

CONTRACT FOR WORK [No.: ____/____]

concluded in accordance with Section 2586 et seq. of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the "**Civil Code**" and the "**Contract**")

1. Parties

1.1. Client:

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: Ing. Ondřej Svoboda, Ph.D., Director

registered in the Register of Public Research Institutions administered by the Ministry of Education, Youth and Sports of the Czech Republic

bank details: 671958383/0300

ID No.: 61389005

Tax ID No.: CZ61389005

(hereinafter the "**Client**")

and

1.2. Contractor:

MShield s.r.o.

registered office: Sluneční 14, 594 01 Velké Meziříčí

represented by Ing. Michal Kazda, MSc.

registered in Krajský soud v Brně, spisová značka C117775/KSBR

bank details: 303843320/0300

ID No.: 09201700

Tax ID No.: SE502095320301, CZ09201700

(hereinafter the "**Contractor**")

(the Client and the Contractor also referred to as the "**Parties**").

2. INITIAL PROVISIONS

- 2.1. The Client is a party to the In-Kind Contribution Agreement as of June 3rd, 2021 (hereinafter the "**IKCA**"), including its annex „Schedule NSS 6.6 #4" (hereinafter the "**NIK Annex**"), under which the Client is obliged to make an in-kind contribution, comprising the Work under this Contract, into large research infrastructure – European Spallation Source ERIC, Reg. No. SW 768200-0018, a European Research Infrastructure Consortium, established by European Commission Decision (EU) No. 2015/1478 in accordance with Regulation (EC) No. 723/2009, which is based in Lund, Kingdom of Sweden (hereinafter the "**ESS**") for the European Spallation Source project (<https://europeanspallationsource.se>, hereinafter referred to as "**Project**"). Construction of the Work under this Contract is financed by the ESS funds granted to the Client under the Project.
- 2.2. The purpose hereof is construction of an experimental cave and a control hutch for the BEER (Beamline for European Engineering Research diffractometer) instrument at the ESS (European Spallation Source), which is the in-kind contribution to be made on behalf of the Czech Republic into the construction of the ESS large research infrastructure. Construction of these BEER components will provide Czech researchers with increased access to ESS measurement capacity. At the same time, related individual research will be carried out within the Project. For the implementation of the Project professional competencies and close coordination between many entities (including the Contractor, Client, foreign partners and ESS) are needed to meet all the standards and requirements (including radiation safety requirements) for integrating the Work into the BEER instrument within the ESS infrastructure for research, development and innovation. The Client cooperates on design, construction and implementation of this instrument with ESS and their partners.
- 2.3. Construction of the Work hereunder represents the necessary prerequisite for successfully implementing the Project and making the in-kind contribution (on behalf of the Czech Republic) into the ESS. Based on that contribution the Work to be constructed by the Contractor hereunder will become part of the BEER instrument within the ESS infrastructure for research, development and innovation in accordance with the IKCA and the NIK Annex; the BEER instrument including the Work thus contributed will be also used to carry out research projects within the Project.
- 2.4. The Contractor has been selected, based on its bid (hereinafter referred to as "**Bid**") submitted to the following procedure, as the winning bidder in the below-the-limit public contract for construction work awarded in the form of negotiated procedure with publication named "Experimental cave and control hutch for the BEER instrument at ESS" (hereinafter referred to as "**Procurement Procedure**") in accordance with Section 60 and following of Act No. 134/2016 Coll., on public procurement, as amended (hereinafter the "**Act on Public Procurement**").
- 2.5. Prior written consent of the Client's Supervisory Board and its founder was properly granted prior to the conclusion hereof.

- 2.6. Construction of the Work hereunder shall be based on the following Annexes which form an integral part hereof:
- 2.6.1. **Annex 1**, which contains detailed technical specifications for the Work (including the Cave and Hutch) and consists of the following documents:
- a) the terms of Cave construction named “EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS” (hereinafter “**Cave Specification**”) and its Annex 1 named “BEER INSTRUMENT – Experimental cave – Technical requirements and design description” (hereinafter “**Cave Design**”);
 - b) the terms of construction named “CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS” (hereinafter “**Hutch Specification**”) and its Annex 1 named “BEER INSTRUMENT – Control Hutch – Technical requirements and design description” (hereinafter “**Hutch Design**”);
 - c) the technical report, which has been drafted by the Contractor and submitted within the Bid (hereinafter the “**Technical Report**”);
- (hereinafter referred to jointly as “**Annex 1**”);
- 2.6.2. **Project schedule for construction of the Work**, which has been part of the Bid, forms **Annex 2** hereto and contains especially a timetable for construction of the Cave and Hutch and execution of Payments by the Client (hereinafter the “**Annex 2**”);
- 2.6.3. **Incentive and Risk Management Instruments** represents a document constituting **Annex 3** hereto, which includes sanctions and other incentive mechanisms for timely and proper performance of the Contract according to the required specifications in the highest possible quality (hereinafter the “**Annex 3**”).
- 2.7. 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 Client (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 Client shall prevail, save for the changes proposed in the Technical Report to the extent expressly allowed by the above PROJECT SPECIFICATIONS AND REQUIREMENTS part of the Technical Specification.
- 2.8. The Contractor acknowledges that the Client cannot be classified as an entrepreneur in relation to the subject matter hereof, nor it is connected with the Client’s business activities.
- 2.9. The Contractor declares that in accordance with Section 5 (1) of the Civil Code, it is able to perform this Contract with the required knowledge, diligence and due care that is associated and expected of well-experienced experts in its profession and that its potential performance lacking such professional care would give rise to corresponding liability on its part. The Contractor shall not misuse its professional expertise or its economic position

to create or exploit the weaker party's dependence or to seek to achieve a clear and unjustified imbalance in the mutual rights and obligations. The Contractor represents that it 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 its part that would prevent it from constructing the Work hereunder.

