



Framework Purchase Contract [No.: ___/___]

concluded in accordance with Section § 2079 et seq. of Act No 89/2012 Sb., the Civil Code, as amended (hereinafter the "**Civil Code**" and the "**Contract**")

1. PARTIES

1.1. Buyer:

Ústav jaderné fyziky AV ČR, v. v. i.

(Nuclear Physics Institute of the Czech Academy of Sciences, public research institution)

registered office: Husinec - Řež 130, 250 68, Czech Republic

represented by: RNDr. Petr Lukáš, CSc., Director

registered in the Register of Public Research Institutions administered by the Ministry of Education, Youth and Sports of the Czech Republic (hereinafter the "**MEYS**" or "**Sponsor**")

bank details:

ID No: 61389005

Tax ID: CZ 61389005

(hereinafter the "**Buyer**")

and

1.2. Seller:

Hamamatsu Photonics Deutschland GmbH

registered office: Arzbergerstr. 10, D-82211 Herrsching, Germany

represented by Dr. Reinhold Guth

registered in Commercial Register of the Local Court of Munich

bank details:

ID No: HRB 79474

Tax ID: DE 128228814

(hereinafter the "**Seller**")

(the Buyer and the Seller also referred to as the "**Parties**").

2. INITIAL PROVISIONS

- 2.1. The Buyer is the beneficiary of a grant from the Sponsor (MEYS) funded within the MEYS “large infrastructures for research, experimental development and innovation” financial tool as well as of a subsidy from the Operational Programme Research, Development and Education (OP RDE) for the implementation of the project FAIR-CZ-OP II (“Facility for Antiproton and Ion Research - participation of the Czech Republic – OP II”, hereinafter the “**Project**”).
- 2.2. Within the Project (FAIR-CZ-OP II) the Czech participation in the Facility for Antiproton and Ion Research (FAIR), being a new European research infrastructure for nuclear and hadron physics at Darmstadt in Germany as a part of the capacity of GSI Helmholtzzentrum für Schwerionenforschung, is organized. Within the FAIR an international group is established involving teams from Czech Republic, Poland, Germany and Russia, 8 different institutions in all. These teams will deliver new electromagnetic calorimeter (ECAL) detector to the FAIR. R&D and detector construction is financed from national budgets, by assigning activities and responsibility for individual subsystems (electronics for data acquisition – Germany, load bearing structure – Poland, lead glass – Russia) or by sharing the expenditure among several partners (high voltage systems – Czech Republic and Slovakia, photomultipliers – Czech Republic, Poland and Germany, assembly and module testing – Czech Republic and Russia).
- 2.3. The Project is simultaneously a part of the Roadmap of Large Infrastructures for Research, Experimental Development and Innovation of the Czech Republic for the years 2016–2022, issued by the MEYS and approved by the Government of the Czech Republic.
- 2.4. With a view to successful implementation of the Project, it is also necessary to provide certain performance according to this Contract. **The aim of this Contract is the supply of the photomultipliers for ECAL detector.** The photomultiplier type has to meet certain minimal criteria in sense of detection properties, physical dimensions, material of the detection window and power requirements.
- 2.5. The Seller has been selected as the winning bidder in the above-the-limit regime public contract for supplies administered in the form of an open procedure named “**Photomultipliers for ECAL@HADES - Round 2**” (hereinafter the “**Procurement Procedure**”) pursuant to Section 56 Act No. 134/2016 Coll., on public procurement, as amended (hereinafter the “**Act on Public Procurement**”).
- 2.6. Prior written consent of the Buyer’s Supervisory Board and its founder was properly granted prior to the conclusion hereof.
- 2.7. Performance hereunder shall be based on the following annexes which form an integral part hereof:
 - 2.7.1. **Annex No. 1**, which contains **Technical Specifications** and detailed description of the subject matter of this Contract (hereinafter “**Annex No. 1**”);
 - 2.7.2. **Incentive and Risk Management Instruments** represents a document constituting

Annex No. 2 hereto, which includes sanctions and other incentive mechanisms for timely and proper performance hereunder (hereinafter the "**Annex No. 2**");

- 2.7.3. **Warranty Terms and Conditions** represents a document constituting **Annex No. 3** hereto, which describes the quality warranty provided by the Seller and motivates him to deliver the goods in the highest quality (hereinafter the "**Annex No. 3**").
- 2.8. In case of any discrepancy between the provisions of this Contract and the provisions of its Annexes the provisions of this Contract shall prevail, except for the provisions of Annexes containing conditions and specifications that are more favourable to the Buyer (i.e. higher technical specification values and/or more technically advanced or demanding solutions etc.), in which case such provisions of Annexes shall prevail. In case of any discrepancy between the provisions of the Annexes the provisions containing conditions and specifications that are more favourable to the Buyer shall prevail.
- 2.9. The Seller acknowledges that the Buyer cannot be classified as an entrepreneur in relation to the subject matter hereof, nor it is connected with the Buyer's business activities.
- 2.10. The Seller declares that he is capable, within the meaning of Section 5(1) of the Civil Code, of providing performance under the Contract with such knowledge, diligence and due care that is associated and expected of well-experienced experts in his profession and that his potential performance lacking such professional care would give rise to corresponding liability on his part. The Seller is prohibited from misusing his expert qualities or his economic position in order to create or exploit dependency of the weaker Party or to establish an unjustified imbalance in the mutual rights and obligation of the Parties. The Seller represents that he has all the professional prerequisites required for the proper fulfilment of this Contract, is fully authorized to perform this Contract and there exist no obstacles on his part that would prevent him from due performance of this Contract.
- 2.11. The Seller declares that he assumes the risk of a change in circumstances within the meaning of Section 1765 (2) Civil Code.
- 2.12. The Seller acknowledges that he is aware of the importance to the Buyer of the fulfilment of this Contract in terms of quality and schedule and that in the event of a failure by the Seller to meet them (e.g. in case of delay with delivery and/or in the case if the Object of Purchase does not meet the stipulated requirements) the Buyer may incur substantial damage. Duly and timely performance hereunder is essential for the Buyer, in particular, given the follow-on activities within the framework of the Project (FAIR-CZ-OP II) or the FAIR project and observation of the respective deadlines for their completion.

