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| **BRUSH SEM s.r.o.****and****Západočeská univerzita v Plzni** **Faculty of Electrical Engineering** |
| **FRAMEWORK COLLABORATION AGREEMENT** |
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**BRUSH SEM s.r.o.**

ID No. 25745735

with its registered seat at Edvarda Beneše 564/36, 301 00, Plzeň - Doudlevce

registered in the Commercial Register maintained by the Regional Court in Plzeň in section C, file No. 14104

(hereinafter “**BRUSH**”)

and

**Západočeská univerzita v Plzni** *(in English: University of West Bohemia)*

Faculty of Electrical Engineering

ID No. 49777513

with its registered seat at Univerzitní 2732/8, 301 00, Plzeň - Jižní Předměstí

(hereinafter the “**University**”)

(BRUSH and the University hereinafter together the “**Parties**” and each separately a “**Party**”)

entered on the day specified below pursuant to Section 1746(2) of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the “**Civil Code**”), to this framework collaboration agreement.

**WHEREAS:**

* 1. BRUSH is a manufacturer of high output generators, excitation and control systems for generators, and is engaged in developing and manufacturing various products for its portfolio with the application of Electrical Engineering and Informatics;
	2. the University, Faculty of Electrical Engineering provides education in bachelor and master programme Electrical Engineering and Informatics and doctoral study programs Electrical Power Engineering and Electrical Engineering and Informatics. *Research & Innovation Centre for Electrical Engineering* (“**RICE**”), is recognized also for its research and development capability, highly trained personnel and R&D facilities;
	3. the Parties are committed to identifying opportunities for mutual collaboration in the area of research, development and innovation in order to achieve effective knowledge transfer between academia and the BRUSH’s area of activity.
	4. BRUSH is willing to purchase and the University is willing to provide consulting services as specified **from time to time** by BRUSH in PO;
	5. BRUSH and the University are further interested in entering together into collaborative research projects of mutual interest with the purpose of developing in such research projects technologies and products of common interest with the possibility to apply for government funded projects as consortium partners;

Now therefore, in consideration of the benefit to each of them, BRUSH and the University agree as follows:

1. **DEFINITIONS**
	1. “**Agreement**” means this framework collaboration agreement, together with all Schedules, Exhibits, executed POs and RPSs.
	2. “**Deliverables**” means any report, code, scripts or software (whether in object or source code form), audio or visual material, modules, content, documentation or other material or deliverables of any type provided by one Party to the other Party in connection with the Services or Projects.
	3. “**Effective Day**” means the day of publication of this Agreement in accordance to Section 19.4 intra.
	4. “**Intellectual Property Rights**” means any and all right, title and interest in and to any and all patents, rights to inventions, rights in computer software, trademark rights, service mark rights, trade dress rights, copyright and related rights, rights in goodwill or to sue for passing-off, moral rights, database rights, design rights, mask work rights, know-how rights, confidentiality rights, trade secret rights, and any other intellectual proprietary rights of any type in each case whether registered or unregistered and including any rights to apply for any applications, continuations, or other registrations with respect to any of the foregoing, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
	5. “**Personnel**” means a Party’s employees, consultants, contractors, subcontractors, professional advisors and agents including in case of University’s Personnel its students participating in the provision of services under the respective POs or RPS.
	6. “**PO**” means purchase order as per Section 2.1 hereof.
	7. “**Pre-Existing Intellectual Property Rights**” means any Intellectual Property Rights that have already been conceived or developed by either Party before the University renders any Services under this Agreement as set out in the applicable PO or before the Parties commence a collaboration on any Project under this Agreement as set out in the applicable RPS.
	8. “**Result**” means any result of the cooperation of the Parties hereunder, whether it can be registered by any Intellectual Property Right or not.
	9. “**Foreground Intellectual Property Rights**” means any Intellectual Property Rights in the Results or Deliverables generated as a result of the cooperation of the Parties hereunder.
	10. “**RPS**” means research project specification as per Section 3.1 hereof.
	11. “**Open source software**” being any open source, community or other free code or libraries of any type, including any code which is made generally available on the internet without charge.
2. **provision of SERVICES**
	1. **Scope of Services.** The University shall provide various professional consultancy services to BRUSH, especially feasibility studies, diagnostics, testing, prototyping work and other engineering activities or consulting services, as individually contracted for by one or more separately issued purchase orders (each, a “**PO**”) in the form attached hereto as Exhibit A (Form of Purchase Order) (the “**Services**”). Each PO shall incorporate the terms and conditions of this Agreement by reference.
	2. **Performance.** The University shall perform the Services in a prompt manner and provide each Deliverable no later than the delivery dates specified in the applicable PO.
	3. **Price of Services.** As consideration for the Services, BRUSH shall pay the University the price specified in each PO. The University shall invoice BRUSH in accordance with the payment schedule set forth in the applicable PO.
3. **RESearch projects collaboration**
	1. **Research Projects.** The Parties undertake to collaborate on various research projects as individually contracted for by one or more separately issued research project specifications (each, a “**RPS**”) in the form attached hereto as Exhibit B (Form of Research Project Specification) (each, a “**Project**”). A RPS proposed by one Party shall be agreed by the other Party within 2 weeks from the date on which that Party has provided the other Party with the proposed RPS. If such agreement is reached than the proposed RPS shall incorporate the terms and conditions of this Agreement by reference.
	2. **RPS.** The RPSshall include, at a minimum, the name(s) of the principal investigator(s), a scope of work, the period of performance and schedule of the Project (the “**Schedule**”) defining milestones (each, a “**Milestone**”), a budget, the proposed exchanges of Personnel between BRUSH and the University (if any), the Deliverablesand such other terms and conditions as may be necessary.
	3. **Research Funding.** The budget for each Project agreed in the respective RPS shall set forth Party’s financial obligations to the other Party for such Project. The Parties shall use best efforts to perform the Project within the agreed budget.
	4. **Projects with Governmental Funding.** Should the Project be even partially funded from the governmental or any other public resources the Parties undertake to fully cooperate during the application procedure, comply with all related regulations and fulfil all respective duties.
	5. **BRUSH Personnel.** BRUSH may send one or more of its Personnel, as identified in the RPS, as a visiting scientist to work in University’s facilities under the agreement in the RPS. Such visiting scientist shall remain employee of BRUSH and will be treated as such in terms of salary, worker’s compensation, taxes, employee benefits and obligations. BRUSH shall assume full financial responsibility for its visiting scientists unless agreed otherwise in the RPS.
	6. **Additional Research.** The Parties agree that if on completion of any Project, any Party desires to conduct additional research on a completed Project on its own account or for a third party, it shall offer the other Party a first option to fund and/or jointly carry out such additional research. The Parties shall then discuss and agree on the terms of the additional research and specify this in a separate RPS. The terms of this Agreement shall similarly apply to the additional research which shall be treated as a new Project. In the event that the other Party declines an option to fund and/or jointly carry out additional research on a completed Project, the offering Party shall be free to carry out the additional research on its own account or with a third party and in such case subject to the prior written consent of the other Party, such consent shall not to be unreasonably withheld.
4. **EDUCATION ACTIVITIES sponsorship**
	1. **BRUSH’s Funding.** In relation to this Section 4, **BRUSH** agrees to pay to the University a contribution to sponsor education activities (“**Funding**”). The Parties agree that the Funding for the calendar year starting with calendar year 2022 will be of CZK 500 000,-CZK.The Funding is to be paid by the end of the March each year.
	2. **Studied topics.** When the University received the Funding, the University will promote topics proposed by **BRUSH** and consented by the University to the students in bachelor or master study programs. The topics will be employed in student projects or master theses, selected by BRUSH. **BRUSH** shall communicate the degree topics to the University no later than end of March for both student projects and master theses for the following academic year.
	3. **Use of the Funding.** The University hereby commits that the Funding will be used mainly to cover scholarships for students working on above defined topics, material costs and other personnel and indirect costs (including used infrastructure) related to the above defined topics. It will also be used for development of modern infrastructure, instrumentation and necessary equipment including software for high-quality education of electrical engineering and information technology at the University.
	4. **Other.** In addition to the Funding, **BRUSH** will support the University with topics definitions. **BRUSH** will also provide students and academic staff of the University with technical expertise for example by providing, at **BRUSH**’s sole discretion, material, instrumentation, data, knowledge, special infrastructure or other equipment including software tools, a trainee programs for the academic staff of the University or by participating in the lectures and courses for the students.
5. **Pre-Existing Intellectual Property Rights**
	1. **No Transfer of Pre-Existing Intellectual Property Rights.** No ownership or right to use of any Pre-Existing Intellectual Property Rights of the Parties is transferred or granted to the other Party, unless otherwise explicitly agreed in writing.
	2. **Licence within the Project.** Each Party agrees to grant to the other Party a worldwide, non-exclusive, royalty free license under its own Pre-Existing Intellectual Property Rights as far as required for and only to the extent and duration necessary to conduct the Project.
	3. **Special Provisions Regarding Open Source Software.** The Party shall not incorporate into any Deliverable any Open Source Software license which imposes any obligations or restriction with respect to other Party’s Intellectual Property Rights (including any licenses which require any party which uses, modifies or distributes the licensed code to make such code (or modification or derivative work thereof) or any other code which may be combined with or linked to such code available in source code form to the public and/or creates a chain of freedom to use the software without payment).
6. **Foreground intellectual property rights**