- 2.10. The Contractor declares that it assumes the risk of a change in circumstances within the meaning of Section 1765 (2) of the Civil Code.
- 2.11. The Contractor acknowledges that the deadlines for the manufacture, delivery and construction of the Work or its parts hereunder as specified in Article 5 hereof and Annex 2 hereto are fundamentally essential for the Client given the follow-on activities within the framework of the Project and the respective deadlines by which the tasks under the Project should be completed and relevant in-kind contribution should be made, and that if these deadlines will not be observed, the Client may incur damage. The Client has duly informed the Contractor about the fact that the deadlines set out herein are linked to deadlines within the Project.
- 2.12. The Contractor declares that in connection with this Contract he complies and shall further comply with all legal regulations imposing international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security.

3. SUBJECT-MATTER AND SCOPE OF WORK

- 3.1. This Contract concerns construction of an experimental cave (hereinafter the "**Cave**") and a control hutch (hereinafter the "**Hutch**") for the "Beamline for European Engineering Research" (BEER) instrument, including the necessary research and development activities, design, manufacture and installation at the ESS address in Lund, Kingdom of Sweden, as defined below, documentation and handover to the Client as well as other performance defined herein, all in accordance with the Technical Specification (Cave and Hutch hereinafter jointly as the "**Work**").
- 3.2. The Contractor shall be obliged to execute the Work meeting parameters defined in the Technical Specification within the deadlines and stages specified in in Article 5 hereof and Annex 2 hereto; the components for the Cave and Hutch shall be delivered new (i.e., not remanufactured). The Client undertakes to take over the duly and timely constructed Work (involving the Cave and Hutch and meeting all requirements specified in this Contract, including its Annexes) and pay the price for the Work, under the terms hereof, to the Contractor.
- 3.3. By signing this Contract, the Contractor agrees to the Technical Specification of the Work as defined in Annex 1, and declares, at the time of execution hereof, that it is not aware of any deficiencies therein and that it will be able, based thereon, to carry out the Work fully and in the required quality without the need for any additional changes thereto. For the entire term hereof, the Client shall provide any required assistance in order to engage the Contractor in possible negotiations with the ESS concerning changes in the NIK Annex,

that - as a result of negotiations between the Client and the ESS - comprises requirements on the BEER instrument and related equipment affecting the Work under this Contract and the binding conditions for performance of the in-kind contribution.

- 3.4. For execution of the Work, the Contractor is entitled to deviate from the existing design descriptions in any of the articles/sub-articles named "CONCEPTUAL DESIGN" in the Cave Design and/or the Hutch Design (for example, the Contractor can deviate from the conceptual design set for foundations and floor supports in Article 3.2.6.2 CONCEPTUAL DESIGN of the Cave Design), as long as the Work executed by the Contractor strives to the other parts of the Technical Specification.
- 3.5. **Work Modifications:** Given the experimental nature of the BEER instrument including the Work and potential development of the specifications on the part of the ESS, it may be necessary to modify specification for the Work, particularly due to possible changes in the terms of the NIK Annex. Therefore, the Client may request modifications to the Cave and/or Hutch at any time before Cave Takeover and/or Hutch Takeover respectively, or during the warranty period, by means of a written notification addressed to the Contractor. Should the Parties not agree in writing otherwise, the Contractor shall, within ten (10) business days following the receipt of such notification, propose documentation defining modification of the performance and submit it in the form of a "**Modification Order**" to the Client for its approval. The Contractor is entitled to appraise the work and costs related to the requested modification as additional work (increased costs) or omitted work (reduced costs). The final price considering this additional and/or omitted work (these increased or reduced costs) will be specified in the Modification Order.
- 3.6. Each Modification Order proposed by the Contractor shall include in particular the following:
 - 3.6.1. detailed description of the modification;
 - 3.6.2. impact of the modification on the deadlines for execution of the Work stipulated herein;
 - 3.6.3. impact of the modification on other Client's or ESS's facilities in the context of the Work;
 - 3.6.4. impact of the modification on the contract price for the Work;
 - 3.6.5. effect of the modification on other provisions hereof;
 - 3.6.6. calculation of the costs of the modification; and
 - 3.6.7. a proposal for the method of reimbursement of the costs associated with such modification.
- 3.7. The value of the agreed omitted work (reduced costs) will be deducted, on the basis of the Contractor's specification (unit price + Contractor's margin), of the total price for the Work and the price for the respective part of Work to which the omitted work relates. This

deduction is to be settled within the next payment.

- 3.8. A written agreement of the Parties shall be necessary in order that modifications under the above Article 3.5 are considered valid and billable.
- 3.9. The Parties acknowledge that for the conclusion of an agreement on modifications under the above Article 3.5, particularly those implementing contractual changes in terms of schedule and price, the Client is obliged to comply with the valid legislation and Project rules as well as to respect the budget capacity of the Client and the ESS.
- 3.10. The Contractor acknowledges and agrees that the Client is not obliged hereunder to order any modifications under the above Article 3.5 from the Contractor. Therefore, the Contractor may not seek from the Client any modifications in connection with this Contract, or require the Client to pay any amounts other than the price for the actually ordered and performed modifications.

4. DOCUMENTS

- 4.1. During performance hereof, the Contractor shall provide the Client with all documentation required and described in Annex 1; these documents shall be made in English, unless specified otherwise.

5. TERM AND PERFORMANCE DEADLINES

- 5.1. The Parties agree that the Work shall be completed by the Contractor within a period of 17 months after the Contract signature. Partial performances of the Work shall be executed by the Contractor according to the milestones specified in Annex 2 hereto.
- 5.2. The Contractor shall notify to the Client at least 3 weeks in advance the actual delivery dates of partial performances of the Work to the ESS Site in accordance with this Contract. The delivery is subject to prior approval by ESS, which is conditioned by meeting the delivery requirements as described in Annex 1, sections 8.5 and 8.6 of PROJECT SPECIFICATIONS AND REQUIREMENTS. If all of these conditions are met, the Client shall ensure that ESS accepts storage of a duly and timely performed deliveries of partial performances of the Work; costs incurred by the Contractor due to the Client's failure to meet these obligations shall be reimbursed to the Contractor, unless agreed by the Parties otherwise.
- 5.3. The Client reserves the right to postpone the milestones specified in Annex 2 referring to the construction installation partial performances of the Work in cases when these performances objectively cannot be performed by the Contractor due to (i) Client's incurred delay with related performance(s) from a third party (including ESS) and/or (ii) delay with readiness of site for Contractor's performance, as the previous performance(s) of a third party and/or the readiness of site for Contractor's performance are a necessary prerequisite for the Contractor's performance; the Client shall have right to postpone the

milestones only if the delay under (i) or (ii) has not been caused intentionally or negligently by the Client's failure to meet its obligation or the existence of such delay was known to the Client at the time of signing of the Contract; the maximal time for which the deadline can be postponed is equal to the duration of the sum of all delays described in (i) and (ii). The Client shall inform the Contractor of any such postponement without undue delay. Without prejudice to Article 3.5 Work Modifications, the Client shall not be obliged to reimburse the Contractor for any costs incurred due to milestone postponement pursuant hereto, unless Client's failure to inform the Contractor in accordance with this paragraph.