3. SUBJECT-MATTER

- 3.1. This Contract concerns delivery of the photomultipliers for ECAL detector. Each photomultiplier shall include a socket. The photomultipliers shall fully comply with the requirements and specification stipulated herein, including Annex No. 1 (Technical Specification) The supply of photomultipliers shall also include potential additional works

and/or deliveries, and a free licence to use the supply for the needs of the Project, including its follow-up phases (the supplies and related activities to be made hereunder shall be referred to jointly as the “**Object of Purchase**”).

- 3.2. This Contract stipulates the obligation of the Seller to deliver to the Buyer and transfer to the Buyer the ownership right to the Object of Purchase as specified herein and in accordance with the terms hereof. The Seller undertakes to duly deliver, under the terms agreed herein and within the time frame agreed herein, at his own cost and risk the items forming the Object of Purchase to the Buyer at the prescribed location and to hand them over to the Buyer. The Seller shall be liable for delivery of the said items fully in accordance with this Contract, his bid submitted within the Procurement Procedure and applicable legal, technical and quality regulations. For the sake of clarity, the Seller’s obligations hereunder to deliver the Object of Purchase, performance of which has been included in the Purchase Price, shall also include all the activities under the above Article.
- 3.3. This Contract further stipulates the obligation of the Buyer to take over the duly and timely delivered Object of Purchase and pay the Purchase Price, under the terms hereof, to the Seller. For the sake of clarity, the Buyer is hereunder obliged to accept and take over only the parts of Object of Purchase that are fully in compliance with all requirements specified in this Contract (including its Annexes).
- 3.4. **Individual Purchase Contracts based on Buyer’s Orders for partial deliverables:**
 - 3.4.1. The Object of Purchase will be performed and completed by the Seller for the Buyer in parts, i.e. partial deliverables, within the extent and under the terms defined in individual Purchase Contracts which shall be concluded simply by the Seller’s acceptance of a written order issued by the Buyer (hereinafter the “**Orders**”). Orders made using e-mail shall be understood to have been made in writing. The Seller undertakes to carry out his performance hereunder only on the basis of a binding Order constituting an agreement of the Parties on the terms of such Order, in particular on the volume of items to be supplied and the time-frame of the supply.
 - 3.4.2. The Seller shall be obliged to accept the Order of up to **400 photomultipliers** if ordered to be delivered until the end of 2022 and deliver each of them for unit price stipulated in Article 6.4 hereof. The Seller shall be further obliged to accept additional Orders up to the amount equal either to the total Purchase Price or the Estimated value of the Public Contract, whichever is higher.
 - 3.4.3. The Seller acknowledges and agrees that the Buyer shall not be obliged to order any performance from the Seller, even not until the total amount according to Article 3.4.2 hereof will have been used in full. Therefore, the Seller may not seek from the Buyer any Order(s) in connection herewith, nor claim on the Buyer any payment or compensation except for the Purchase Price to be paid for the actually ordered and duly delivered parts of the Object of Purchase.
 - 3.4.4. Without prejudice to Article 14.2 hereof, the Buyer shall be entitled to cancel his Order at any time; in such an event the Buyer shall be obliged to reimburse the Seller for the

costs which were demonstrably expended by the Seller with respect to that Order by the time the Order will have been cancelled as well as further costs which the Seller have demonstrably incurred due to that cancellation up to the amount that the Seller could not demonstrably avoid. The Seller shall be obliged to prove the amount of these costs. Alternatively, the Seller shall be entitled to choose to apply the cancellation fee under the conditions determined in Article 14.6 hereof as a reimbursement for the cancelled Orders. In any case of Order cancellation, the maximum reimbursement for cost incurred unavoidably due to cancellation may be the part of the Purchase Price corresponding to the delivery ordered in that Order.

- 3.4.5. The Buyer shall specify in each Order his proposal for specific number of items to be supplied by the Seller, time-frame of the supply as well as corresponding part of the Purchase Price for the number of items to be supplied, which shall comply with the relevant unit price stipulated in Article 6.4 hereof as well as in the Seller's bid submitted within the Procurement Procedure.
- 3.4.6. In the event that the Seller informs the Buyer within the below deadline that the proposed time-frame is not feasible with respect to the performance required, the Seller shall be entitled to propose a new time-frame. In those cases, where the Buyer accepts the Seller's counter-proposal for the given time-frame, the Buyer shall re-issue the Order with the time-frame proposed by the Seller, or with a time-frame which the Parties mutually agreed on. Both Parties acknowledge the delivery time under Article 5.3 hereof and agree to always professionally assess the required time-frames and to propose only such time-frames that are appropriate to each specific task.
- 3.4.7. The Seller shall reply whether he accepts the terms specified in each Order pursuant hereto and confirm his acceptance to the Buyer in writing within ten (10) business days of receiving the Order.
- 3.4.8. The Parties agreed that should the Seller not reply within the above deadline, the Order is deemed accepted. Moreover, in the event that the Seller does not notify the Buyer in writing, within the above deadline, in the manner stipulated in Article 13.3 hereof, that he does not agree with the time-frame proposed for the specific supply, and without supporting his disagreement by expert argumentation pursuant to Article 3.4.6 hereof, then it shall be understood that the Seller accepts the Buyer's proposal as specified in the Order. Furthermore, should an Order contain a requirement, which exceeds the framework agreed herein or in the tender documentation or the Seller's bid submitted within the Procurement Procedure, which the Seller has not agreed to perform, the Seller shall notify the Buyer of such excess requirement within the above deadline, otherwise it shall be understood that the Seller agrees with such additional performance, without a claiming to increase the Purchase Price.
- 3.5. **Additional supplies Option:** By means of the above Orders the Buyer shall be entitled but not obliged to order up to **30 additional sockets** as spare parts. The Seller undertakes to deliver the additional sockets pursuant to the terms of the Buyer's Order and for the price calculated according to the relevant unit price stipulated in Article 6.4 hereof as well as in

the Seller's bid submitted within the Procurement Procedure.