	1. **Ownership and prosecution.** All Foreground Intellectual Property Rights shall be the sole and exclusive property of the Party whose employee created the specific Result or Deliverable. In the case that a Result or Deliverable is jointly developed by the Parties, the Parties shall enter into a separate agreement setting forth the ownership, rights of use, management, prosecution, maintenance and other terms for such joint Result or Deliverable.
	2. **License to BRUSH.** Any Foreground Intellectual Property Right owned or partially owned by the University shall be licensed to **BRUSH**. The University agrees to grant **BRUSH** a worldwide, non-exclusive, royalty bearing unlimited license under any Foreground Intellectual Property Rights included in the Results or Deliverables unless agreed otherwise in the separate agreement. This license will be subject of a separate agreement negotiated in good faith and corresponding with the market conditions.
	3. **Licence to the University.** **BRUSH** agrees to grant to the University a worldwide, non-exclusive, royalty free unlimited license under any Foreground Intellectual Property Rights (i) for its internal use including further research and development of the Foreground Intellectual Property and/or (ii) educational activities and/or (iii) as required to conduct the cooperation hereunder. Any other use of Foreground Intellectual Property Rights not mentioned herein above, such as commercialisation, shall be subject to the written approval of BRUSH.
	4. **Unrelated future Intellectual Property Rights.** For the sake of clarity, this Agreement does not affect the ownership or right of use of any Intellectual Property Rights that will be conceived or developed by either Party outside the collaboration under this Agreement.
7. **OWNERSHIP OF DELIVERABLES**
	1. **Ownership of Deliverables Created as Result of the Services.** The University agrees that all Deliverables resulting from provision of Services will be the sole and exclusive property of **BRUSH**. To the extent that any such ownership rights do not automatically vest in **BRUSH**, the University shall and hereby does irrevocably assign to **BRUSH** all right, title and interest in and to the Deliverables. If the Deliverable or Result contains any Intellectual Property Rights, the ownership, use and prosecution is settled as agreed in the Section 6 above.
	2. **Ownership of Deliverables Created as Result of the Project.** Unless agreed otherwise in the respective RPS all Deliverables resulting from the Project will the sole and exclusive property of the Party which achieved the Result or Deliverable.
8. **CONFLICTS AND PRECEDENCE OF DOCUMENTS**
	1. **Conflicts.** Thecontract between the Parties consists of the following documents in the following order of precedence: (a) this Agreement; and (b) each PO and/or RPS; and any express conflicts between such documents shall be resolved in such order of priority. Notwithstanding the foregoing, if document A contains certain terms and conditions, and document B does not contain those terms and conditions, the documents shall not be deemed to conflict, and the additional terms and conditions contained in document A, to the extent applicable to document B, shall also apply to document B.
	2. **Changes to Services and Projects.** Either Party may request a change in the Services or Project or other aspect(s) of a PO or RPS. The Parties will meet promptly to discuss the proposed change, but they will not implement the change unless and until both Parties have agreed in writing any such amendment to the relevant PO or RPS, or if necessary, this Agreement.
	3. **Amendments and BRUSH Policies.** Neither this Agreement nor any of the documents referred to in this Agreement may be amended except by an agreement signed by authorized representatives of both Parties referring specifically to this Agreement, the PO, the RPS or other document to be amended. Notwithstanding the foregoing, any **BRUSH** policies, handbooks, guidelines or procedures (collectively, “**BRUSH Policies**”) referenced in this Agreement may be updated by **BRUSH** from time-to-time in its sole discretion. No form of purchase order, purchase order acknowledgment, sign-in instructions, website or online service terms of use, software license or terms of use or other document or terms from either Party not expressly referred to in this Agreement will have any effect unless in writing and signed by both Parties.
9. **EHS AND Conduct**
	1. **BRUSH Premises.** For activities performed under the Agreement at **BRUSH**’s premises, the University (and its Personnel) must:
		1. Take all required precautions relating to environmental, health and safety (“**EHS**”) with respect to the Services and Projects, including compliance with all applicable legal requirements, **BRUSH**’s Safety Policy, **BRUSH**’s EHS Handbook in the form attached hereto as Exhibit C and any additional site, project, or other specific health and safety requirements and protocols specified by **BRUSH** (“**BRUSH’s EHS Requirements**”, all of which are incorporated by reference herein).
		2. In the event that the University fails to comply with **BRUSH**’s EHS Requirements, **BRUSH** reserves the right to require the University to stop the activities and remove its Personnel from the **BRUSH**’s premises until the University has taken such corrective actions as reasonably required by **BRUSH**. The University shall be solely responsible for all costs, liabilities and claims associated with such stoppage, and shall not charge **BRUSH** for any resulting stoppages. The rights and remedies of **BRUSH** in this Section are in addition to, and not in lieu of, **BRUSH**’s other rights and remedies hereunder (including termination).
	2. **University’s Premises.** For activities performed under the Agreement at University’s premises, the University must inform **BRUSH** and **BRUSH**’s Personnel about its EHS Requirements and **BRUSH** and **BRUSH**’s Personnel shall comply with University’s EHS Requirements.
		1. In the event that **BRUSH** fails to comply with the **University’s EHS Requirements**, the University reserves the right to require **BRUSH** to stop the activities and remove its Personnel from the University’s premises until **BRUSH** has taken such corrective actions as reasonably required by the University. **BRUSH** shall be solely responsible for all costs, liabilities and claims associated with such stoppage, and shall not charge the University for any resulting stoppages. The rights and remedies of the University in this Section are in addition to, and not in lieu of, the University’s other rights and remedies hereunder (including termination).
	3. **Code of Conduct** . At all times throughout the duration of this Agreement, the University shall, and shall require its Personnel to, comply with **BRUSH**’s Compliance Policies in the form attached hereto as Exhibit D. The University also agrees to observe **BRUSH**’s working hours, work rules and holiday schedule (all incorporated herein by reference) when performing activities under the Agreement on **BRUSH**’s premises. **BRUSH** also agrees to observe University’s working hours, work rules and holiday schedule when performing activities under the Agreement on University’s premises. At all times throughout the duration of this Agreement, **BRUSH** shall, and shall require its Personnel to, comply with University’s Supplier Code of Conduct (available at https://zcu.cz/export/sites/zcu/media/about/important-documents/vdokumenty/kodex.pdf, and incorporated herein by reference).
10. **Representations and WarrantieS**
	1. The University represents and warrants to **BRUSH** that:
		1. **Due Authority.** It has the full right, power and authority to enter into and perform this Agreement without the consent of any third party and its performance under this Agreement will not: (a) conflict with, result in any violation or breach of, or constitute a default under any term or provision of any lease, license, contract or other instrument to which the University is a party or by which any of its properties or assets are or may be bound; or (b) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the University.
		2. **Qualified Personnel.** It shall select appropriately trained and skilled Personnel to perform the activities hereunder and will monitor their performance and as reasonably necessary, replace Personnel who do not possess the requisite qualifications to perform the tasks assigned to them.
		3. **Standard of Performance.** It shall perform the activities hereunder in a timely, professional and workmanlike manner and with a degree of quality equal to or higher than applicable industry standards for similar activities. In addition, all Services (including each Deliverable) shall conform in all material respects with the specifications in the applicable PO or otherwise agreed upon by **BRUSH** and the University. All activities related to the Project (including each Deliverable) shall conform in all material respects with the specifications in the applicable RPS or otherwise agreed upon by the Parties.
		4. **Viruses.** The Deliverables shall be free of any: (a) viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; (b) software disabling devices, time-out devices, counter devices and devices intended to collect data regarding usage of the software without the knowledge of **BRUSH**; and (c) Open Source Software, except as expressly authorized by **BRUSH** in writing.
