning the Company*) is true, correct and not misleading as at the Closing Date.
	2. Along with the calculation of the Eligible Manager’s Pro Rata Share, Annex 2 to this Agreement contains examples of such calculation vis-à-vis to sample Joint Claim amounts.

# Indemnification

* 1. From and after the Closing, each Eligible Manager shall reimburse the Sellers for such Eligible Manager’s Pro Rata Share in any payments which the Sellers are required to pay to the Buyer under the SPA in respect of:
		1. any Claim for indemnification under Section 5.2(a) of the SPA (*Indemnification Obligations of the Sellers Parties in Joint Matters*), i.e., a breach of the Company Representations; or
		2. any Claim for indemnification under Section 5.2(p) of the SPA (*Specific Indemnities*), i.e., a breach of the Specific Indemnities,

(such Claims under the SPA hereinafter the “**Joint Claims**”).

* 1. The Parties acknowledge and agree that the Joint Claims shall terminate unless the Joint Claims are notified by the Buyer to the Sellers’ Claim Representative in accordance with the SPA as follows:
		1. XXX;
		2. XXX.
	2. The indemnification obligations of the Eligible Managers pursuant to this Article 3 are not joint but each Eligible Manager shall individually (in Czech: *samostatně*) pay only a part of the Joint Claim in proportion to their eligible Manager‘s Pro Rata Share in the Joint Claim.
	3. Unless agreed otherwise herein, indemnification procedures and limitations set out in ARTICLE V of the SPA (*Indemnification*) shall apply *mutatis mutandis* to the indemnification obligation of the Eligible Managers under this Agreement.
	4. Notwithstanding anything to the contrary in this Agreement, the aggregate liability of each Eligible Manager in the case of any Joint Claim related to a breach of:
		1. XXX;
		2. XXX; and
		3. XXX.

The Eligible Managers shall not in any event be required to indemnify the Sellers in respect of any claims under this Agreement in excess of the respective Eligible Manager’s Net Premium.

* 1. Should any Joint Claim be notified by the Buyer under the SPA, the Sellers’ Claims Representative shall without undue delay:
		1. inform all Eligible Managers of such Joint Claim via their e-mail addresses set out in Article 6.8, describe the Joint Claim and the amount thereof (if known and quantifiable); provided that, however, a failure to do so shall not relieve the Eligible Managers of their obligations hereunder, except to the extent that (and only to the extent that) the Eligible Managers have been materially prejudiced thereby;
		2. conduct the defense of the Joint Claim diligently and in good faith and take any action and give any information and assistance as the Eligible Manager may reasonably request to avoid, dispute, mitigate, remedy, defend, appeal, compromise or settle the Joint Claim;
		3. keep the Eligible Manager reasonably informed of the progress of the Joint Claim and its defense;
		4. notify the Eligible Managers in writing on the result of the Joint Claim once it is finally determined in accordance with the SPA and actually paid to the Buyer, together with the specification of the amount of the Eligible Manager’s Pro Rata Share in the Joint Claim payable under this Agreement and supporting documentation reasonably requested by the Eligible Manager(s).
	2. Should any Joint Claim be notified by the Buyer under the SPA, the Eligible Managers shall provide the Sellers’ Claims Representative with any and all reasonable cooperation necessary in order to defend the claim, namely to assist the Sellers’ Claims Representative in the necessary scope in order to avoid, dispute, mitigate, remedy, defend, appeal, compromise or settle the Joint Claim.
	3. Any indemnification owed to the Sellers shall be effected as follows (in each case, subject to the limitations on indemnification set forth in this Article 3):
		1. first by asserting a claim against the Eligible Managers’ Retention Amount pursuant to the terms of the Escrow Agreement;
		2. in case of any other claims or if the Eligible Managers’ Retention Amount set off has been exhausted, directly against the Eligible Managers.