- 5.4. Postponing of a milestone according to Article 5.3 of this Contract beyond the end of completion period set in Article 5.1 of this Contract causes also prolongation of the completion period set in Article 5.1 of this Contract. The delivery period prolonged in this way shall end at the date of last milestone postponed in accordance with Article 5.3 of this Contract. Notwithstanding the above postponement of milestones stipulated for partial performances of the Work, the above deadline for completion of the Work cannot exceed the initial timeframe of 17-month after the Contract signature by more than 6 months.

6. SITE OF PERFORMANCE

- 6.1. The Site of construction of the Work shall be the ESS premises in Lund, Kingdom of Sweden (hereinafter the "Site").

7. ACCEPTANCE OF PERFORMANCE; ACCEPTANCE PROCEDURE

- 7.1. **ESS role:** The Client shall be jointly liable with the ESS Team for final assessment of the Contractor's construction of the Work. The appointed expert group shall review and evaluate the Work as to its technical aspects.
- 7.2. **Acceptance procedure and conditions:** The acceptance procedure phases, acceptance tests (FAT/SAT) and other prerequisites of acceptance of the Work and its partial performances are described in Annex 1.

8. PRICE OF THE WORK; INVOICING; PAYMENTS

- 8.1. The price of the Work has been agreed by the Parties as the total non-exceed-able price for the execution of the entire Work in the amount of **EUR 2 485 720 excluding VAT** (in words Two million four hundred and eighty five thousand seven hundred twenty Euros excluding VAT). The price of the Work is a sum of partial prices for 1) Cave; and 2) Hutch, whereas:
- 8.1.1. the partial price for Cave is EUR 2 176 520 excluding VAT; and
- 8.1.2. the partial price for Hutch is EUR 309 200 excluding VAT.

- 8.2. VAT shall be imposed on top of all payments made hereunder according to valid legislation. **The applicable VAT rate is 25 %.** The Contractor shall be liable for registration to VAT in Sweden as a VAT payer and for VAT payments according to valid legislation.
- 8.3. The above price of the Work plus VAT shall cover any and all performance provided by the Contractor hereunder and include all of the Contractor's activities executed and all of the Contractor's costs accrued or associated with the proper performance hereof. The price shall include especially all expenses related to production engineering, production, transport, delivery, construction and handover of the Work, including documentation and installation of the Cave and Hutch within the Work, warranty service, any customs duties, fees, insurance, packaging and its disposal and all other Contractor's costs required to meet his obligations hereunder as well as the costs associated with creation and protection of intellectual property and Contractor's claims arising on the basis of intellectual property laws. The costs for construction of the Work included in the price for the Work shall include, without limitation, all travel expenses and expenses related to the stay of the Contractor's employees, costs associated with ensuring work safety and protection of health at work, e.g., protective equipment, training required by the ESS, etc.
- 8.4. The Parties agreed that the **price for the Work may be paid either in full upon completion of the Work, or in partial instalments as advance payments** stipulated according to Articles 8.5 to 8.7 hereof, upon completion of specified milestones according to the said Article as well as the schedule in Annex 2 hereto.
- 8.5. Upon Contractor's request for interim financing of the Work, the Client may provide the Contractor with **partial payment(s)** in advance according to the schedule and amounts specified in Annex 2 hereto, up to the following (maximum) limits:
- a) 0 - 5 % of the price for the Cave after completion of the milestone ID WP01.1.2 "Procurement contract signed";
 - b) 10 - 25 % of the price for the Cave after completion of the milestone ID WP01.1.3 "Detailed design approved (RFM)";
 - c) X % of the price for the Cave after completion of the milestone ID WP01.1.4 "Delivered to site, start of the installation (SAI, RFI)" as the portion remaining up to 50 % of the price upon adding the sum of partial payments (a) and (b) above; thus, X equals $50 - (a + b)$; and
 - d) 50 % of the price for the Hutch after completion of the milestone ID WP09.1.4 "Delivered to site, start of the installation (SAI, RFI)".
- Irrespective of Annex 2, none of the above payments can be provided according to this Article by the Client to the Contractor before the relevant milestone pertaining to that payment is completed and before the Contractor provides the Client with the relevant **bank guarantee** in the amount required (if any) pursuant to Article 15 of this Contract.
- 8.6. Since the amounts of partial payments provided (if any) have to be taken into account, the Contractor shall be entitled to invoice (i) upon completion of the milestone ID WP01.1.5 "Access for installation of equipment (SAT)" only the remaining part of the price for the Cave, i.e., the price for construction of the Cave reduced by the partial payments as listed in Article 8.5 under a), b) and c) in their actual amount provided by the Client to the

Contractor, and (ii) upon completion of the milestone ID WP09.1.5 “Access for installation of equipment (SAT) only the remaining part of the price for the Hutch, i.e., the price for construction of the Hutch reduced by the partial payment as listed in Article 8.5 under d) in its actual amount provided by the Client to the Contractor.

8.7. Early payment option / Change in the schedule of payments:

8.7.1. In the event of the Contractor’s delay with delivery of individual partial performances, the Client is entitled to pay a part of the funds pertaining to the relevant partial performance at the request of the Contractor. This option available to the Client may be exercised at his discretion, and in doing so the Client shall take into account (i) the value of the completed part of the Work and the course of the acceptance procedure; (ii) the Contractor’s plan submitted to the Client describing the Contractor’s steps for prompt completion of the partial performances with which the Contractor may be in delay, as well as other follow-on performance in accordance with Annex 2 as well as any risks associated with late payments in relation to the follow-on partial performances.