		5. **Intellectual Property Rights.** Each Result or Deliverable produced by the University is and will be an original work of the University, except for any Pre-Existing Intellectual Property incorporated therein as approved hereunder. Neither the Services (including the Deliverables) or activities of the University related to the Project nor any element thereof will: (a) infringe or misappropriate the Intellectual Property Rights of any third party; or (b) be subject to any restrictions or to any mortgages, liens, pledges, security interests, encumbrances or encroachments. Furthermore, there are no pending claims and the University is not aware of any threatened claims, suits, actions or charges pertaining to the Services (including the Deliverables) or activities of the University related to the Project. The University shall notify **BRUSH** immediately if it becomes aware of any actual or threatened claims, suits, actions, allegations or charges that could affect either party’s ability to fully perform its duties or to exercise its rights under this Agreement.
		6. **Corrections.** The University shall correct any non-conformity, defect or malfunction in a Service, including a Deliverable, (each, a “**Defect**”)promptly following the earlier of the University’s discovery of any such Defect or notice by **BRUSH**.
	2. **BRUSH** represents and warrants to the University that:
		1. **Due Authority.** It has the full right, power and authority to enter into and perform this Agreement without the consent of any third party and its performance under this Agreement will not: (a) conflict with, result in any violation or breach of, or constitute a default under any term or provision of any lease, license, contract or other instrument to which **BRUSH** is a party or by which any of its properties or assets are or may be bound; or (b) violate any order, writ, injunction, decree, statute, rule or regulation applicable to **BRUSH**.
		2. **Qualified Personnel.** It shall select appropriately trained and skilled Personnel to perform the activities hereunder and will monitor their performance and as reasonably necessary, replace Personnel who do not possess the requisite qualifications to perform the tasks assigned to them.
		3. **Standard of Performance.** It shall perform the activities hereunder in a timely, professional and workmanlike manner and with a degree of quality equal to or higher than applicable industry standards for similar activities. In addition, all activities related to the Project (including each Deliverable) shall conform in all material respects with the specifications in the applicable RPS or otherwise agreed upon by the Parties.
		4. **Viruses.** The Deliverables shall be free of any: (a) viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; (b) software disabling devices, time-out devices, counter devices and devices intended to collect data regarding usage of the software without the knowledge of the University.
		5. **No Remote Access or Disablement.** It shall not include in any portion of any Services (including the Deliverables) or Project (including the Deliverables) any device or mechanism which would permit **BRUSH** or any third party to interfere, in whole or in part, with or allow **BRUSH** or any third party to access (except as otherwise expressly authorized by the University) any University System.
	3. **Warranty Disclaimer.** Except for warranties set forth in this Agreement, each Party expressly disclaims to the fullest extent permitted by applicable law any and all other warranties of any kind or nature whether express or implied including without limitation the implied warranties of merchantability and fitness for a particular purpose. For avoidance of doubt, Parties make no representations or warranties regarding the marketability, use or fitness for any particular purpose of the Results.
11. **Financial Terms**
	1. **Fees and Payment.** Unless otherwise specified in a PO or RPS, the Party with the right for pecuniary consideration shall invoice the other Party in Czech korunas (CZK) and the other Party shall pay any such invoice in Czech korunas (CZK) within thirty (45) days of receipt of a correct invoice (the “**Payment Period**”). The University hereby agrees and accepts that BRUSH issues its payment to its suppliers and service providers twice in a calendar month (i.e. on a biweekly basis). In case that a justified invoice of the University becomes due after the set payment cycle of payment of BRUSH, then it shall be paid in the following term. The University hereby waives its right to claim interest for delayed payment for a maximum period of thirteen (13) days after the justified invoice becomes due. Notwithstanding anything above, the University shall be entitled to claim interest for late payment starting on the fourteenth (14) day following its due date.
	2. **VAT.** The Parties declare than all payments hereunder are subject to value added tax. All amount and fees specified herein are without VAT and will be subject to application of the VAT.
	3. **Invoicing.** In the event that the Party’s invoice does not contain all statutory requirements prescribed by the law for tax and accounting document, the other Party is entitled to return it for correction even repeatedly. In this case, the maturity period commences to run only from the date of delivery of the corrected invoice to the other Party.
	4. **Taxes.** Each Party will declare and pay all income, employment and other taxes based on its income, sales, property and Personnel. If any location in which the activities hereunder are performed requires the payment of a sales or value added tax, Party will pay all such taxes and will provide the other Party with receipts showing the payment of such amounts.
12. **Term and Termination**
	1. **Agreement Term.** This Agreement will become effective as of the Effective Date and, subject to earlier termination as set forth below in this Section.
	2. **PO Term.** Subject to earlier termination as set forth in this Section, each PO will commence on the PO effective date specified therein, and will remain in effect for the period of time stated in the relevant PO.
	3. **RPS Term.** Subject to earlier termination as set forth in this Section, each RPS will commence on the RPS effective date specified therein, and will remain in effect for the period of time stated in the relevant RPS.
	4. **Termination for Breach.** Either Party may terminate this Agreement or a PO or a RPS immediately upon written notice to the other Party without notice period: (a) if the other Party materially breaches the terms of this Agreement or an Agreement or a RPS and fails to cure such breach within sixty (60) days of receipt of a written notice from the non-breaching Party specifying the breach; or (b) upon written notice to the other Party if the other Party files or has filed against itself an insolvency petition under Act No. 182/2006 Coll., Insolvency Act; or the other Party is adjudged to be insolvent, bankrupt or is otherwise unable pay its debts when due; or an order is made or an effective resolution is passed for the winding-up of the other Party; or any distress, execution, sequestration, attachment or other process has been levied or entered upon or sued out in respect of the other Party or against any property or asset of the other Party.
	5. **Effect of Termination.** On termination or expiration of this Agreement or a PO (and except to the extent the PO remains in effect pursuant to Section 12.6.), **BRUSH** shall be liable to pay for Services provided up to the date of termination or expiration of this Agreement or a PO and not yet invoiced provided that such Services are performed in accordance with the terms of this Agreement and the University submits a correct invoice for any such fees due. Subject to the foregoing, **BRUSH** shall pay any such undisputed invoices. Termination or expiration of this Agreement or PO will not affect any accrued rights and liabilities of either Party at any time up to the date of termination or expiration.
	6. **Effect of Termination of Agreement on POs and RPSs.** The termination or expiration of this Agreement will not result in the cancellation of any PO or RPS whose term is still in effect, in which case such PO and RPS will remain in effect according to its terms and will continue to be controlled by the terms of this Agreement; provided however, that if a Party terminates this Agreement pursuant to Section 12.4., the terminating Party shall, upon written notice to the other Party, have the option of terminating all POs and RPSs then in effect, with such termination effective upon the termination of this Agreement.
	7. **Hand-Back of Party’s Data.** On the termination or expiration of the Agreement (or any PO or RPS) and for a minimum period of 180 days thereafter, the Parties shall make available or otherwise provide to the other Party all Other Party’s Data as held by the Party throughout the duration of the Agreement in such electronic, readable delimited flat file format as may be requested by the other Party. “Other Party’s Data” shall mean such information owned by the other Party concerning the Services or Project or any other activity performed hereunder as determined by the other Party, including any data identified as “Other Party’s Data” in any applicable PO or RPS.