- 3.6. The value of the agreed omitted work will be deducted on the basis of the Seller's specification (unit price + Seller's margin) of the total Purchase Price and the price for the respective performance to which the omitted work relates, to be settled within the next payment.
- 3.7. A written agreement of the Parties shall be necessary in order that modifications hereunder are considered valid and billable. The Parties assume that part of the modifications may also be implemented in the form of additional Orders.
- 3.8. The Seller acknowledges that for additional Orders and/or conclusion of an agreement on modifications hereunder, the Buyer as a public contractor is obliged to respect the applicable legislation, including the Public Procurement Act, and the rules applicable to the Project, as well as the budget capacity of the Buyer.

4. OBLIGATIONS OF THE SELLER AND FURTHER REQUIREMENTS ON THE SUPPLY

- 4.1. The Seller shall deliver the Object of Purchase in accordance with the Buyer's Orders and must act in such a way that this Contract is performed in time and in due manner.
- 4.2. During the performance of this Contract the Seller proceeds independently, unless hereunder stated otherwise. If the Seller receives instructions from the Buyer, the Seller shall follow such instructions unless these are against the law or in contradiction to this Contract. If the Seller finds out or should have found out by exercising professional care that the instructions are inappropriate or contradicting valid Czech or EU standards or are in contradiction to this Contract, then the Seller must promptly notify the Buyer.
- 4.3. The Seller shall ensure that the Object of Purchase complies with all technical specifications and performance requirements stipulated herein. The Seller is responsible that the Object of Purchase meets valid safety, technical and quality Czech and EU standards.
- 4.4. The Object of Purchase and its components and parts shall be delivered new (i.e. not remanufactured).
- 4.5. The Seller agrees to the specifications as defined in Annex No. 1 and declares, at the time of execution hereof, that he is not aware of any deficiencies therein and that he will be able, on the basis of these specifications, to deliver the Object of Purchase in the required quality without the need for any additional work.

5. TERM, TIME SCHEDULING AND PLACE OF DELIVERY

- 5.1. This Contract is concluded as a framework agreement for the period of the duration of the Project – i.e. until the end of 2022.
- 5.2. The Seller agrees to execute the subject-matter of this Contract according to the schedule

stipulated in the individual Purchase Contracts based on the Orders issued by the Buyer.

- 5.3. Provided that regular monthly deliveries will have been ordered, the first partial deliverable shall consist of at least 10 photomultipliers and any of the next partial deliverables shall consist of at least 20 photomultipliers. The delivery time for the very first partial deliverable shall be 3 months upon its Order. The delivery time for each next partial deliverable shall be 1 month upon the deadline of the immediately preceding partial deliverable if not agreed otherwise by both Parties. In case of Orders for irregular deliveries (i.e. for significantly less than ca. 10 photomultipliers or not on a regular monthly basis) the delivery schedule shall be agreed by both Parties in the manner stipulated in Articles 3.4.5-3.4.8 hereof. If not agreed otherwise, the delivery time for such an irregular partial deliverable shall be 2 months upon its Order or the deadline of the preceding partial deliverable, whichever comes later. The Seller acknowledges that the Buyer expects to issue multiple Orders for deliveries according to a monthly based delivery schedule agreed by both Parties for each Order. Nevertheless, no Buyer's deviation from this assumption shall increase the stipulated Purchase Price. The last Order/delivery is limited by the Contract expiry (i.e. end of 2022).
- 5.4. Unless the Parties agree otherwise, the place of delivery shall be the Buyer's facility— located at the Buyer's registered office as defined in Article 1.1 hereof (hereinafter the "**Place of Delivery**").
- 5.5. The Seller shall deliver and handover the Object of Purchase or its individual parts at the Place of Delivery. The Buyer shall provide to the Seller for this purpose necessary cooperation.
- 5.6. The Seller shall be entitled to deliver the Object of Purchase or its individual parts to the Buyer at the Place of Delivery prior to the stipulated deadlines for their handover provided that an agreement to that effect is reached before that with the Buyer.

6. PURCHASE PRICE; INVOICING; PAYMENTS

- 6.1. The total (maximum) purchase price for the subject of this Contract has been set forth on the basis of the Seller's bid submitted within the Procurement Procedure in the amount not exceeding the maximum possible amount of **7.342.013 CZK excluding VAT** (*in words: seven million, three hundred forty-two thousand, thirteen Czech Korunas excluding VAT*) and VAT in the amount of 1.541.823 CZK (*in words: one million, five hundred forty-one thousand, eight hundred twenty three Czech Korunas*) according to the 21 % VAT rate, i.e. 8.883.836 CZK including VAT (*in words: eight million, eight hundred eighty-three thousand, eight hundred thirty-six Czech Korunas including VAT*); (hereinafter the "**Purchase Price**"). VAT shall be imposed on top of all payments made hereunder according to valid legislation.
- 6.2. The Purchase Price cannot be exceeded, and may be changed only in accordance with the Act on Public Procurement.
- 6.3. The Purchase Price shall cover any and all performance provided by the Seller hereunder and include all of the Seller's activities executed and all of the Seller's costs accrued or

associated with the proper performance hereof. The Purchase Price includes especially all expenses related to delivery and handover of the Object of Purchase, including warranty, any customs duties, fees, insurance etc. as well as the costs associated with creation and protection of intellectual property and Seller's claims arising on the basis of intellectual property laws.