8.7.2. At the request of the Contractor, the Client is entitled to unilaterally modify the schedule of payments in Annex 2 effective upon delivery of the modified Annex 2 to the Contractor.

8.7.3. The purpose of these Client’s options is to enable the Contractor to proceed with the construction work and minimise Project risks while maintaining the appropriate standard of public funds management practices entrusted to the Client in accordance with the so-called “private debtor/creditor” principle.

8.8. The invoices issued by the Contractor in accordance with this Contract will become due for payment in thirty (30) calendar days upon delivering them to the Client, unless a longer period is specified either in the invoice itself or in Annex 2 (hereinafter the “**Due Date**”). Payment of invoiced amount shall be understood as the date on which it was remitted to the Contractor’s account.

8.9. Tax documents – invoices issued by the Contractor pursuant to this Contract shall, in accordance with relevant Czech legislation, include in particular the following data:

8.9.1. business name / name and registered office of the Client;

8.9.2. tax identification number of the Client;

8.9.3. business name / name and registered office of the Contractor;

8.9.4. tax identification number of the Contractor;

8.9.5. serial number of the tax document;

8.9.6. scope and subject-matter of performance;

- 8.9.7. date of the tax document;
- 8.9.8. date of the performance or the date of receipt of the payment, whichever happens first, if different from the date of the tax document;
- 8.9.9. Due Date;
- 8.9.10. price of the performance provided; and
- 8.9.11. number of the Client's order (if any).
- 8.10. Tax documents – invoices shall comply with double taxation treaties, if applicable.
- 8.11. All invoices shall include an annex with detailed breakdowns of the amounts invoiced.
- 8.12. Except for the first invoice upon signing the Contract and invoices for advance payments, all invoices shall include an annex demonstrating handover and takeover of the performance provided / acceptance certificate signed by the Client and the Contractor (e.g., Protocol).
- 8.13. The last invoice in each calendar year needs to be delivered by the Contractor to the Client by the 15th of December of the respective calendar year.
- 8.14. The Client shall not be obliged to make 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 Client by the date specified above, the Client is entitled to return the tax document – invoice as incomplete or incorrectly issued to the Contractor for completion or for new issue within ten (10) business days after its delivery to the Client. In such a case, the Client shall not be deemed to be in delay with payment of the price for the Work or part thereof, and the Contractor shall issue a corrected invoice with a new Due Date for payment in the full period of the same duration starting again upon the delivery of the corrected or newly issued tax document – invoice to the Client.
- 8.15. The Client's invoicing data are provided in Article 1.1 hereof.
- 8.16. **Direct payments to subcontractors at their request:** The Client shall be entitled to direct payments to the Contractor's subcontractors (i.e., to transfer amounts already due for payment for the performance of the subject matter of the Contract to subcontractors) at their request under the following conditions:
 - 8.16.1. Contractor's subcontractor applies for a direct payment by a written request delivered to the Client,
 - 8.16.2. the written request includes the requested amount of payment corresponding to the relevant portion of the Price for the Work and its justification demonstrating the extent of the part of the Work carried out by the subcontractor as well as the fact that the relevant portion of Price for this part is already due under the Contractor,

- 8.16.3. the written request is forwarded by the Client to the Contractor for review or comments and, based on this possible review or comments, the Client will not assume any significant doubt as to the appropriateness of the subcontractor's request,
- 8.16.4. such transfer (i.e., direct payment) is prevented neither by legal regulations nor international sanctions and
- 8.16.5. the payment is transferred by the Client directly to the subcontractor.
- 8.17. By providing the payment by the Client directly to the Contractor's subcontractor according to the above paragraph, the Contractor loses the right to the price for the Work under this Contract in the amount of the payment so provided to the subcontractor (i.e., this payment is deducted from the price to which the Contractor itself would otherwise be entitled).

9. RIGHTS AND OBLIGATIONS OF THE PARTIES

- 9.1. The Contractor undertakes to fulfil all obligations arising here-from duly, timely and with due professional care, at his expense and risk, within the deadlines specified in Annex 2 hereto for the price defined in Article 7.2 of this Contract.
- 9.2. During execution of the Work, the Contractor proceeds independently, unless herein stated otherwise. If receiving instructions from the Client the Contractor shall follow such instructions unless these are inappropriate or in contradiction to this Contract, applicable law or valid Czech or EU standards. If the Contractor finds out or should have found out by exercising due professional care that the Client's instructions are inappropriate or in such contradiction it must promptly notify the Client.
- 9.3. The Client shall, without undue delay, provide the Contractor with all documents or other information which are necessary for the construction of the Work and which the Contractor has reasonably requested from the Client under Article 13.5 hereof, provided that the Contractor has made such request in good time ensuring that the deadlines can be met. Such documents or other information include especially those necessary upon the conclusion hereof, in case that it becomes or shows necessary to obtain additional specific data or documents during implementation hereof.
- 9.4. This obligation under the Article 9.3 above may be also met by handover of documents or information requested by the Contractor at ESS or their partners. In the event of any inconsistencies between documents or information provided to the Contractor by ESS or their partners and this Contract or, where relevant, documents provided or instructions given directly by the Client, this Contract shall prevail or, where relevant, documents or instructions of the Client shall prevail, but the Contractor shall promptly notify the Client of any such inconsistency. If there is any delay with submission of the documents or information which the Contractor requested from the Client hereunder, and the Contractor presumes that such delay (especially with regard to its duration and importance for the current stage of execution of the Work) may lead to delay in the

Contractor's delivery in accordance with deadline specified in this Contract (including its Annexes), the Contractor shall promptly notify the Client thereof. The Contractor shall demonstrate that such a delay may actually lead to delay in delivery in question, otherwise provision of documents will be considered to be made on time, rather than delayed within the meaning of Article 9.6 hereof.

