

AMENDMENT No. 1

(hereinafter the "**Amendment**") to the Framework Purchase Agreement as of October 14th, 2021 concluded between the following

1. Parties

1.1. Buyer:

Ústav fyziky plazmatu AV ČR, v. v. i.

With its registered seat at: Za Slovankou 1782/3, 182 00 Praha 8 – Libeň

ID No.: 61389021

VAT No.: CZ61389021

represented by: doc. RNDr. Radomír Pánek, Ph.D., Director

(hereinafter the "**Buyer**")

and

1.2. Seller:

Budker Institute of Nuclear Physics of Siberian Branch Russian Academy of Sciences (BINP SB RAS)

With its registered seat at: 11 Lavrentiev av., 630090, Novosibirsk, Russia

ID No.: 1025403658136

VAT No.: 5408105577

Registered with Novosibirsk State Registry Chamber in July 19, 1994

Represented by [REDACTED]

(hereinafter the "**Seller**")

(the Buyer and Seller referred to jointly as the "**Parties**" or with respect to each individually as the "**Party**").

2. INITIAL PROVISIONS

2.1. As of October 14th, 2021, the Buyer concluded the Framework Purchase Agreement with the Seller (hereinafter the "**Framework Agreement**"), who won the public procurement procedure announced by the Buyer pursuant to Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the "**PPA**"), for tender entitled "System for plasma heating with neutral particle beam for COMPASS-U Tokamak - Round 2".

2.2. Based on the Framework Agreement the Buyer issued Order No. 1097 (Č.j./UFP/1097/2021) as of 16. 11. 2021 and Order No. 1110 (Č.j./UFP/1110/2021) as of 19. 11. 2021 (hereinafter the "**Amended Orders**") as partial purchase agreements under the Article 3.1 of the Framework Agreement which were accepted by the Seller. The performance under the Amended Orders is delivery of the Devices No. 1 and 2. (in the meaning of "Device" under

Article 2.1 of Framework Agreement) as specified in the Amended Orders. According to 2.1 of Framework Agreement, delivery of Devices comprises, among others, design documentation of the Devices (hereinafter the „**Design Documentation**“).

- 2.3. Based on the Amended Orders and in accordance with the Price Schedule and Deliverables Annex of the Framework Agreement the Seller issued invoices for advance payments, in particular, invoice No. 2732 as of December 1st, 2021 and invoice 2733 as of December 1st, 2021 (hereinafter jointly as the “**Invoices**”), each for advance payment in the maximal allowed amount of 35 % of the Purchase Price for the Device, i.e. each of Invoices identically for the amount of EUR 637.000. The advance payments, in the amounts listed in the Invoices, were transferred by the Buyer to the bank account of the Seller in full.
- 2.4. This Amendment does not extend the performance, does not change the nature of the performance, nor the quantity or quality of the performance under the Amended Orders, it only modifies the payment terms by (i) offsetting instead of payment and (ii) reduction of the total advance payments, so that Buyer no longer pays any additional payment beyond the advance payment to the total amount of the Purchase Price for the Design Documentation delivered under the Amended Orders. In other words, the advance payment for the Device is used to pay the full Purchase Price for the Design Documentation instead of paying the additional payment. Accordingly, the modification made herewith does not materially expand the scope of the Orders or the Framework Agreement, alter the balance of the obligation in Seller's favour, or be of a nature that would expand the scope of potential suppliers as regards their ability to participate in the public procurement procedure. Thus, it does not constitute a substantial and prohibited change within the meaning of Sec. 222 (3) PPA and is in line with Sec. 222 (1) PPA.
- 2.5. The Parties acknowledge that the Amended Orders cannot be performed in conflict with valid international sanctions imposed as coercive measures applied against states, non-state entities or individuals. The Parties further acknowledge that the exception under Article 5k (4) of the Council Regulation (EU) No 833/2014 of 31 July 2014, as amended (hereinafter the “**Regulation**”) from the prohibition under the Article 5k (1) of the Regulation does apply on performance under the Orders only until October 10th, 2022, unless an appropriate state (official) permit is granted. Therefore, the Parties also acknowledge that the Design Documentation has to be delivered in due time before the aforementioned date in order to enable financial settlement according hereto as payment of the relevant portion of Purchase Price for the duly and timely delivered Design Documentation by that date.