- 6.4. The respective part of Purchase Price corresponding to the relevant partial deliverable shall be calculated on the basis of unit prices as follows:

Unit price currency	Price per unit - a photomultiplier (including socket)	Price per unit - an additional socket as spare part
CZK	18.310,115	598,91

- 6.5. The Purchase Price or its parts shall be paid in CZK, according to the actual scope of the partial deliverables on the basis of tax documents – invoices, to the account of the Seller designated in [Article 1.2](#) hereof.
- 6.6. With respect to the above, the Parties have agreed that the Purchase Price or its parts shall be paid by the Buyer and that the Seller shall be authorized to invoice the Purchase Price according to the actual scope of the partial deliverables while the amount to be paid by the Buyer based on the invoice shall not exceed the relevant part of the Purchase Price calculated on the basis of unit prices.
- 6.7. The Seller is entitled to issue any invoice no sooner than on the moment the corresponding part of the Object of Purchase is duly delivered to and taken over by the Buyer as confirmed by the relevant Handover Protocol. All invoices issued hereunder shall become due within thirty (30) days from the date of their delivery to the Buyer (hereinafter the "**Due Date**").
- 6.8. **Early payment option:** At the request of the Seller the Buyer is entitled to pay a part of the funds in advance, even in the event of the Seller's delay with delivery of partial deliverables to which the funds are actually pertaining. This option available to the Buyer may be exercised at his discretion, and in doing so the Buyer shall take into account (i) the value of the completed part of the Object of Purchase and the course of the handover procedure; (ii) the Seller's plan submitted to the Buyer describing the Seller's steps for prompt completion of the partial deliverables with which he may be in delay, as well as other follow-on deliveries as well as any risks associated with late payments in relation to the follow-on deliveries. The purpose of this Buyer's option is to enable the Seller to proceed with his performance in order to fulfil his obligation to deliver the Object of Purchase while maintaining the appropriate standard of public funds management entrusted to the Buyer in accordance with the so-called "private debtor/creditor" principle.
- 6.9. A payment of the amounts invoiced shall be understood to be effected on the day on which it was remitted to the Seller's account, i.e. the invoice shall be considered to be paid for on

the day when the invoiced amount is deducted from the Buyer's account on behalf of the Seller's account.

- 6.10. The invoice issued by the Seller as a tax document must contain all information required by the applicable laws of the Czech Republic. Invoices issued by the Seller pursuant to this Contract shall, in accordance with relevant legislation, contain particularly the following data:
 - 6.10.1. business name / name and registered office of the Buyer;
 - 6.10.2. tax identification number of the Buyer;
 - 6.10.3. business name / name and registered office of the Seller;
 - 6.10.4. tax identification number of the Seller;
 - 6.10.5. serial number of the tax document;
 - 6.10.6. scope and subject-matter of the performance, i.e. quantity (extent) and nature of performance supplied or services rendered (including the reference to this Contract);
 - 6.10.7. date of issue of the tax document;
 - 6.10.8. date of the supply of goods or services or date of receipt of the payment on account, whichever comes sooner, in so far as they differ from the date of issue of the tax document – invoice;
 - 6.10.9. due date (payment deadline);
 - 6.10.10. price of the performance provided;
 - 6.10.11. number of the Buyer's order; and
 - 6.10.12. a declaration that the invoiced performance is provided for the purposes of the project "Facility for Antiproton and Ion Research - participation of the Czech Republic – OP II", Reg. No. CZ.02.1.01/0.0/0.0/18_046/0016066;
- 6.11. and, furthermore, the tax documents – invoices shall also be in compliance with agreements on avoidance of double taxation, if applicable in particular cases.
- 6.12. The last invoice in each calendar year must be delivered by the Seller to the Buyer no later than on 15th of December of that calendar year.
- 6.13. The Buyer shall not be obliged to effect payments based on incorrectly issued tax documents – invoices. If the tax document – invoice is not issued in accordance with the payment terms stipulated in the Contract or will not meet the required legal requirements or if it is not delivered to the Buyer by the date specified above, the Buyer is entitled to return the tax document – invoice as incomplete or incorrectly issued to the Seller for completion or for new issue within ten (10) business days after its delivery to the Buyer. In

such a case, the Buyer shall not be deemed to be in delay with payment of the Purchase Price or its part, and the Seller shall issue a corrected invoice with a new identical payment deadline (due date), which shall commence running upon the delivery of the corrected or newly issued tax document – invoice to the Buyer.

- 6.14. The Buyer's invoicing data are provided in Article 1.1 hereof.

7. RIGHTS AND DUTIES OF THE PARTIES

- 7.1. The Seller undertakes to fulfil all obligations arising herefrom with due professional care, within the deadlines specified herein and/or hereunder, at his expense and risk and for the Purchase Price defined herein.
- 7.2. The Seller shall be obliged to inform the Buyer on their request about the progress of the works carried out in order to complete and deliver the Object of Purchase, in the form of an electronic message in English no later than ten (10) business days upon such request delivery. If required by the Sponsor or Operational Programme rules or subsidy/grant conditions determined by the Sponsor, the Seller is obliged to also inform the Buyer about the progress of works every three (3) months in the form of an electronic message in English sent to the Buyer's contact person.
- 7.3. In the event of the **Seller's delay** with performance within the deadlines according hereto, particularly in respect of the time of handover of the deliverables, the Buyer is entitled to charge the Seller with a contractual penalty in accordance with Annex No. 2 hereto.
- 7.4. In the event of the **Buyer's delay** with payment of the Purchase Price or any part thereof within the deadlines set out in this Contract, the Seller is entitled to charge the Buyer with a late payment interest in accordance with Annex No. 2 hereto, unless the Buyer proves that the delay was caused by late release of the funds by the Sponsor.
- 7.5. For the avoidance of any doubt, the Parties agree that during a Party's delay the other Party's liability for delay is excluded; in that case the respective performance deadlines of the latter Party are adequately extended by the period of that delay.
- 7.6. Unless herein stipulated otherwise, the Seller shall pay any of the contractual penalties charged under this Contract no later than within thirty (30) calendar days from the day, on which the Buyer enumerated his claim for the contractual penalty.
- 7.7. The Buyer is entitled to offset unilaterally at any time his claims for the payment of the contractual penalty under this Contract against any claims of the Seller for the payment of any part of the Purchase Price. The setoff shall be effective upon written notification to the Seller describing and quantifying the Buyer's claim to be offset.
- 7.8. The Parties exclude application of Section 2050 of the Civil Code, and agree that the Buyer, in addition to the contractual penalty under this Article, is also entitled to foreseeable damages in excess of contractual penalties hereunder actually paid by the Seller.