- 9.5. The Contractor shall continuously record the progress of the Work in electronic written reports made in English and submit these reports to the Client for review and consultation. If requested by the Client, the Contractor is obliged to arrange for the participation of its specialists on a working meeting with the Client held in person or via videoconferencing equipment and scheduled by the Client at least on a two (2) month basis. The Contractor is obliged to inform the Client about the progress of the Work at least one week before the date of the meeting. The communication shall be addressed to the Client's representative pursuant to Article 13.2 hereof.
- 9.6. 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 for the period of that delay.
- 9.7. In the event of the Client's delay with payment of the price of the Work or any part thereof, the Client undertakes to pay the Contractor late payment interest in accordance with Annex 3 hereto.
- 9.8. In the event of the Contractor's default (including delay with delivery of the Work exceeding the deadlines in Annex 2), the Contractor undertakes to pay to the Client contractual penalty in accordance with Annex 3 hereto. Unless herein stipulated otherwise, the Contractor 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 Client enumerated its claim for the contractual penalty.
- 9.9. In derogation from the provisions of Section 2050 of the Civil Code, the Parties agree that the Client shall be entitled, in addition to the contractual penalty pursuant to this Article 9, to compensation for any damage resulting from the breach of the same obligation as the contractual penalty in excess of such contractual penalty.
- 9.10. The Client is entitled to offset at any time its claims for the payment of the contractual penalty or damages under this Contract against any claims of the Contractor for the payment of any part of the price for the Work or late payment interest.
- 9.11. If a Party violates any obligation hereunder or if it knows or should know of such violation, that Party shall, without undue delay, notify the other Party which may incur harm to that effect and shall inform it of the possible consequences; in such a case, the injured Party is not entitled to compensation for the harm it could have prevented after the notification.
- 9.12. The Contractor shall promptly inform the Client about any liquidation, bankruptcy or insolvency proceedings held under any legal jurisdiction against the Contractor and/or about any relevant documents and/or facts which could lead to the initiation of any such

proceedings.

- 9.13. **Change in qualified personnel:** The Contractor shall be obliged to carry out the Work through the person(s) who has (have) demonstrated their qualifications within the Contractor's qualification in the tender and involve such person(s) in the activities provided under this Contract in the extent to that the Contractor's qualification was demonstrated through them. Any change in that (those) person(s) shall be subject to the Client's approval, which should not be withheld if the Contractor demonstrates at least the same level of qualification of the replacing person(s) compared to the replaced one(s) and compliance with international sanctions.
- 9.14. **Notification about significant risks:** The Contractor shall be obliged to inform the Client without undue delay about any and all significant changes of circumstances affecting or threatening the performance of this Contract. As regards international sanction(s) applicable against the Contractor and/or at least one of its subcontractors, the Contractor shall be obliged to constantly monitor whether it or its subcontractors are subject to international sanctions imposed by legal regulations (including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security), inform immediately the Client about any affection by such sanctions and, with the Client's consent, replace according to [Article 9.13](#) hereof its subcontractor(s) against which sanction(s) preventing or endangering the performance of the Contract applies(y).
- 9.15. **Removal of part of Work affected by international sanctions:** The Client reserves the right to either remove a particular part of Work (i.e., components of the Cave or Hutch) from the Contract or request the Supplier for adequate replacement of the particular part in case that:
- a) this particular part is affected by international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security; or
 - b) this particular part should be performed by the Contractor's subcontractor (including those given on the list of subcontractors within the Bid indicating which performances will each of the subcontractors perform; with possible changes by procedure under [Article 9.13](#) hereof) affected by the above international sanctions and the subcontractor has not been replaced.

Such procedure is without prejudice to all performances of the rest of the Work (Work minus its part/component affected by the international sanction) under this Contract.

10. PASSAGE OF OWNERSHIP RIGHT AND RISK OF DAMAGE

- 10.1. The ownership right to the Cave as well as the risk of damage to the Cave passes from the Contractor to the Client by completion of the ID WP01.1.5 milestone as specified in Cave Specification which is also considered as acceptance of the Cave and its handover and takeover at the Site (hereinafter the "**Cave Takeover**").

- 10.2. The ownership right to the Hutch as well as the risk of damage to the Hutch passes from the Contractor to the Client by completion of the ID WP09.1.5 milestone as specified in Hutch Specification which is also considered as acceptance of the Hutch and its handover and takeover at the Site (hereinafter the "**Hutch Takeover**").
- 10.3. For the avoidance of doubt the Parties agree that the risk of damage to the Cave and/or Hutch passing to Client shall not relieve the Contractor from its liability for damage caused as a consequence of defects of the Cave and/or Hutch or part thereof.

11. CONFIDENTIALITY, PUBLISHING

- 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, and which the Party explicitly marks as confidential information or business secret. 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 orally, by e-mail or written correspondence or by other appropriate means of communication.

- 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 becomes 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 nor disclose it to third parties 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, representatives or agents (on the part of the Recipient – Client, such authorized representatives also include the ESS) who need access to Confidential Information for the fulfilment of their obligations in connection with the agreed subject-matter of the Contract. 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.). In the publications about the subject-matter of this Contract, the publishing Party shall indicate, in an appropriate manner, the other Party as the contractual partner. 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 Work or any part thereof constitutes an author's work within the meaning of Act No. 121/2000 Coll., 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 Contractor grants to the Client a royalty-free licence to use the author's work (or part thereof) 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 works on the territory of the whole World, including sub-licence for the purpose of implementing the Project, including its follow-up phases and the alternative award of the construction of the Work to another contractor.
- 12.2. For the purposes of this Contract, author's works 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 Contractor 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 Contractor shall grant to the Client, for the duration of the protection of the relevant industrial property rights, a royalty-free licence to use the work 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. Safe for the purpose hereof (including construction of the Work) as well as Article 12.3 hereof, the Client hereby undertakes not to provide the results of the work to third parties without the prior consent of the Contractor.
- 12.3. When the in-kind contribution is made, the intellectual property rights shall pass to the ESS for the duration of the protection of the relevant intellectual property rights and/or for the duration of the property rights to author's works on the territory of the whole World.
- 12.4. The Parties have agreed that the Contractor's fee for granting the licence under paragraphs 1 and 2 of this Article 12 is already reflected and included in the price under Article 7.2 of this Contract.
- 12.5. In the event that any intellectual property rights arising hereunder are infringed, their owner is entitled to enforce them with the competent public authorities or bodies. The

licensee 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 author's work or part thereof is created as a result of a joint activity of the Contractor and the Client, the two Parties undertake to file a joint application for any intellectual property rights as co-authors.

