

COOPERATION AND LASER LOAN AGREEMENT

concluded pursuant to Act No. 89/2012 Coll., Civil Code, as amended

between

FZU – Institute of Physics of the Czech Academy of Sciences

with its registered seat at Na Slovance 1999/2,
182 00, Prague 8

represented by RNDr. Michael Prouza, Ph.D.,
Director

Id. No. 68378271

(Hereinafter referred to as the “**Lender**” or “**FZU – HiLASE**”)

and **The Extreme Light Infrastructure ERIC**

with its registered office at Za Radnicí 835, 252
41, Dolní Břežany

represented by Roman Hvězda, ELI Beamlines
facility director

Id. No. 109 749 38

(Hereinafter referred to as the “**Borrower**” or
“**ELI ERIC**”)

FZU – HiLASE and ELI ERIC shall collectively be referred to as “**Parties**”.

LASER LOAN AND COOPERATION AGREEMENT shall be hereinafter referred to as “**Agreement**”.

WHEREAS FZU is ELI – ERIC’s “Strategic Partner” in terms of ELI ERIC Statutes and thus shall contribute to the mission of ELI ERIC and support the involvement of their user communities and the operation of the ELI - ERIC facilities on a long-term perspective through a partnership agreement; as a result, Parties entered into Strategic Partnership Agreement on 18th October 2022 („**Strategic Partnership Agreement**”);

WHEREAS the Strategic Partnership Agreement outlines the framework for cooperation and collaboration between the Parties;

WHEREAS the Parties desire to implement Article 3 of the Strategic Partnership Agreement, which pertains to the exploration and R&D activities of ■■■;

WHEREAS FZU – HiLASE has been a beneficiary of HiLASE Centre of Excellence project, funded from the European Structural and Investing Funds, Operational Programme Research, Development and Education (project reg. no. CZ.02.1.01/0.0/0.0/15_006/ 0000674) and from the European Union’s Horizon 2020 Research and Innovation Programme (Grant agreement no. 739573);

WHEREAS FZU – HiLASE has developed, within the HiLASE Centre of Excellence project, ■■■ (“**XXX Laser**”) and is owner of XXX Laser;

WHEREAS, ELI ERIC represents an excellent technological infrastructure in the field of laser research and development on the European level. ELI ERIC was established on 30 April 2021 as a single-sited European research infrastructure with operational facilities in multiple ELI ERIC member countries with the purpose to operate the high-power laser facilities as a single integrated organisation, with unified governance and single management. ELI ERIC is a stakeholder of the European research area. ELI ERIC is the sole owner and operator of the ELI Beamlines Facility;

WHEREAS FZU – HiLASE concluded, after careful consideration and taking into account its obligations towards funding bodies as well as “3E principles”, that in order to make use of XXX Laser to its maximum

potential and thus maximizing public funds' effectiveness, it will be beneficial for FZU – HiLASE, ELI ERIC as well as potential future users of XXX Laser to lend XXX Laser to ELI ERIC and then cooperate in its further usage;

WHEREAS FZU – HiLASE shall be entitled to use XXX Laser even after it is lent to ELI ERIC in line with provisions of this Agreement;

WHEREAS, the Parties desire to collaborate on the preparation, installation, commissioning, operation, and R&D activities related to the XXX Laser at the ELI Beamlines Facility, as well as other R&D opportunities;

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants herein contained, the Parties hereto agree as follows:

I. Scope of Cooperation

- (1) The Agreement serves to implement Article 3 of the Strategic Partnership Agreement. ELI ERIC and FZU - HiLASE shall collaborate on the exploration and R&D activities of the XXX Laser, including but not limited to its [REDACTED]. Details of the Cooperation shall be described in Annex no. 1.
- (2) ELI ERIC shall provide the necessary premises in [REDACTED] hall and conduct all preparatory works for the installation of the XXX Laser at the ELI Beamlines Facility.
- (3) FZU – HiLASE shall make the XXX Laser available to ELI ERIC through this Agreement, as specified especially in Article IV. And V. of this Agreement.
- (4) The Parties shall develop an annual plan of operations, specifying the joint and individual use of the XXX Laser, as well as use XXX Laser logbook during the whole period of the loan, as specified especially in Article IV. And V. of this Agreement. FZU - HiLASE shall have a right to a minimum of [REDACTED] use of the laser for [REDACTED].
- (5) The Parties shall agree on the allocation of resources to support operations on an annual basis, taking into account Annex no. 3. Phasing and Costs. Costs, which Parties will not be able to cover from sources stipulated in this Agreement, shall be covered by Parties on a case-by-case basis.

II. Risk Mitigation and Technical Review

- (1) The Parties shall develop an Operations and Maintenance Plan, a Spare Parts Management Plan, and a Training Plan for the staff involved in the operation and maintenance of the XXX Laser during Installation Phase.
- (2) The status of the XXX Laser shall undergo regular annual technical reviews to ensure its optimal performance and safety.