- 7.9. Should a Party breach its obligation hereunder or may it or should it be aware of any such breach, that Party shall, without undue delay, notify the other Party which may incur harm to that effect and shall advise it of potential consequences; in such a case, the injured Party shall not be entitled to compensation for the harm that the notified Party could have prevented after such notification.

8. SPECIAL PROVISIONS

- 8.1. Under the terms hereof, the Seller undertakes, in accordance with the Buyer's instructions and exercising all due professional care, to:
- 8.1.1. archive all documents produced in connection with the execution hereof and performance hereunder for a period of 10 years after the end of the performance hereunder, but at least until the end of 2033, and allow the Buyer access to these archived documents, with the exclusion of those specific parts of documents containing business secrets, at any time during that period. The Buyer shall be entitled to take possession of the above documents from the Seller free of charge after the period of 10 years from the end of performance under the Contract;
- 8.1.2. cooperate within the framework of potential financial control procedures pursuant to Act No. 320/2001 Coll., on financial control, as amended, which includes, but is not limited to, allowing the Sponsor or the competent Managing Authority of the relevant Operational Programme access to also those portions of the bid submitted within the Procurement Procedure, the Contract, Orders, subcontracts and related documents that might be subject to protection under special legal regulation, provided that all requirements set forth by legal regulation with respect to the manner of conducting such controls will have been observed;
- 8.1.3. enable observance of any publicity obligations stemming from the rules of the relevant Operational Programme; and
- 8.1.4. enable the Buyer to fulfil its obligations pursuant to the Act on Public Procurement.

9. HANDOVER

- 9.1. The Seller shall handover the Object of Purchase or its parts to the Buyer at the Place of Delivery within the stipulated delivery deadlines and, if applicable, along with technical and legal documentation, e.g. user manuals, guides, warranty certificates etc.
- 9.2. During the handover and takeover procedure, the Buyer shall be entitled, in particular, to visually inspect the delivered deliverables. The Buyer may, provide to the Seller any comments regarding the delivered deliverables and the Seller shall be obliged to act on the basis of these comments or justify why these are unacceptable.
- 9.3. The Buyer shall not be obliged to verify accuracy of any calculations and details of the

technical solution constituting the Object of Purchase.

- 9.4. The handover of the Object of Purchase or its individual parts shall be subject to a handover protocol on the course of the handover and takeover procedure to be drawn up and executed by the Parties; the protocol must include:
 - 9.4.1. details on the Seller and Buyer;
 - 9.4.2. description of the items that are the subject of handover and takeover;
 - 9.4.3. output sheet from each photomultiplier containing following parameters:
 - (i) cathode luminous sensitivity;
 - (ii) anode luminous sensitivity;
 - (iii) anode dark current;
 - (iv) cathode blue sensitivity index/blue filter measurement (CS 5-58, half stock);
 - 9.4.4. declaration of the Buyer as to whether the Buyer accepts or does not accept the supply;
 - 9.4.5. the date of execution of the protocol on handover and takeover of the supply (hereinafter the "**Handover Protocol**").
- 9.5. The part of the Object of Purchase - partial deliverable in question shall be considered duly completed only by its acceptance effected by execution of the relevant Handover Protocol by both Parties. Assessment and subsequent acceptance of individual part of the Object of Purchase does not affect the Seller's liability for other parts of the Object of Purchase.
- 9.6. In case of any defects of the delivered Object of Purchase or its part, the Buyer shall be entitled to refuse the takeover of that defective delivery. Whenever technically possible the Seller shall remedy the deficiencies within one (1) month, unless Parties agree otherwise; however, these periods do not imply that the Seller is not in delay with delivery of any deliverable. The Buyer shall be entitled at his discretion (but not obliged) to take over the defective deliverable despite its defect, in particular if such defect does not have a material impact on its functionality. If the Buyer does not exercise his right not to take over the defective delivery, the Parties shall make a list of ascertained defects in the Handover Protocol, including the manner of and deadline for their removal no longer than one (1) month or, where necessary due to technical nature of the defect, two (2) months upon returning the defective delivery to the Seller. If the Seller fails to remove ascertained defects within the deadline stated in the Handover Protocol, the Buyer shall be entitled to charge the Seller with a contractual penalty in the amount of 0.5 % of the part of the Purchase Price (excl. VAT) corresponding to the defective part of the Object of Purchase for each, even incomplete, day of delay. Till the remedy of the defects the Buyer shall be entitled to postpone any due payments up to the amount corresponding to the significance of the defects.
- 9.7. Should the Object of Purchase or its parts have defects, which are not apparent at the handover (i.e. hidden defects), the Parties shall follow regulation stipulated in Section 2112 (1), second sentence, of the Civil Code to make claims.

- 9.8. The Parties wish to deviate from provisions of Section 2126 of the Civil Code and agree that the Seller shall not be authorized to use institutes established therein.

10. TRANSFER OF OWNERSHIP RIGHT

- 10.1. The ownership right to individual parts of the Object of Purchase shall pass to the Buyer upon their handover and takeover confirmed by the signature of the persons authorised by the Parties hereunder on the Handover Protocol.
- 10.2. The Seller shall bear the risk of damage to the Object of Purchase until passing that risk to the Buyer. The Buyer assumes the risk of damage to the parts of the Object of Purchase along with the transfer of the ownership right to that parts; this fact shall not relieve the Seller from his liability for damage caused as a consequence of defects of the Object of Purchase or part thereof.