1. **INDEPENDENT CONTRACTORS**
	1. **Independent Parties.** Each Party agrees and acknowledges that neither it nor any of its Personnel is an employee or agent of the other Party and that neither it nor any of its Personnel, is authorized to act as an employee or agent of the other Party. Each Party agrees and acknowledges that it has an employer-employee relationship with its Personnel. Each Party and its Personnel shall not be entitled to any benefits offered to the other Party’s Personnel.
	2. **Indemnity.** The Party shall perform all activities hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the Parties or any affiliates or subsidiaries thereof, or to provide either Party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other Party.
	3. **Cooperation.** If a Party is notified by any government entity of Party’s potential liability for any such taxes, penalties, or other liabilities relating to the other Party’s Personnel, the other Party shall make its best effort to reasonably cooperate, at the other Party’s expense, with Party’s efforts to object to or appeal any such determination of liability or potential liability.
	4. **Personnel.** Each Party shall ensure that all of its Personnel shall be hired and employed in compliance with all relevant statutory requirements, especially that it will meet all immigration requirements.
2. **Insurance**

At all times throughout the duration of this Agreement, the Party shall maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under this Agreement in accordance with best industry practices and procedures for maintaining insurance in connection with its operations. The University shall require the same of any subcontractor used in the performance hereunder. The Party agrees to provide the other Party with certificates of insurance evidencing such policies on other Party’s request and undertakes that it will not do, or omit to do, anything to adversely affect either in whole or in part any of the insurance cover that it is obliged to have and maintain under this Section. Compliance with the foregoing insurance requirements does not in any way limit indemnification or limitation of liability obligations set forth in this Agreement.