Any indemnification of the Sellers pursuant to this Article 3.8(b) shall be effected by wire transfer of immediately available funds to an account designated in writing by the Sellers‘ Claims Representative within forty-five (45) days after the later of (1) delivery of the notice specified in Article 3.6(d) or (2) after delivery by the Sellers' Claims Representative of the designation of accounts to which such indemnification should be made.

* 1. The Sellers and the Eligible Managers further agree that along with any liability for the Joint Claim, the Sellers and the Eligible Managers shall jointly bear the reasonably incurred expenses (in Czech: *účelně vynaložené náklady*) accrued by the Sellers’ Claims Representative in connection with the defense of such Joint Claim according to their Eligible Manager‘s Pro Rata Share. For this purpose, the Seller’s Claims Representative shall be entitled to recover such Eligible Manager‘s Pro Rata Share of the reasonably incurred expenses from the Retention Amount.
	2. All payments made by the Eligible Managers under this Agreement shall be made directly to the Sellers in accordance with their respective Sellers’ Pro Rata Share (as the term is defined in the SPA; i.e., a pro rata share of such Seller on the registered capital of the Company immediately prior to the Closing) and to the accounts of the Sellers as notified in advance by the Sellers’ Claims Representative. If any payments in favor of the Sellers are made to the Sellers’ Claims Representative, the Sellers’ Claims Representative shall distribute any such amounts without undue delay to the individual Sellers in accordance with their respective Sellers’ Pro Rata Share.
	3. The Parties agree that the indemnification provisions of this Article 3 shall be the sole and exclusive remedy relating to a breach of a Company Representation by the Eligible Managers, except as otherwise specifically provided herein. The Eligible Managers‘ obligation to pay the indemnification pursuant to this Article 3 is an obligation agreed pursuant to Section 1746(2) of the Act No. 89/2012 Coll., the Civil Code (the “**Civil Code**”).

# Appointment of the SELLERS’ claim representative

* 1. For the purposes of this Agreement the Parties agree that the Sellers’ Claims Representative shall act as the Sellers‘ representative in respect of all matters relating to the conduct of any claims arising hereunder, including (a) to give and receive notices and communications in respect of the claims arising hereunder; notices or communications to or from the Sellers' Claims Representative shall constitute notice to or from each of the Sellers in respect of the claims arising hereunder; (b) to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to the claims arising hereunder and (c) to take all actions necessary or appropriate in the judgment of the Sellers' Claims Representative for the accomplishment of the foregoing.
	2. The Sellers’ Claims Representative may be removed by the Required Sellers upon not less than ten (10) days’ prior written notice to the other Parties hereto, which notice shall be accompanied with an instrument executed by a substitute agent, which must be a Seller, accepting the position of a Sellers' Claims Representative. In the event of a dissolution of the Sellers' Claims Representative or any other vacancy in its position, the Required Sellers may appoint a substitute agent upon not less than ten (10) days’ prior written notice to the other parties hereto, which notice shall be accompanied with an instrument executed by a substitute agent, which must be a Seller, accepting the position of a Sellers' Claims Representative. After the end of such prior notice period, the successor Sellers' Claims Representative shall, without further acts, be vested with all the rights, powers, and duties of the predecessor Sellers' Claims Representative as if originally named as Sellers' Claims Representative. The Sellers shall ensure that the removed Sellers’ Claims Representative and the new Sellers’ Claims Representative appointed pursuant to this Article 4.2 inform the Eligible Managers of the new Sellers’ Claims Representative’s appointment.

# Confidentiality

* 1. All Parties shall treat the contents of: (i) this Agreement; (ii) all documents and information obtained under this Agreement or during contractual negotiations relating to this Agreement; (iii) all matters in connection with any dispute under or in relation to this Agreement; (iv) any other information which is not in the public domain and which relates to the other Party (the "**Confidential Information**") as confidential and shall not disclose the Confidential Information to any third party. This Article 5.1 shall not prohibit the disclosure of the Confidential Information:
		1. to a governmental authority;
		2. to the extent required by applicable law or required or formally requested by a governmental authority having jurisdiction over the relevant Party; or
		3. to the extent required by applicable law, if and to the extent that such disclosure is required for the purpose of any judicial, arbitration or other similar proceedings. For the avoidance of doubts, the Parties acknowledge and agree that this Agreement shall be disclosed in accordance with the Act No. 340/2015 Coll., on Registry of Public Agreements and any such disclosure shall not be considered a breach of this Article 5.