11. CONFIDENTIALITY, PUBLISHING, PUBLICITY

- 11.1. **Confidential information:** For the purposes of this Contract, confidential information means any data or information which is owned or possessed by one of the Parties and is not generally known to the public, or which has not yet been made available, whether in tangible or intangible form, at any time and place, if the Party explicitly marks it as “confidential information” or “business secret” including the case of Article 11.4 below. Examples of such information include:
- 11.1.1. scientific or technical information, inventions, designs, processes, procedures, formulae, improvements, technologies or methods;
 - 11.1.2. concepts, samples, news, data, know-how, progress work, designs, drawings, photographs, development tools, technical data, software, source code, object code, flowcharts and databases;
 - 11.1.3. marketing strategies, plans, financial data or estimates, operations, sales estimates, business plans and performance results relating to past, present or future business activities of the Party or its branches, subsidiaries and affiliates;
 - 11.1.4. business secret; product or service plans and lists of clients or suppliers; or
 - 11.1.5. any other information that could reasonably be considered confidential by the Parties.
- 11.2. The Parties hereby acknowledge that business secrets / confidential information protected by each of the Parties have been developed and obtained through a considerable effort, and are therefore viewed and held as business secrets / confidential information (hereinafter the “**Confidential Information**”).
- 11.3. **Originality:** The Parties have agreed that Confidential Information does not have to be original, unique, patentable, and it does not have to be subject to copyright or constitute a

business secret to be classified as Confidential Information and therefore protected.

- 11.4. **Designation:** In case of written documents, information communicated orally, or written documents which are not designated, Confidential Information must be designated as such by notifying the other Party of the confidential nature of the information disclosed. This notification must be made by e-mail or written correspondence within thirty (30) days of the disclosure of Confidential Information.
- 11.5. **Notifier and Recipient:** For the purposes of this Contract, the Party that discloses Confidential Information under the terms set forth herein to the other Party is considered the notifier (hereinafter the "**Notifier**"). Similarly, the Party that receives Confidential Information is considered the recipient (hereinafter the "**Recipient**").
- 11.6. **Exclusion of protection:** Notwithstanding the above, Confidential Information excludes information which:
 - 11.6.1. is already publicly known at the time of its disclosure by the Notifier to the Recipient or become publicly known thereafter without any breach of the terms herein;
 - 11.6.2. was known to the Recipient prior to the disclosure (subject to the provision of appropriate evidence or a written record of such disclosure);
 - 11.6.3. is subsequently made available to the Recipient by a third party that acquired it legally and has no confidentiality obligation towards the Notifier;
 - 11.6.4. becomes publicly accessible in a way other than the violation of the Recipient's confidentiality obligation (i.e. other than the result of the Recipient's fault or omission);
 - 11.6.5. is (or was) developed/acquired by employees, advisors or representatives of the Recipient completely independently of its provision stipulated in this Contract (to be sufficiently demonstrated) without violating the provisions hereof or access to any Confidential Information concerning the Parties; or
 - 11.6.6. is or was provided by the Recipient based on a binding and final act of a public authority (including a requirement of control and audit authorities to submit the documents).
- 11.7. **Purpose of disclosure of Confidential Information:** The Notifier, in connection with the exercise of rights and obligations under this Contract or in the context of related negotiations, may provide the Recipient with Confidential Information. The Recipient undertakes to use Confidential Information solely for the purpose intended by the Parties under this Contract and is not entitled to use Confidential Information for any other purpose without the prior written consent of the Notifier.
- 11.8. **Confidentiality obligation:** The Recipient shall not disclose and shall maintain confidentiality of the information received, with the exception of its employees including its affiliates' employees, representatives or agents who need access to Confidential Information for the fulfilment of their obligations in connection with the agreed subject-matter of the Contract for a period of three (3) years from the date of disclosure of

Confidential Information. The Recipient shall inform them of the confidentiality of the information received and ensure that they keep confidentiality under the conditions set out in this Contract. The Recipient must ensure compliance with these confidentiality obligations and the prohibition of use contained herein, strictly observe them and assume full responsibility for any acts or omissions concerning and caused by its employees or representatives.

- 11.9. **Publications:** The Parties undertake to not include in their publications any Confidential Information, unless the prior written consent of the Notifier is given for such publication (it is sufficient in the form of data communication, e.g. e-mail, etc.). The Seller undertakes that as part of its publishing activity concerning the subject-matter of this Contract, it shall provide information about the Project and sources of financing in accordance with the publicity rules applicable to the Project, especially in the Acknowledgments section of the publication. In the publications about the subject-matter of this Contract, the Buyer undertakes to indicate, in an appropriate manner, the Seller as the authorized supplier. The Seller undertakes to adhere to any applicable publicity rules resulting from the binding documentation of the Operational Programme and/or Project. The Parties undertake that in their publishing activities they shall protect the legitimate interests of the other Party.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. If, **in connection** with the performance of the Contract, the Object of Purchase or any of its parts constitute an author's work within the meaning of Act No 121/2000 Sb., on copyright, on rights related to copyright and amending certain acts, as amended (hereinafter the "**Copyright Act**"), it is a contract work in the sense of Section 61 of the Copyright Act. In this case, the Seller grants to the Buyer a royalty-free licence to use the author's work (or any of its parts) for the purposes of this Contract and/or for the purposes of research and education for the duration of the property rights to author's work on the territory of the whole world, including sub-licence for the purpose of implementing the Project, including its follow-up phases.
- 12.2. For the purposes of this Contract, author's work and industrial rights are hereinafter jointly referred to as intellectual property rights. In the event that a work or part thereof is created in connection with the performance of the Contract, and the Seller is entitled to register such work or part thereof through any of the forms of industrial property rights (i.e. trademark, patent or invention, utility or industrial design, etc.) protected under applicable legislation of the Czech Republic, foreign State or an international or supranational organization, the Seller shall grant to the Buyer, for the duration of the protection of the relevant industrial property rights, a royalty-free licence to use the work embedded in the photomultipliers and/or any deliverables hereunder for the purposes of the Project and other research and educational activities, as well as for the purposes of this Contract on the territory of the whole world. The Buyer hereby undertakes not to provide the results of the work to third parties without the prior consent of the Seller.
- 12.3. The intellectual property rights according to Article 12 hereof shall pass to the legal

successor of the Buyer, for the duration of the protection period granted to that particular intellectual property right and/or period of existence of ownership rights to copyrighted work on the territory of the whole world.