1. **Limitation of Liability**
	1. Nothing in this Agreement shall limit either Party’s liabilities arising out of or in respect of (i) fraud, gross negligence or wilful misconduct; (ii) any other losses or liabilities which cannot be excluded or limited by applicable law; and (iii) indemnification obligations under this agreement. The Parties hereby declare that they have sufficient opportunity to negotiate the terms of this Agreement and neither Party should be considered as a weaker party to this Agreement.
	2. Subject to section 15.1., neither Party shall be liable for any loss of use, interruption of business, lost profits or any indirect, special, incidental or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), strict product liability or otherwise, even if it has been advised of the possibility of such damages. In no event shall either party’s aggregate liability under this Agreement exceeds 5,000,000 CZK.

1. **Confidential Information**
	1. **Definition.** “**Confidential Information**” means all information of a secret and confidential nature disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) or that the Receiving Party observes in the course of the performance of its obligations or the exercise of its rights under this Agreement, that relates to the Disclosing Party’s past, present and/or future products, services and technology, research and development, finances and/or other business activities and all Personal Data (as defined below). All information obtained by the University while at any **BRUSH** facility will be considered to be Confidential Information belonging to **BRUSH**. Also all information obtained by **BRUSH** while at any of the University’s facility will be considered to be Confidential Information belonging to the University.
	2. **Non-Disclosure and Non-Use.** The Receiving Party may only use the Disclosing Party’s Confidential Information to the extent necessary to perform its obligations or exercise its rights under this Agreement. The Receiving Party will otherwise treat the Confidential Information of the Disclosing Party as confidential, and will not divulge it, directly or indirectly, to any person, firm, corporation, association or entity; provided that the Receiving Party may divulge such Confidential Information to its Personnel only to the extent necessary for the performance of its obligations or the exercise of its rights under this Agreement; provided further that the Disclosing Party shall have required each of such Personnel to keep it confidential and to only use it as permitted above, in each case by written terms no less protective of the Disclosing Party than the terms of this Section (and to the broadest extent permitted by the applicable law).
	3. **Exceptions.**  Information will not be considered Confidential Information to the extent that: (a) such information is or becomes publicly available without any breach of this Agreement; (b) the Receiving Party rightfully received such information from third parties without accompanying secrecy obligations; (c) the Receiving Party independently developed such information without use of, or reference to, the Disclosing Party’s Confidential Information; (d) such information was already in the Receiving Party’s possession without any obligation of non-disclosure before being revealed by the Disclosing Party; or (e) the Disclosing Party gives prior written approval for the public release of such information by the Receiving Party.
	4. **Disclosures Required by Law.** The Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent required by law or order of a court or governmental agency, as long as the Receiving Party (to the extent legally permissible) promptly informs the Disclosing Party of the disclosure requirement so that the Disclosing Party may seek a protective order or other appropriate remedy to abrogate or restrict the scope of such order or other requirement.
	5. **No License.** Except as expressly provided herein, no right or license whatsoever is granted by either party to the other party pursuant to this Agreement under any Intellectual Property Rights now or hereafter owned or controlled by the other party; there are no implied rights. Each party continues to own all right, title and interest (including all Intellectual Property Rights) in and to its Confidential Information, including in the case of **BRUSH**’s Confidential Information, any modifications or derivative works thereof created in connection with the Services.
	6. **Personal Data**. In providing activities hereunder, each Party may have access to one or more of the other Party’s databases, applications, reports, documents and/or other information in hardcopy or electronic form that contain or process data relating to identified or identifiable individuals (“Personal Data”). Such individuals may include **BRUSH**’s or the University’s employees, temporary workers, contractors, consultants, students, customers, end-users or other business partners. Each Party acknowledges and agrees that Personal Data, in whatever form, is of a very sensitive nature, and hereby undertakes to treat Personal Data as strictly confidential and to use it only within the limits expressly authorized by the other Party and in accordance with applicable law, rules and regulations, including those applicable to privacy and data protection. No Party shall not transmit Personal Data from one country to another country without the other Party’s express prior written consent. Each Party shall ensure that its personnel is trained and committed to protect the other Party’s personal data that they have access to and to process it only for the authorized purpose of providing the activities under this Agreement. In the event of a Security Breach (as defined below), the responsible Party shall (a) take immediate steps to remedy the breach at its sole cost and expense in accordance with individual privacy rights and applicable law; and (b) agrees to report to the other Party any Security Breach immediately after becoming aware that such Security Breach affects the other Party’s information. The other Party shall have the option to terminate this Agreement with immediate effect upon a Security Breach. For purposes of this Section a “Security Breach” shall mean any actual breach of Personal Data, but not limited to: (i) a physical trespass on a secure facility in which Personal Data is maintained; (ii) intrusion or hacking into a computing system on which Personal Data is maintained; (iii) loss or theft of a computer, mobile device, hard drive, other information storage device, or printed materials which contain Personal Data; (iv) a potential or actual use, misuse, acquisition, compromise, loss, destruction, alteration, or disclosure of, or unauthorized access to, Personal Data; or (v) any circumstance pursuant to which applicable law requires notification of such breach to be given to affected parties or other activity in response to such circumstance. Should either Party process the Personal Data of the other Party’s Personnel, it shall procure that it will comply with all legal requirements, especially the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Parties will regulate the details by a separate agreement.
	7. **Return of Confidential Information.** Upon the earlier request of the Disclosing Party or upon the termination or expiration of this Agreement, the Receiving Party shall destroy all Confidential Information or return all Confidential Information to the Disclosing Party and, if requested by the Disclosing Party, shall certify such return or destruction in writing.