III. Financial Support

- (1) The Installation Phase, as defined in Annex no. 3, of the XXX Laser shall be supported by the Czech Academy of Sciences through a voluntary Member contribution from the Czech Republic to ELI ERIC. This contribution shall cover the respective preparatory works associated with utilities supply and required safety measures.
- (2) It is anticipated that such financial support will continue during the Operation Phase to enable R&D activities to be conducted at the highest possible level.

IV. Scope and purpose of Loan

- (1) The subject of the loan hereunder is XXX Laser as it is defined in Annex No. 2 (“**Loan**”).
- (2) Lender hereby agrees to lend XXX Laser to the Borrower for free of charge use for the purposes of [REDACTED] (“**Loan Purpose**”) as ELI ERIC has much higher prerequisites for efficient utilization of the XXX Laser in basic research than FZU - HiLASE in applied research. The Borrower shall not be allowed to lend XXX Laser to a third party, shall be allowed to use XXX Laser only for Loan Purpose and shall indicate its own usage of XXX Laser within XXX Laser logbook; model XXX Laser logbook is attached as Annex no. 6.
- (3) Parties declare to be aware of the fact, that XXX Laser price according to the accounting value at the time of the Agreement conclusion is 74 320 851,98, - CZK.
- (4) The ownership rights to the XXX Laser shall remain unaffected by the Agreement.
- (5) The Parties hereto jointly declare that XXX Laser herein is eligible for the Loan Purpose. Both Parties are familiar with condition of XXX Laser, which condition is good. The exact condition is described in the Annex No. 2 together with manners of XXX Laser usage. Any deviations from this condition shall be described in hand – over protocol, which shall be signed by authorized employees of the Parties once XXX Laser is fully assembled in respective laboratory within the Borrower’s premises at Za Radnicí 835, 252 41 Dolní Břežany (“**Borrower’s Premises**”); model hand – over protocol annexed as Annex no. 4 shall be used for this purpose.

V. Loan Period and Extension

- (1) The Loan period shall be initially set at [REDACTED] commencing from the date of its delivery to Borrower’s Premises gate (“**Loan Period**”). The Agreement shall become effective on the day of its publication in the register of contracts pursuant to Act. No. 340/2015 Coll., as amended.
- (2) XXX Laser shall be placed at laboratory [REDACTED] at ELI Beamlines at the Borrower’s Premises during the whole Loan Period, unless stipulated otherwise in the Agreement.
- (3) Both Parties acknowledge their mutual desire to extend the loan period beyond the initial [REDACTED], as long as the advantages and benefits of placing the XXX Laser at the ELI Beamlines Facility continue to exist.
- (4) Prior to the expiration of the initial [REDACTED] Loan Period, the Parties shall enter into discussions to assess the feasibility and benefits of extending the Loan Period.
- (5) If both Parties mutually agree to extend the Loan Period, the terms and conditions of the extension shall be negotiated and documented in an amendment to this Agreement.
- (6) Any extension of the Loan Period shall be based on a comprehensive evaluation of the scientific, technical, operational, and financial considerations involved.
- (7) The Parties shall endeavor to make a decision regarding the Loan Period extension well in advance of the Agreement expiration date to ensure a smooth transition and continuity of the collaborative activities.
- (8) In the event that an agreement to extend the Loan Period cannot be reached, the Parties shall cooperate in good faith to ensure a smooth and orderly transition of the XXX Laser from the ELI Beamlines Facility back to FZU - HiLASE, adhering to the agreed-upon procedures for the return of the equipment.

- (9) Any decision to extend or not extend the Loan Period shall not affect the ongoing cooperation and collaboration between ELI ERIC and FZU - HiLASE in other areas as outlined in this Agreement or any other relevant agreements.

VI. Transport, Delivery and Assembly of XXX Laser at Borrower's Premises

- (1) The cost of and responsibility for packaging and transport of XXX Laser to Borrower's Premises gate shall be borne by Lender.
- (2) The cost of and responsibility for XXX Laser transport from Borrower's Premises gate to the laboratory ■ at Borrower's Premises and its re-assembly and installation shall be borne by Borrower (unless the Lender participates in such activities according to Art. VI.5 hereof).
- (3) The method of packaging, transport and carrier shall be determined by Lender and Borrower shall accept and observe these instructions from Lender.
- (4) Lender reserves right of participation via its authorized employee in the delivery, on-site transport, re-assembly and installation of XXX Laser. Borrower's authorized employee shall be present during the take-over and assembly of XXX Laser.
- (5) XXX Laser re-assembly, including installation, shall be done by both Parties as described in Annex no. 3. Phasing and Costs; Parties shall agree on detailed way of such re-assembly, including installation, before the activity itself is commenced.