- 12.4. The Parties have agreed that the Seller's fee for granting the licence under Article 12 hereof is already reflected and included in the Purchase Price under Article 6 hereof.
- 12.5. In the event that any intellectual property rights arising hereunder are infringed by any third party, their owner including the Seller is entitled to enforce them with the competent public authorities or bodies. The licensee including the Buyer or the legal successor of it is obliged to inform the owner of the intellectual property rights without undue delay if the licensee becomes aware of the infringement under the previous sentence.
- 12.6. In the event that the work or part thereof is created as a result of a joint activity of the Seller and the Buyer, the two Parties undertake to file a joint application for any intellectual property rights as co-authors. To avoid any doubt, the Seller or the Buyer may file any sole application for any intellectual property rights not based on the other party's Confidential Information
- 12.7. In the event that any products constituting intellectual property rights are created or co-created by the Seller under the relevant financial contribution under this Contract is commercialized by the Seller in the future, the Seller undertakes to pay to the Buyer from his own proceeds of such commercialization a share corresponding to the financing rate under this Contract. This provision does not apply if the share of profit so determined does not exceed 0.1% of the gross proceeds of commercialization. To avoid any doubt, the payment of Purchase Price is not such relevant financial contribution.

13. REPRESENTATIVES, NOTIFICATIONS

- 13.1. The Seller has appointed the following authorised representatives for communication with the Buyer in relation to the subject of performance hereunder:

In technical matters:

- Elias Iwotschkin
E-mail:

In project matters:

- Elias Iwotschkin
E-mail:

In contract matters:

- Elias Iwotschkin
E-mail:

13.2. The Buyer has appointed the following authorised representatives for communication with the Seller in relation to the subject of performance hereunder:

In technical matters:

- _____
E-mail: _____

In project matters:

- _____
E-mail: _____

In contract matters:

- _____
E-mail: _____

13.3. Unless this Contract provides otherwise, all notifications between the Parties hereunder must be made in writing and delivered to the other Party by an authorised delivery service, in person (with written confirmation of receipt), by registered mail sent using a postal service provider, or may be made by electronic communication with an electronic signature to the Buyer at _____ and to the Seller at _____

13.4. In design, expert or technical matters (e.g. negotiation of the preliminary assessment of part of the Object of Purchase, claiming the warranty, etc.), electronic communication through the above representatives is permitted.

14. TERMINATION OF CONTRACT, FORCE MAJEURE

14.1. This Contract may be terminated by its completion, by its expiration, by agreement of the Parties or by withdrawal from the Contract for reasons specified by law or the Contract.

14.2. The Buyer is entitled to withdraw from this Contract without any sanction if any of the following circumstances occur:

14.2.1. the Buyer is withdrawn from or loses the financial subsidy and/or funding for the implementation of the Project or will not be awarded such subsidy and/or funding;

14.2.2. the expenditure or part thereof incurred under this Contract is identified ineligible by the Sponsor or any other control body;

14.2.3. the Seller breaches this Contract in a substantial manner;

- 14.2.4. the Seller is in delay with delivery of any supply hereunder for a period exceeding three (3) calendar months, except where the delay has been caused solely by the Buyer;
- 14.2.5. any of the supplies submitted to the Buyer under this Contract do not meet the technical or other parameters foreseen by this Contract, even after the Buyer has requested the Seller twice to meet or supplement them;
- 14.2.6. insolvency proceedings are initiated or pursued against the Seller or his assets; or
- 14.2.7. should it become apparent that the Seller has provided information or documents during the Procurement Procedure or in his bid which are false and which had or could have had therefore an impact on the result of the Procurement Procedure which led to the conclusion of this Contract.
- 14.3. The Seller is entitled to withdraw from this Contract without any sanction if any of the following circumstances occur:
- 14.3.1. the Buyer breaches this Contract in a substantial manner;
- 14.3.2. the Buyer is in delay with the payment of the Purchase Price or its part for more than three (3) calendar months after an additional period for the payment of the relevant part thereof specified by the Seller pursuant to point 1.2 of Annex No. 2 to this Contract had been provided.
- 14.4. The Party which is hereunder entitled to withdraw from hereof may withdraw entirely or just with respect to some partial deliverables. If herein or in the withdrawal not expressly stated otherwise, termination of this Contract does also terminate the individual Purchase Contracts concluded hereunder (i.e. the binding Orders). Costs accrued due to such withdrawal shall be reimbursed under the conditions set out in Article 14.6 hereof.
- 14.5. The act of withdrawal from the Contract shall become effective on the date when the written notification of the withdrawal from the Contract by one of the Parties is delivered to the other Party, with consequences of the Contract termination effective in the “*ex nunc*” regime.
- 14.6. In the event of termination of this Contract for other reasons than for breach of obligations on the part of the Seller, the Seller shall be entitled to get reimbursement for the costs which he accrued in connection with the fulfilment of his obligations hereunder prior to the Contract termination, provided that such costs could demonstrably not be avoided (e.g. by timely cancellation of orders), have not been already paid by the Buyer within any instalment of the Purchase Price and are not covered from other sources (e.g. by insurance). Under the same conditions and where not included in the previous reimbursement, the Seller shall be entitled to the portion of Purchase Price for the part of the Object of Purchase actually delivered to the Buyer pursuant to the Contract within one (1) month upon termination of the Contract. Alternatively to the above reimbursement with respect to unsupplied parts of the Object of Purchase and provided that the Buyer’s termination of this Contract does cancel the binding Order(s), the Seller may choose to apply a flat rate