1. **ACCESS TO BRUSH SYSTEMS and Cybersecurity**
	1. **Access.** Access, if any, to any **BRUSH** System is granted solely to allow the University to provide the Services or activities related to the Project and is limited to those specific **BRUSH** Systems, time periods and Personnel as are separately designated by **BRUSH** in writing from time-to-time. Access is subject to business control and information protection policies, standards and guidelines as may be provided by **BRUSH**. Use of any other **BRUSH** Systems and use of **BRUSH** Systems during other time periods or by Personnel not authorized by **BRUSH** is expressly prohibited. Without limiting the foregoing, the University warrants that it has adequate security measures in place to comply with the above obligations and to ensure that access granted hereunder will not impair the integrity and availability of **BRUSH** Systems.
	2. **Cybersecurity.** The University shall during the term of this Agreement operate and maintain an information security program, including administrative, physical and technical safeguards, designed to protect against and prevent any unauthorized use, access, processing, destruction, loss, alteration or disclosure of data and other proprietary information of **BRUSH**.

1. **Indemnification**
	1. **Scope.** Each Party shall defend, indemnify and hold harmless the other Party and its Personnel, successors and assigns from and against all claims, losses, liabilities, suits or actions, including court costs and reasonable attorneys’ fees, (each a “**Claim**”), to the extent arising out of or resulting from any fraud, negligence or willful misconduct on the part of the Party or indemnification obligations agreed hereunder.
	2. **Procedures.** The Party shall give the other Party prompt written notice of any Claim. The other Party shall upon receipt of notification of a Claim, promptly assume full responsibility for the defense of the Claim. In no event shall the Party settle any Claim without other Party’s prior written consent to the extent such settlement admits any liability on the part of other Party.
2. **Miscellaneous**
	1. **Non-Exclusivity.** This Agreement is a non-exclusive agreement; nothing in this Agreement shall be construed to preclude **BRUSH** or the University from executing identical or similar Agreements with the third parties.
	2. **Compliance with Laws.** Each Party agrees that, at all times throughout the duration of this Agreement, it shall comply with all applicable laws and regulations in connection with the provision of activities under this Agreement, including any applicable privacy, data protection and non-discrimination laws and regulations.
	3. **Notices.** Any notice regarding the termination hereof or termination of the PO or RPS, must be in writing and (i) personally delivered; or (ii) sent by registered mail, postage prepaid and return receipt requested, or by reputable express delivery service (and delivery shall be deemed to take place when deposited for delivery), in each case to the addresses specified below. Unless required otherwise by either Party, any other notice, consent or request permitted or required by this Agreement may be made via email provided the other Party confirms delivery of the notice, consent or request within 3 business days. Either Party may update its address and email address for communication in accordance with this Section.

If to **BRUSH**

**BRUSH SEM s.r.o.**

**x**

Edvarda Beneše 564/39, Plzeň, CZ

x@brush.eu

and

If to the University, to:

University of West Bohemia

Faculty of Electrical Engineering

**x**
Univerzitní 26, 306 14 Plzeň, CZ
x@rice.zcu.cz

* 1. **Publicity.** This Agreement is subject to publication in the register of contracts in accordance with Act. No. 340/2015 Coll., on registry of contracts (hereinafter the "**Act on the registry of contracts**") the University undertakes to publish the Agreement in register of contracts in accordance with the Act on the registry of contracts.
	2. **Accounting Documents** Each Party (and as applicable its Personnel) shall keep and maintain complete and accurate invoicing and related records in accordance with generally accepted accounting principles and adequate supporting documents.
	3. **Contract Interpretation.** In this Agreement: (a) singular words include the plural, and plural words the singular, as is required throughout; (b) the parties have negotiated this Agreement and they agree that in the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement; (c) the term “**including**” is illustrative and not limiting; (d) all references to a ‘day’ means a calendar day unless the term ‘business day’ is expressly used in a specific instance; and (e) the headings are for convenience only and shall not affect their interpretation.
	4. **Governing Law.** This Agreement is made under and shall be construed in accordance with Czech law and shall be governed by valid legal regulations of the Czech Republic.
	5. **Change of Circumstances.** Notwithstanding the provisions of Section 1765 of the Civil Code, the Parties agreed that if there is a material change of circumstances which establishes gross disproportion in the rights and obligations of the Parties, neither Party is entitled to resumption of negotiations on the Agreement. Each Party thus takes the risk of change of circumstances within the meaning of Section 1765 para. 2 of the Civil Code.
	6. **Contracts of adhesion.** The Parties hereby exclude the application of Sections 1799 and 1800 of the Civil Code to this Agreement and legal relationships arising out of this Agreement to the maximum extent permitted by the provisions of Section 1801 of the Civil Code.
	7. **Assignment.** Neither this Agreement (including any of the Services or activities within the Project to be performed under the POs or RPSs) nor any of the sums due or to become due to either Party under this Agreement or PO or RPS, shall be assigned without the other Party’s express prior written consent; provided however, that notwithstanding any such consent, each Party shall remain responsible for the acts and omissions of its assignees.
	8. **Entire Agreement.** As of the Effective Date, this Agreement replaces all earlier communications, agreements and understandings, whether written or oral, between the parties or their Affiliates relating to the subject matter hereof and sets forth the entire agreement and complete understanding of the parties with respect thereto.
	9. **Severability.** If any provision of this Agreement is held by any competent court, arbitrator or authority to be invalid or unenforceable in whole or in part, the remaining provisions of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permissible under applicable law.
	10. **Prevailing Language**.This Agreement shall be governed, interpreted and construed in the English language only. Any translations that may be made into any other language shall be for convenience only and shall have no legal force or effect.
	11. **Survival.** The following terms shall survive the termination or expiration of this Agreement for any reason: those terms addressing confidentiality, privacy, indemnities, limitations of liability, Intellectual Property Rights, remedies, governing law and dispute resolution and any other terms which by their nature are intended to survive such termination or expiration.
	12. **Third Parties.** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its provisions.
	13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
	14. **Promotion.** Both Parties have the right to use each other’s names and logos in any publicity material and to make any form of presentation or statement in order to promote collaboration of the Parties hereunder. The University is obliged to include **BRUSH**’s logo and descriptive text on “Partners” section of the website of the University or RICE and on display boards in premises of the University.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