13. REPRESENTATIVES, NOTIFICATIONS

- 13.1. The Contractor has authorized the following representatives responsible for managing the construction of the Work under the Contract and communicating with the Client:

In technical matters:

-

In contract matters:

- |

- 13.2. The Client has authorized these representatives responsible for communicating with the Contractor in the construction of the Work under this Contract:

In technical matters:

-

In contract matters:

-

- 13.3. The contact person of the ESS for the Contractor's communication with the ESS in technical matters is:

- |

The Client may identify other contact persons and means of communication.

- 13.4. All notifications between the Parties under this Contract 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 Client at
and to the Contractor at

- 13.5. In design, expert or technical matters (e.g., negotiation of the preliminary assessment of part of the Work, 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 agreement of the Parties or by withdrawal from the Contract for reasons specified in the Contract or by valid law.
- 14.2. The Client is entitled to withdraw from the Contract, either with respect to the entire Work or part thereof, without any sanction in the case of any of the following:
 - 14.2.1. performance of the Contract is prevented by an event of Force Majeure for more than six (6) consecutive months;
 - 14.2.2. the ESS funding for the subject matter of this Contract is lost because of either cancellation of the IKCA or NIK annex or expenses or part of the expenses incurred under this Contract are identified as ineligible for payment by the ESS;
 - 14.2.3. it has become obvious during execution of the Work, considering all pertinent facts and circumstances, that the Contractor will not be able to fulfil his main obligations under this Contract, especially that the Contractor will not be able to construct the Work meeting at least the minimal requirements stipulated herein or serving for the intended purpose according hereto;
 - 14.2.4. the Work or any part thereof has a material defect (e.g., a defect that prevents the proper use of the Work for the intended purpose and/or the Work does not meet at least the minimal requirements set out in the technical specification) and the Contractor fails to remove the defect within the deadlines stipulated herein or it cannot be removed;
 - 14.2.5. any of the reports submitted by the Contractor to the Client under this Contract do not meet the technical or other parameters foreseen by this Contract, even after the Client has requested the Contractor twice to meet or supplement them;
 - 14.2.6. the Contractor is in delay with delivery of any part of Work hereunder for a period exceeding three (3) calendar months, except where the delay has been caused solely by the Client;
 - 14.2.7. the Contractor breaches this Contract in a substantial manner;
 - 14.2.8. the Contractor enters liquidation;
 - 14.2.9. insolvency proceedings (or similar proceedings under the laws of another country) were commenced against the Contractor or its assets, where a decision on bankruptcy was issued, or insolvency petition rejected because of insufficient assets to cover the costs of insolvency proceedings, or where bankruptcy was cancelled because property was completely insufficient or receivership was introduced by special legislation;
 - 14.2.10. it is revealed that the Contractor stated in the Bid in the Procurement Procedure certain information or submitted documents which are false and which had or could have had impact on the results of the Procurement Procedure that lead to the conclusion of this

Contract [Section 223 Paragraph 2 letter c) Act on Public Procurement];

- 14.2.11. it is revealed that, at the time of the Procurement Procedure including the period from the expiry of the deadline for the submission of bids to the date of signature of this Contract by both Parties, there were prohibitions or restrictions resulting from international sanctions in force, for instance, in connection with a Russian involvement on part of the Contractor or any of its subcontractors affecting the Bid, Procurement Procedure or Contract, especially if contrary to the affidavit of the Contractor or any of its subcontractors on no Russian involvement declared in the Contractor's Bid; or
- 14.2.12. international sanctions imposed after signing this Contract apply on any part of the Work, the Contractor and/or at least one of its subcontractors.
- 14.3. The Contractor is entitled to withdraw from this Contract, either with respect to the entire Work or part thereof, without any sanction in the case of any of the following:
 - 14.3.1. performance of the Contract is prevented by an event of Force Majeure for more than six (6) consecutive months;
 - 14.3.2. the Client is in delay with the payment of any price or part thereof invoiced by the Contractor according hereto for more than three (3) calendar months after an additional period for such payment has been given by the Contractor pursuant to Article 1.2 of Annex 3 to this Contract; or
 - 14.3.3. the Client breaches this Contract in a substantial manner.
- 14.4. The withdrawal from the Contract takes effect on the date when the written notification of the withdrawal from the Contract by one of the Parties is delivered to the other Party, the Contract being terminated "*ex tunc*", unless stipulated herein or agreed by the Parties otherwise.
- 14.5. In the event of termination of this Contract by a withdrawal the Client is entitled to claim repayment of all advance payments already paid to the Contractor. These advance payments for repayments shall be reduced by the portion of price of Work for parts of Work actually performed and to which the Client gained ownership.
- 14.6. In the event of termination of this Contract by a withdrawal for other than the following reasons, the Contractor shall not be entitled to any portion of price for the Work. In the event of termination of this Contract by a withdrawal of the Contractor for any of the reasons stipulated in Article 14.3 of the Contract or by a withdrawal of the Client for reasons stipulated in Article 14.2.1 and/or 14.2.2 of the Contract, the Contractor shall be entitled to the corresponding portion of price for the parts of Work actually performed and handed over to the Client in accordance with the Contract prior to the termination. Things, rights and any other values whose price was paid for by the Client to the Contractor according to this provision shall pass, by payment, into the ownership of the Client, and the Contractor shall be obliged to allow the Client 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 (e.g., to cancel orders, etc.).