cancellation fee determined as follows: (i) In case of termination (cancellation) one month before the scheduled delivery of the relevant part of the Object of Purchase, the cancellation fee shall be 80 % of the purchase price of that part. (ii) In case of termination (cancellation) within the first month upon Order issuance the cancellation fee for that Order shall always be 0 % of the relevant part of the Object of Purchase. (iii) In case of termination (cancellation) between the first month upon Order issuance and the last month before the scheduled delivery of the relevant part of the Object of Purchase this flat rate should be proportionally decreased with respect to the day of termination (cancellation) within the framework between the first day of the second month upon Order issuance and the first day of the last month of the scheduled delivery of the relevant part of the Object of Purchase [flat rate = (number of days from 1st day of 2nd month to the day of termination) / (number of days from 1st day of 2nd month of the planned delivery schedule to 1st day of the last month of the delivery schedule) * (80 %)]. In other events of termination of this Contract the Seller shall not be entitled to get any reimbursement and becomes entitled just to the portion of Purchase Price for the part of the Object of Purchase actually delivered to the Buyer pursuant to the Contract prior to the Contract termination. In any event, things, rights and any other values whose price was paid for by the Buyer to the Seller according to this provision shall pass, by payment, into the ownership of the Buyer, and the Seller shall be obliged to allow the Buyer to dispose with such accordingly. The Parties shall strive and cooperate to avoid or minimize further cost that might arise as a consequence of the Contract termination.

- 14.7. Circumstances precluding liability are considered to include obstacles which have occurred independently of the will of the obligated Party, and which prevent it from fulfilling its obligation, provided that it could not be reasonably expected that the obliged Party could overcome or avert these obstacles or their consequences and furthermore that such Party could foresee such obstacles when it entered into the respective covenants (hereinafter the "**Force Majeure**"). Liability cannot be precluded by obstacles which occurred only when the obligated Party was in delay with fulfilling its duty or arose out of its economic situation. The effects precluding liability shall be limited to the period during which the obstacles causing these effects persist.
- 14.8. Should a situation occur, which a Party could reasonably consider to constitute Force Majeure (vis maior), and which could affect fulfilment of its obligations hereunder, such Party shall promptly notify the other Party and attempt to continue in its performance hereunder in a reasonable degree. Simultaneously, such Party shall inform the other one of any and all its proposals, including alternative modes of performance, however the Party shall not proceed to carry out such alternative performance without the other Party's previous consent. If a Force Majeure event occurs, the deadlines stipulated herein shall be extended by the period of the duration of that Force Majeure event.

15. GOVERNING LAW, DISPUTE SETTLEMENT

- 15.1. This Contract and any and all legal relationships arising therefrom are governed by the laws of the Czech Republic.

- 15.2. The Parties acknowledge that areas not expressly regulated by this Contract are governed by the relevant provisions of the Civil Code (Act No. 89/2012 Sb., as amended).
- 15.3. Any and all disputes arising out of this Contract or legal relationships related thereto shall be settled by mutual negotiation between the Parties. If a dispute cannot be settled amicably by negotiation within sixty (60) days, such a dispute shall be decided by the competent court in the Czech Republic having jurisdiction according to the registered office of the Buyer based on application of any of the Parties. The conduct language shall be English.

16. TRANSITIONAL AND FINAL PROVISIONS

- 16.1. This Contract constitutes the entire and comprehensive agreement between the Buyer and the Seller.
- 16.2. The Seller shall not be entitled to transfer rights and duties from this Contract or its part on third parties, to transfer his claims against the Buyer that arose on the basis or in connection with this Contract on third parties, nor to set off any of its claims or his debtor's claims against the Buyer's claims.
- 16.3. If any Party breaches any duty under this Contract and knows or should have known about such breach, the Party shall notify and warn the other Party of possible consequences.
- 16.4. If any provision of this Contract becomes or is declared null, ineffective, non-existent or unenforceable, then such nullity, ineffectiveness, non-existence or unenforceability shall not make the Contract null, ineffective, non-existent or unenforceable as a whole. In such a case, the Parties shall without undue delay clarify such a defective provision within the meaning of Section 553(2) of the Civil Code, or replace it, to the extent permitted by the applicable laws, by mutual agreement with a new provision, whose meaning is as close as possible to the intention of the Parties at the conclusion of this Contract.
- 16.5. This Contract becomes valid on the date of its signature by the authorised persons of both Parties and effective on the date of its publication in the Register of Contracts.
- 16.6. This Contract may be changed or supplemented solely by means of written numbered amendments, indicating time and place of conclusion, and signed by duly authorized representatives of the Parties. Within the meaning of Section 564 of the Civil Code, the Parties expressly exclude the possibility to amend the Contract by any other means in any different form.
- 16.7. This Contract is made in the English language and executed in four (4) counterparts each of which is deemed original. Each of the Parties shall receive two (2) counterparts.

In witness of the agreement with all the contents of the Contract, the Parties attach their signatures:

In [...place...] on [...date...] 2020

On behalf of the Buyer:

RNDr. P
Lukáš, C

Datum: 2021.02.18 11:59:41 +01'00'

Name: RNDr. Petr Lukáš, CSc.
Position: Director

In Herrsching on 02.02.2021

On behalf of the Seller:



Name: Dr. Reinhold Guth
Position: Managing Director

Doložka konverze do dokumentu obsaženého v datové zprávě

Tento dokument, který vznikl převedením vstupu v listinné podobě do podoby elektronické pod pořadovým číslem **135904391-211436-210215133759**, skládající se z **21** listů, se doslovně shoduje s obsahem vstupu.

Vstup bez viditelného prvku.

Jméno a příjmení osoby, která konverzi provedla: **MARKÉTA KÁNINSKÁ**

Vystavil: **Káninská Markéta - notářka**

Pracoviště: **Káninská Markéta - notářka**

Praha dne 15.02.2021