# final provisions

* 1. Any payments (regardless of their currency) made under this Agreement shall be rounded to the second decimal place.
	2. Should any amounts be converted from or into Czech crowns, the spot exchange rate of CNB as of the Calculation Time shall be used.
	3. Should any Eligible Manager fail to fulfil their obligation set out in Article 1.1 or should the Sellers’ Claims Representative have any doubts regarding the calculation of said Eligible Manager’s Retention Amount:
		1. each Eligible Manager hereby authorizes (in Czech: *zmocňuje*) the Sellers’ Claims Representative to make an inquiry with the Company in order to verify the calculation of the Net Premium and the Eligible Manager’s Retention Amount; for this purpose, the Sellers’ Claims Representative is entitled to disclose terms of this Agreement to the Company; and
		2. for the purposes of the Eligible Manager’s Pro Rata Share calculation, it shall be deemed that each Eligible Manager duly paid their Eligible Manager’s Retention Amount according to Article 1.1.
	4. All Parties shall provide the Sellers’ Claims Representative with all information, including the amounts of Net Premium received by each Eligible Manager, and cooperation necessary so that the Sellers’ Claims representative may fulfil its obligations under this Agreement.
	5. Unless defined otherwise in this Agreement, any capitalized terms used in this Agreement shall have the same meaning as they have in the SPA.
	6. This Agreement shall be effective as of its disclosure pursuant in accordance with the Act No. 340/2015 Coll., on Registry of Public Agreements.
	7. All payments to be made under this Agreement shall be made in Czech Crowns unless otherwise agreed between the parties. Any amounts which shall be the subject of a payment and which are not in Czech Crowns shall be converted into Czech Crowns at the spot exchange rate of CNB as of the Calculation Time.
	8. For the purposes of this Agreement, the Eligible Managers shall be contacted by the Sellers’ Claims Representative from its e-mail address in the domain “XXX” on the Eligible Managers’ e-mail addresses:
		1. XXX;
		2. XXX;
		3. XXX;
		4. XXX; and
		5. XXX.

Any changes made in the e-mail addresses set out in this Article 6.8 shall be noticed to the Seller’s Claims Representative and shall not require a formal written amendment to be effective.

* 1. Any amendment or supplement to or modification or termination of this Agreement shall be valid only if made in writing, except where a stricter form (such as notarisation) is required under applicable law.
	2. This Agreement and any non-contractual obligation in connection with it are governed by, and shall be construed in accordance with, Czech law excluding international private law provisions. The validity of this choice of law provision is governed by the laws of the Czech Republic. Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, breach or termination, shall be referred to and finally resolved by the competent Czech courts with the territorial jurisdiction according to the registered office of the Sellers’ Claims Representative.
	3. If any provision in this Agreement is held to be illegal, invalid or non-existent or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties. To the extent that it is not possible to delete or modify the provision, in whole or in part, under this Article, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under this Article, not be affected. The aforesaid shall apply, *mutatis mutandis*, to any omission in this Agreement.
	4. This Agreement is executed electronically by facsimile or electronic signature and a facsimile or electronic signature will constitute an original for all purposes.