- 14.7. In case of withdrawal from Contract under Article 14.2.11 hereof, the Client shall be entitled to either withheld any payment of price or reduce the price for Work to the extent such payment conflicts with applicable international sanctions and either claim repayment of all advance payments already paid to the Contractor or set them off unilaterally against the relevant portion of price due while keeping or acquiring ownership to all already performed and/or obtained parts of the Work; the Contractor shall bear this in consequence for his misrepresentation or assumption of unreasonable risk with respect to the international sanctions, save for the Client's right to pay any part of the price either to the Contractor or directly to his subcontractor(s), provided that the payment does not conflict with applicable international sanctions.
- 14.8. Circumstances excluding liability are considered to include an obstacle that has occurred independently of the will of the obligated Party and prevents it from fulfilling its obligation, unless it can be reasonably assumed that the obligated Party could have averted or overcome such an obstacle or its consequences and, in addition, that it could have anticipated this obstacle upon the creation of the obligation (hereinafter the "**Force Majeure**"). Liability is not excluded by an obstacle which occurred only when the Contractor was in delay with fulfilling its duty or arose out of its economic circumstances. Effects excluding liability are limited only to the duration of the obstacle with which these effects are associated. Force Majeure under this Contract does not include the Contractor's research and development risks in the execution of the Work.
- 14.9. In the event that a Party considers a situation to be an event of Force Majeure and the situation may affect the fulfilment of its obligations, it shall promptly notify the other Party and shall endeavour to continue to fulfil its obligations to the extent reasonably possible. At the same time, such Party shall notify the other Party of all proposals, including any alternative means of performance, but shall not proceed to provide such performance without the consent of the other Party.
- 14.10. If case of Force Majeure, the deadlines stipulated in the Contract will be extended for a period corresponding to the duration of a Force Majeure event. Upon termination of event of Force Majeure, the prevented Party shall forthwith resume performance of the Contract.

15. BANK GUARANTEE

- 15.1. The Contractor is not obliged to provide the Client with a bank guarantee under this Article 15 if it requests for any and all of the partial performance in the Project Schedule attached as Annex 2 hereto no partial payment in excess of the lower limits defined for each of the partial performances in Article 8.5 letter a) or b) hereof, e.g., according to Article 8.5 letter b) not more than 10 % of the price for the Cave after completion of the milestone ID WP01.1.3 "Detailed design approved (RFM)."
- 15.2. In case that the Contractor requires in the Project Schedule attached as Annex 2 hereto

for completion of a partial performance within the relevant milestone a partial payment from the Client in excess of the lower of the limits defined for such partial payment for the partial performance in Article 8.5 letter a) or b) hereof, the Contractor shall provide the Client with an original of bank guarantee securing proper execution of the Work (including construction of the Cave and Hutch) according hereto in the amount by which the partial payment requested by the Contractor exceeds the said limit (thereinafter also the “**excessive portion of partial payment**”). The Bank guarantee shall be provided no later than along with the first invoice for such excessive portion of partial payment.

- 15.3. With each subsequent request for an excessive portion of partial payment, the Contractor must either have the amount of the existing bank guarantee increased or provide a new bank guarantee to the Client, so that the aggregate of the bank guarantees covers the full amount by which the total of actual partial payments requested or already made exceeds the lower limits specified in Article 8.5 letter a) or b) hereof.
- 15.4. After completion of a partial performance within the relevant milestone without invoicing any partial payment for that partial performance, the Contractor is entitled to have the existing bank guarantee reduced by the value of the lower limit specified for such partial payment in Article 8.5 hereof or replaced accordingly.
- 15.5. Nevertheless, the Contractor must keep the above bank guarantee valid and effective in the amount of the remaining excessive portion of partial payments actually provided by the Client to the Contractor as advance payments that have not been cleared in full so far, until they are fully cleared either against the invoiced prices for partial performances in the amounts not exceeding the lower limits of the partial payments specified in in Article 8.5 hereof or against the invoiced price for the partial performance completing the milestone ID WP01.1.4 “Delivered to site, start of the installation (SAI, RFI).”
- 15.6. The Contractor’s obligation to maintain the bank guarantee hereunder shall expire no later than upon the Cave Takeover.
- 15.7. The Contractor declares that the bank guarantee is irrevocable, unconditional and payable on demand, i.e., the bank guarantee permits unconditional draw down, without the bank having recourse to objections within the meaning of Section 2035 Civil Code, without the need for the Client to notify the Contractor to observe his obligations, in all cases where the Contractor may default on any of his obligations defined herein.
- 15.8. The bank guarantee shall cover financial claims of the Client against the Contractor (statutory or contractual sanctions including contractual penalties, damages including reimbursement for damage caused to the Client by the Contractor and/or its subcontractor(s), sanctions resulting from delays with any performance under this Contract etc.), which may arise due to the breach of the Contractor’s obligations under this Contract in terms of proper construction of the Work in agreed quality and timeframe. The bank guarantee shall also cover the above obligation of the Contractor to keep the bank guarantee valid and effective for the entire set period.

16. GOVERNING LAW, DISPUTE SETTLEMENT

- 16.1. This Contract and any and all legal relationships arising there from are governed by the laws of the Czech Republic.
- 16.2. The Parties acknowledge that areas not expressly regulated by this Contract are governed by the relevant provisions of the Civil Code (the Act No. 89/2012 Coll., as amended).
- 16.3. 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 Client based on application of any of the Parties.

17. TRANSITIONAL AND FINAL PROVISIONS

- 17.1. This Contract constitutes the complete and comprehensive agreement between the Client and the Contractor.
- 17.2. The Contractor shall not be entitled to transfer rights and duties from this Contract or its part on third parties, to transfer its claims against the Client 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 Client's claims.
- 17.3. 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.
- 17.4. 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.
- 17.5. 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.
- 17.6. 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.
- 17.7. This Contract is made in the English language and executed in one (1) electronic counterpart and in two (2) paper counterparts, each having the force of original. Each Party shall obtain one (1) of the paper counterparts.

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

On behalf of: the Client

On behalf of: the Contractor

In _____, on _____

In Velké Meziříčí, on 3.3.2024

Datum: 2024.04.17
16:20:29 +02'00'

Name: Ing. Ondřej Svoboda, Ph.D.
Position: Director

Name: Ing. Michal Kazda, MSc.
Position: Executive head

Annex 1

EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS

Forms a separate document attached hereto.

BEER INSTRUMENT – Experimental cave – Technical requirements and design description

Forms Annex 1 to the aforementioned EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS document.

CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS

Forms a separate document attached hereto.

BEER INSTRUMENT – Control Hutch – Technical requirements and design description

Forms Annex 1 to the aforementioned CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS document.

Technical Report drafted by the Contractor, as submitted within the Bid.

To be attached hereto by the Contractor.