VII. Insurance

- (1) Should the Parties agree so, Borrower is obliged to insure with all-risk construction and installation insurance XXX Laser in the Borrower's premises for the duration of its on-site transportation, re-assembly and installation. The Parties shall agree on if to contract the all-risk construction and installation insurance and on payment of insurance premium well in advance before delivery of the xxx laser to Borrower's Premises based on the value for money criterion.
- (2) Borrower is obliged to obtain all-risks property insurance coverage for XXX Laser for the entire duration of the Loan in an amount not less than the total insurance value as stipulated in Art. IV.3 herein; such insurance coverage shall be in effect from the moment of the end of effects of the construction and installation insurance.

VIII. Damage and Liability

- (1) Borrower shall be obliged to protect XXX Laser from damage, loss or destruction and is aware of its liability for damage to XXX Laser caused by violation of the obligations mainly under section 2894 et seq. of the Civil Code.
- (2) Borrower shall inform Lender immediately of any damage and shall not repair XXX Laser without Lender's consent.
- (3) Borrower shall be responsible for the cost and repair of XXX Laser which is damaged while in the care and possession of Borrower, unless stipulated otherwise in this Agreement, especially in case of a project carried out by FZU – HiLASE' employees using XXX Laser at ELI ERIC premises during Operation Phase (see Annex No. 3); in such case, repair coverage shall be decided on a case-by-case basis.

- (4) Borrower shall not be required to pay for repairs in the amount that exceeds the insurance value of XXX Laser as stipulated in Art. IV.3.
- (5) Borrower's liability shall arise from the time of the signature of the hand-over protocol and shall last until XXX Laser is returned to Lender and a return protocol is signed; model return protocol annexed as Annex no. 5 to this Agreement may be used for this purpose.

IX. Parties' rights and obligations regarding the Loan

- (1) Borrower shall be obliged to use XXX Laser once it is granted a project by the Czech Academy of Sciences for Installation Phase of Parties' cooperation, as stipulated also in Annex no. 3.
- (2) Lender shall be allowed to use XXX Laser after it is lent to Borrower's Premises once Parties' cooperation reaches Operation Phase, as stipulated in Annex no. 3, in amount of ca. ■■■ of operation time, as stipulated in Art. I.5 of the Agreement. For the sake of clarity, it is hereby agreed that use of XXX Laser by Lender during the Loan Period shall not be considered as relinquishing XXX Laser to another party within the meaning of section 2194 of the Civil Code.
- (3) XXX laser shall be operated in the Borrower's Premises in compliance with Annex no. 3. Phasing and Costs, section "XXX laser operation in L2 hall of ELI Beamlines".

X. Return of XXX Laser

- (1) Borrower shall return XXX Laser by the end of Loan Period, taking into account any agreed extensions of the Loan Period. XXX Laser return shall be recorded in return protocol, which shall be signed by Parties' authorized employees.
- (2) Lender may request Borrower to return XXX Laser anytime before the end of the Loan Period provided Lender needs XXX Laser inevitably due to reasons which Lender could not have predicted at the time of the Agreement conclusion. Lender may also request Borrower to return XXX Laser before the end of Loan Period provided Borrower uses XXX Laser in breach of the Agreement.
- (3) Before the end of the Loan Period, Borrower shall be entitled to return XXX Laser to Lender only with Lender's approval; Section 2197 of the Civil Code shall not apply in this case.

XI. Agreement Termination

(1) If either Party:

- breaches the Agreement fundamentally; the fundamental breach of this Agreement for the purposes of immediate termination means in particular such a breach of the obligation of which the Party breaching this Agreement already at the conclusion of this Agreement knew or should have known that the other Party would not have concluded this Agreement had it foreseen such a breach. Provided such breach is not remedied within thirty (30) calendar days from the time of receipt of a written notice from the other Party;
- becomes bankrupt or insolvent;

- is obliged to terminate this Agreement on legal grounds;

this Agreement shall be immediately terminated.

XII. Final Provisions

- (1) In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall continue in full force and effect. If any provision shall be deemed invalid due to its scope of breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
- (2) Except as otherwise in this document, this Agreement may be modified, superseded, or voided only upon the written and signed agreement of the Parties.
- (3) The Agreement will come in effect by publishing in the register of contracts pursuant to Act no. 340/2015 Coll., as amended. The Agreement shall be published in the register of contracts pursuant to Act no. 340/2015 Coll., as amended, by Lender.
- (4) This Agreement has been executed in two copies.
- (5) This Agreement shall be governed by the Czech law. Any disputes arising between the Parties in connection herewith shall be settled by Czech courts with the venue at the court pertinent for the head office of Lender.

In witness whereof and acknowledging acceptance and agreement of the foregoing, Borrower and Lender affix their signatures hereto.

In Prague on



RNDr. Michael Prouza, Ph.D.
Director of FZU – Institute of Physics of the Czech
Academy of Sciences

In Dolní Břežany on



Roman Hvězda
ELI Beamlines facility director

Annex no. 1

Subject Matter of the Cooperation



Annex no. 2

XXX Laser description



**Annex no. 3
Phasing and Costs**

A.  Phase



B.  Phase



Annex no. 4

Model Hand – Over Protocol



Annex no. 5

Model Return Protocol



Annex no. 6

Model XXX Laser logbook