**The Parties expressly represent that they have read this Agreement prior to signing hereof, this Agreement was concluded after mutual negotiations and is made as a free act and deed, in witness whereof they attach their signatures hereunto.**

|  |  |
| --- | --- |
| XXX |  |
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| Name: | XXX | Name: | XXX |
| Title: | XXX |  |  |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | XXX | Name: | XXX |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | XXX | Name: | XXX |
|  |
|  | **Masarykova univerzita** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | XXX | Name:Title: | Martin BarešRector |
|  |
| **Vysoké učení technické v Brně** |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name:Title: | Petr ŠtěpánekRector | Name: | XXX |
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| Name: | XXX | Name: | XXX |
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| Name: | XXX | Name: | XXX |
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| Name: | XXX | Name: | XXX |
|  |  |  |  |
| XXX | XXX |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | XXX | Name: | XXX |
| Title: | XXX | Title: | XXX |
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| Name: | XXX |  |  |

**Annex 1**

**SPA**

**Annex 2**

**Eligible Manager’s Pro Rata Share Calculation**

For the purposes of determining the Eligible Manager’s Pro Rata Share, the abbreviations used herein shall have the following meaning:

“**ANP**” means the Aggregate Net Premium, i.e. the sum of all Eligible Managers’ Net Premiums adjusted by the QC, rounded to the second decimal place.

“**ARA**” means the Aggregate Retention Amount, i.e. the sum of all Eligible Managers’ Retention Amounts, rounded to the second decimal place.

“**FRIC**” means the XXX.

“**MC**” means the Manager’s Coefficient, i.e. with respective to each Eligible Manager a ratio between said Eligible Manager’s Net Premium and the ANP, rounded to the sixth decimal place.

“**EMPRS**” means the Eligible Manager’s Pro Rata Share as calculated herein, rounded the second decimal place.

“**ORIC**” means XXX.

“**Purchase Price Cap**” means the amount of XXX.

“**QC**” means Qualification Coefficient, i.e. the coefficient of XXX, agreed on in Articles 3.5(a) and 3.5(b).

“**TMC**” means XXX.

“**TMIC**” means XXX.

“**TML**” means XXX.

For the **illustrative purposes of example calculations herein**, the following amounts shall be used.

**ANP** equals to XXX.

**ARA** equals to XXX.

**MC** equals with respect to:

* XXX;
* XXX;
* XXX;
* XXX; and
* XXX.

**TML** equals to XXX.

For the avoidance of doubt, the aforementioned amounts are for illustrative purposes only and the final amounts shall be different.

**XXX**

Each Eligible Manager’s Pro Rata Share (EMPRS) with respect to the Indemnity for XXX shall be calculated as follows:

**EMPRS = FRIC\*ANP\*MC**

For example, should the amount of Joint Claim, arising from XXX, amount to XXX, the Eligible Manager’s Pro Rata Share of:

1. XXX shall be XXX, i.e. XXX;
2. XXX shall be XXX, i.e. XXX;
3. XXX shall be XXX, i.e. XXX;
4. XXX shall be XXX, i.e. XXX; and
5. XXX shall be XXX, i.e. XXX.

where FRIC = XXX, i.e. XXX / XXX.

**XXX**

Each Eligible Manager’s Pro Rata Share (EMPRS) with respect to the Indemnity for XXX shall be calculated as follows:

**EMPRS = TMIC\*TML\*MC**

For example, should the amount of Joint Claim, arising from XXX, amount to XXX, the Eligible Manager’s Pro Rata Share of:

1. XXX shall be XXX, i.e. XXX;
2. XXX shall be XXX, i.e. XXX;
3. XXX shall be XXX, i.e. XXX;
4. XXX shall be XXX, i.e. XXX; and
5. XXX shall be XXX, i.e. XXX.

where TMIC = XXX, i.e. XXX.

**Breach of XXX**

Each Eligible Manager’s Pro Rata Share (EMPRS) with respect to the Indemnity for XXX shall be calculated as follows:

**EMPRS = ORIC\*ARA\*MC**

For example, should the amount of Joint Claim, arising from breach of XXX, amount to XXX, the Eligible Manager’s Pro Rata Share of:

1. XXX shall be XXX, i.e. XXX;
2. XXX shall be XXX, i.e. XXX;
3. XXX shall be XXX, i.e. XXX;
4. XXX shall be XXX, i.e. XXX; and
5. XXX shall be XXX, i.e. XXX.

where ORIC = XXX, i.e. XXX / XXX.