Annex 2

Project schedule

Project schedule for construction of the Cave and Hutch drafted by the Contractor, as submitted within the Bid,

To be attached hereto by the Contractor.

Annex 3

Tools to Reduce Risks

1. Motivation mechanisms

1.1. Contractual penalties for Contractor's delay

1.1.1. The rate of contractual penalty for each day of Contractor's delay with construction of the Work or any part thereof according to the milestones defined in the Contract (including its Annexes) is 0.1 % of the price of the Work excl. VAT as specified in Article 8.1 of the Contract for each day of delay after the expiry of an additional period of thirty (30) days specified in the Client's written request.

1.1.2. The due date of all contractual penalties stipulated herein shall be thirty (30) days from delivery of the complaining Party's notification to the other Party. The notification under this paragraph shall include description and date of the particular event that entitles one of the Parties to impose a contractual penalty on the other Party. In case of delay with payment of the contractual penalty the breaching party undertakes to pay to the other party also an interest at the statutory rate.

1.2. **Late payment interest for Client's delay:** The rate of late payment interest concerning the Client's delay with the payment of the price of the Work or any part thereof is 0.01 % of the due part of the price of the Work for each day of delay after the expiry of an additional time limit of thirty (30) days specified by the Contractor in a written request.

1.3. **Liability for damage:** The Parties are mutually liable for any damage caused by breach of this Contract. The compensation for damage is limited to 100 % of the price of the Work as specified in Article 8.1 of this Contract.

2. Risk minimization tools

2.1. **Insurance:** The Contractor is obliged to ensure adequate insurance of the components/materials for construction of the Work during the period of storage at the Contractor's premises, the coverage being equivalent to their value under standard conditions. Furthermore, the Contractor is obliged to maintain general third-party liability insurance for the duration of the Contract, the coverage being equivalent to the value of the Work. Additionally, the Contractor is obliged to take out risk insurance with adequate coverage for the transport of the components/materials for construction of the Work to the ESS Site in Lund, Kingdom of Sweden.

3. Warranty (quality warranty)

3.1.1. The Work has defects if the Work, its part, execution or results do not formally or materially correspond to the conditions, specifications, requirements, purposes or results set forth in this Contract.

3.1.2. The Contractor is liable for any defects of the Cave or its part at the time of Cave Takeover and it is also liable for any defects of the Cave found during the entire

Warranty period (quality warranty). The Contractor is liable for any defects of the Hutch or its part at the time of Hutch Takeover and he is also liable for any defects of the Hutch found during the entire Warranty period (quality warranty).

- 3.1.3. The Contractor guarantees that in the course of the Warranty period, the Cave and the Hutch shall have properties laid down in this Contract, applicable legal regulations and standards and usual properties, if applicable. The Contractor further guarantees that the Cave and Hutch or any of its parts will in all material respects be and remain free from errors, defects and deficiencies, especially those which will prevent the components of the Cave and the Hutch to be used materially as intended, i.e., that all such components are in accordance with agreed specifications and fully functioning and will work properly for this period.
- 3.1.4. The Contractor provides a quality warranty on any part of the Cave and the Hutch of sixty (60) months (the "**Warranty period**").
- 3.1.5. The Warranty period for the Cave and each of its part shall commence on the day of the Cave Takeover, the Warranty period for the Hutch and each of its part shall commence on the day of the Hutch Takeover. If the Protocol lists any deficiencies, the Warranty period shall begin on the day, which follows the day, in which the last deficiency was removed.
- 3.1.6. The Contractor shall pass any existing components warranty to the Client. If on the warranty list or other document submitted by the Contractor the warranty period is of longer duration, then this longer warranty period shall have priority over the period stated in this Contract.
- 3.1.7. The Client shall request the Contractor to remove the defects of the Cave and/or the Hutch or a part thereof during the corresponding Warranty period in writing without undue delay upon their discovery, but no later than on the last day of the corresponding Warranty period (hereinafter the "**Claim**"). Even a Claim asserted by the Client on the last day of the Warranty period is considered to have been asserted in due time.
- 3.1.8. The Contractor undertakes to examine the Claim, notify the Client of whether or not it accepts the Claim, and provide in writing the suggested method and the deadline for the removal of the defect within two (2) weeks from the delivery of the Claim by the Client.
- 3.1.9. The Contractor undertakes to gratuitously remove any defects of the Cave and Hutch or their part without undue delay and shall bear all the expenses related with removal of the defects. The deadline for the removal of the defect shall be no later than in one (1) month from the delivery of the Claim to the Contractor, unless the Parties agree otherwise; which they shall do in case that the nature of the defect does not permit removal within that deadline.
- 3.1.10. The Contractor is obliged to remove the defects of the Cave and Hutch within the

specified time limit, even if it believes that it is not liable for the defects. The costs of removing the defects in these disputed cases shall be borne by the Contractor until the clarification or resolution of the conflict.

- 3.1.11. The Parties shall make a report concerning the removal of the claimed defect which will confirm such removal. The respective Warranty period for the Cave or the Hutch is extended by the period that elapsed between the assertion of the Claim and the removal of the defect.
- 3.1.12. In case that the Contractor does not remove the defect within the stipulated or mutually agreed period or if the Contractor refuses to remove the defect, the Client shall be entitled either to claim a reasonable discount from the Price or to remove the defect at its own costs and the Contractor shall provide discount or reimburse these costs within one (1) month after the Client's request to do so, respectively. In such a case the existing warranty remains intact.
- 3.1.13. The acts of the Parties constitute claims under this Article if they are made in writing or by electronic communication by one of the representatives of the Party concerned under the Contract to the address of the other Party.
- 3.1.14. Irrespectively of the warranty for the Cave and the Hutch set out herein above, the Contractor shall be responsible for procuring industry standard, commercially available warranties on all procured components of the Cave and the Hutch from the respective manufacturer or supplier and shall pass all such warranties on to the Client, or to the extent such warranties are not transferable, shall assign all benefits of such warranties on to the Client forthwith and without any additional charge. The Client shall be entitled to pass any of the warranties hereunder, including the rights to Claim warranty and request services within the corresponding Warranty period, to ESS while the Contractor shall be obliged from the warranty in favour of ESS if a warranty claim is raised either by the Client or ESS.