|  |  |
| --- | --- |
| **BRUSH SEM s.r.o.** | **Západočeská univerzita v Plzni** |
|   |   |
| xExecutive Officer, BRUSH SEM s.r.o. | **x**Rector, University of West Bohemia |
| Date:  | Date:  |
|   |   |
| xExecutive Officer, BRUSH SEM s.r.o.Date:  | **x**Dean, Faculty of Electrical Engineering, University of West Bohemia  |
|  | Date:  |

**Exhibit A**

**Form of Purchase Order**

***[This form PO is a template. To be adapted and updated for relevant project]***

**Purchase Order**

This Purchase Order (“**PO**”) is issued under, and the Services (including the Deliverables) provided hereunder, are fully subject to all of the terms and conditions of the Framework Collaboration Agreement between **BRUSH SEM s.r.o.** ( **BRUSH”**) and Západočeská univerzita v Plzni referenced below (“**Agreement**”). The Agreement is hereby fully incorporated by reference. All capitalized terms used in this PO shall have meanings ascribed to them in the Agreement.

|  |  |
| --- | --- |
| **PO Number:** |  |
| **PO Effective Date:** |  |
| **PO Term/Expiry Date:** |  |

**General Description of Services:**

[ ]

**Milestones and Delivery Dates:**

The University and **BRUSH** agree to the following Services to be provided by the University:

|  |  |  |
| --- | --- | --- |
| **Service/Action Item** | **Deliverable or Milestone** | **Delivery Due Date** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**Testing:** If **BRUSH** determines that a Deliverable is not in material conformance with the applicable specifications, this PO and the related Framework Collaboration Agreement(collectively, the “**Specifications**”), it shall so notify the University and specify the non-conformance in reasonable detail (“**Review Notice**”). If a Review Notice is sent, the University shall have sixty (60) days following receipt of such Review Notice to remedy the identified non-conformance and resubmit the Deliverable for subsequent review in accordance with this paragraph.

**Fees and Invoice Timing:**

[ ]

[ ]

**BRUSH Data:**

[ ]

**Acceptance criteria:**

**[]**

**Miscellaneous:**

[ ]

**[Signature Follows]**

*The parties have caused this PO to be signed by their duly authorized representatives as of the PO Effective Date.*

|  |  |
| --- | --- |
| BRUSH SEM s.r.o., Edvarda Beneše 564/39,Pilsenas a Client | **Západočeská univerzita v Plzni****Univerzitni 8, Pilsen****as a Supplier** |
|   |   |
|  |   |
| Date:  | Date:  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

**Exhibit B**

**Research Project Specifications**

***[This form RPS is a template. To be adapted and updated for relevant project]***

**Research Project Specifications and Funds**

This Research Project Specification (“**RPS**”) is issued under, and the activities (including the Deliverables) provided hereunder, are fully subject to all of the terms and conditions of the Framework Collaboration Agreement between **BRUSH** and Západočeská univerzita v Plzni referenced below (“**Agreement**”). The Agreement is hereby fully incorporated by reference. All capitalized terms used in this RPS shall have meanings ascribed to them in the Agreement.

|  |
| --- |
| **Background** |
| **Item** | **Please complete** |
| Project Title |  |
| Project Number |  |
| Names and contact details of principal investigator(s) |  |
| Name and contact details of responsible person from **BRUSH** |  |
| Summary of requirements |  |
| Special requirements  |  |
| Additional information |  |

|  |
| --- |
| **Topic / Article(s) for research** |
| **Parameters** | **Please complete** |
| Description of research |  |
| Purpose/proposed use |  |
| Statement of work |  |
| Period of performance |  |
| Will prototypes be needed? When? |  |
| Deliverables |  |

**Milestones and Delivery Dates:**

The University and **BRUSH** agree to the following activities to be performed:

|  |  |  |  |
| --- | --- | --- | --- |
| **Action Item** | **Deliverable or Milestone** | **Delivery Due Date** | Fees for the Deliverable/Milestone |
|  |  |  |  |
|  |  |  |  |

|  |
| --- |
| **Support documentation, input data, material provided** |
| **Item** | **Enclosed by** |
|  |  |
|  |  |
|  |  |

**Budget and Fees:**

[ ]

**Pre-Existing Intellectual Property (if any):**

[ ]

**BRUSH Data:**

[ ]

**Miscellaneous:**

[ ]

**[Signature Follows]**

*The parties have caused this RPS to be signed by their duly authorized representatives as of the RPS Effective Date.*

|  |  |
| --- | --- |
| BRUSH SEM s.r.o. | **Západočeská univerzita v Plzni** |
|   |   |
|  |  |
| Date:  | Date:  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

**Exhibit C**

**BRUSH HSE Policy**

(to be annexed)

**Exhibit D**

**BRUSH Compliance Policies**

(to be annexed)