- 2.6. The Parties confirm that they have exchanged notices of Vis major according to Article 10.9 of the Framework Agreement demonstrating existence of temporary obstacles constituting circumstances precluding liability of each Party for failure to fulfil obligations under the Framework Agreement, except of the obligations regarding the Amended Orders as detailed in the Section 3 of this Amendment (i.e. the Amended Orders are not affected by the aforementioned Vis major notices). In view of the above, the Parties acknowledge and agree that, except for completing the performances under the Amended Orders, the performance under the Framework Agreement cannot be continued due to the temporary obstacles mentioned above; therefore, until the said obstacles on the part of each of the Parties have passed, further performance of mutual obligations under the Framework Agreement is temporarily suspended according to Article 10.10 of the Framework Agreement without proceeding to any alternative modes of performance in the meaning of Article 10.9 of the Framework Agreement.

3. CHANGE TO THE FRAMEWORK AGREEMENT WITH RESPECT TO THE AMENDED ORDERS

- 3.1. Unless the Framework Agreement or Amended Order indicates an earlier date, the Seller undertakes to deliver the design Documentation under the Amended Orders and hand it over to the Buyer through the signing of the Handover Protocol of Documentation (in the meaning of this term in the Framework Agreement) at the latest on October 6th, 2022. The Seller declares that he is not aware of any obstacle to the fulfilment of his aforementioned obligation (i.e. only in relation to the Design Documentation), especially those resulting from legal impediments or a Vis major event (in the meaning of the Article 10.8 of the Framework Agreement).

- 3.2. In relation to the Amended Orders, the Parties agreed that the following special provision shall apply in deviation from Articles 5.5.1 and 5.5.2 of Framework Agreement:

"5.5.1 The Seller shall be authorized to be paid the price for delivery of the design documentation of a Device in the amount of 10 % of the Purchase Price for the Device by means of a set-off upon execution of the Handover Protocol of Documentation in compliance with this Agreement provided that all terms and conditions stipulated herein and all requirements for delivery of the respective design documentation of such Device are met. The aforementioned 10% amount shall be set-off against the advance payment which has been provided by the Buyer to the Seller based on Invoice pursuant to the Framework Agreement in the amount of 35 % of the Purchase Price for the Device under the Amended Order. Without the need for any further legal act, executing the said Protocol, accompanied with an invoice - tax document for the amount of zero additional price issued by the Seller according to the instructions of the Buyer and handed over by the Seller to the Buyer along with the delivery of the design documentation, shall be automatically considered as the set-off hereunder. The advance payments further held by the Seller upon their set-off shall be reduced by the set-off to 25 % of the Purchase Price for the Devices under the Amended Orders; those 25 % shall be newly set maximal allowed advance payment for the performance under the Amended Orders, without the Seller having right to demand its increase up to the 35 % of the Purchase Price for the Device until neither Party is prevented by any international sanction from performing the Agreement. Only thereafter, i.e. when

neither Party is prevented by any international sanction from performing the Agreement, may the advance payments be increased to the amount that would have been applicable had this Amendment not been concluded.

5.5.2. The Seller shall be authorized to invoice 90 % of the Purchase Price for the Device for delivery of the Device upon execution of the Handover Protocol of Acceptance in compliance with this Agreement provided that all terms and conditions stipulated herein and all requirements for delivery of the respective Device are met. Since the already provided advance payment and its partial set-off has to be taken into account, the Seller shall then receive just the payment of the remaining part (i.e., for instance, 65 % of the Purchase Price, after deducting the 90% Purchase Price by the 25% advance payment)."

- 3.3. For avoidance of any doubts, the Parties agree that the provision 3.2 above shall be interpreted as setting different provision to be applied only with respect to the Amended Orders and not as changing the Framework Agreement with respect to other Orders.

4. CONCLUDING PROVISIONS

- 4.1. Except for rights and obligations regarding the Amended Orders including related advance payments and their settlement, the provisions of the Framework Agreement shall remain fully valid and unchanged hereby.
- 4.2. This Amendment becomes valid on the date of its signature by the authorized representatives of both Parties and effective on the date of its publication in the Register of Contracts (in the meaning of this term in the Framework Agreement).
- 4.3. This amendment 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 this entire Amendment, the Parties attach their signatures:

In Prague, Czech Republic on __. __. 2022

In Novosibirsk, Russia on __. __. 2022

On behalf of: the Buyer

On behalf of: the Seller

Name: doc. RNDr. Radomír Pánek, Ph.D.
Function: Director

Name: _____
Function: Deputy Director