

# **AGREEMENT ON PARTICIPATION IN THE RESEARCH AND DEVELOPMENT PROJECT AND ON THE USE OF RESEARCH AND DEVELOPMENT RESULTS**

## **NenoVision, sro**

**Company registered in the Commercial Register kept by the Regional Court in Brno,  
Section C, Insert 90407**

with registered office: Purkyňova 649/127, Medlánky 612 00 Brno

IČO: 04525671

Steuernummer: CZ04525671

Represented by:

Bank details:

Main Principal Investigator:

tel .:

(hereinafter referred to as the "beneficiary")

and

## **École polytechnique fédérale de Lausanne (EPFL)**

based: Batiment CE 3.316, Station 1, 1015 , Lausanne, Switzerland

ID: CHE-116.075.613

VAT number: CHE-116.075.613

Represented by:

Bank connection:

Account holder:

Bank:

Swift/Bic:

IBAN:

Principal Investigator for EPFL:

(hereinafter referred to as "Other Participant 1")

and

## **Czech Metrology Institute (CMI)**

based: Okružní 772/31, 638 00 Brno

ID: 00177016

VAT number: CZ00177016

Represented by:

Bank connection:

Principal Investigator for CMI:

(hereinafter referred to as "Other Participant 2")

and

**c-sense**

based: Dechantstr. 9, 3550 Langenlois, Austria

ID: FN 539869 a

VAT number: ATU75948129

Represented by:

Bank connection:

Principal Investigator for c-sense:

(hereinafter referred to as "Other Participant 3")

(collectively referred to as "partners")

conclude within the 10th public tender of the Program for the Support of Applied Research TREND (hereinafter referred to as the "program"), announced by the Technology Agency of the Czech Republic (hereinafter referred to as the "TACR" or "provider") this contract for participation in the project no. : "FW10010168" called "In-situ microscopy tool for better materials, energy storage and semiconductor devices". (Hereinafter referred to as "the contract"):

**I.**

**Subject of the contract**

1. The subject of this contract is the determination of the rights and obligations of the partners in cooperation on the execution and implementation of the project entitled "In-situ microscopy tool for better materials, energy storage and semiconductor devices". (hereinafter referred to as "the project") under the program. The project proposal contains a detailed description of the project execution and implementation, the project execution and implementation schedule, project objectives, its expected results and how to verify their achievement, the division of tasks in the project execution and implementation, adjustment of rights and obligations of partners and the expected work schedule. The subject of the contract is also the division of cooperation and all economic participation of the partners in the project.
2. The aim of the project is to develop and commercialize the next-generation of AFM in SEM technology, significantly increasing its capability for in-situ complex characterization of novel materials, energy storage, and semiconductor devices.
3. With this contract, the partners regulate their mutual relations, rights and obligations in the performance of the project during the term of the contract as laid down in Article XII.

**II.**

**Project execution**

1. The subject of the project, the time plan of the project, the project goals, its expected results and the method of verifying their achievement, the specific tasks of each partner and the expected work progress are included in the project proposal (attached as Annex 1). The partners undertake to proceed in the execution and implementation of

the project in order to achieve the project objectives set out in the project proposal. The partners undertake to proceed in the execution and implementation of the project in accordance with the project proposal, the binding parameters of the project implementation (attached as Annex 2), the general conditions of the provider (TACR GCs, attached as Annex 3) and in accordance with the project grant agreement (including all its annexes) concluded between the beneficiary and the provider (hereinafter "grant agreement", attached as Annex 4), which form an integral part of this contract.

2. In addition to this contract, the rights and obligations of the partners are also set out in the program tender documentation, binding parameters of the project execution and implementation and the TACR GCs while the obligations that apply to the beneficiary according to these documents apply to the other participants insofar as applicable. By signing this Agreement, the other participants confirm that they have read and agree to these documents and the obligations laid down in such documents.
3. The partners also undertake to cooperate with each other in the management, execution and implementation of the project.
4. The partners are obliged to act in a way that does not endanger the execution and implementation of the project or the interests of the partners.
5. The main Principal Investigator on the part of the beneficiary is
6. The Principal Investigators on the part of the other participants will be

### **III.**

#### **Project budget and payment terms**

1. The structure of the budget and the amount of its individual items is specified in the Binding parameters of the project execution and implementation, which are the approved project proposal in the sense of § 9 paragraph 2 of the Act on Support and Research. The project funds from the provider ("Grant") will be provided by the beneficiary to other participants within 90 days in the first year and within 30 days in the following years from the receipt of the respective part of the Grant from the provider, by transfer to the accounts of the other participants, which are listed in the header of this contract.
2. The project funds will be disbursed to other participants after converting CZK into the respective foreign currency.
3. The transfer of part of the Grant to another participant is considered only as a transfer of funds.
4. The partners undertake to fully respect the purpose, timing and breakdown of the recognized costs as approved by the provider.
5. If a portion of the part of the Grant provided to the other participants 1, 2 or 3 for a calendar year is not used during such calendar year by such other participant, such other participant shall return the unused portion to the beneficiary in accordance with Article 4(3) of the grant agreement to allow the beneficiary to meet its obligations

towards TACR under Article 4(3) of the grant agreement. The other participants 1, 2, and 3 are also obliged to transfer to the beneficiary any revenues generated in connection with the project implementation, in accordance with Article 9 of the TACR GCs. The other participants 1, 2, and 3 are obliged to return the above-mentioned funds upon written request by the beneficiary.

#### **IV. Confidentiality**

1. Each partner („Recipient“) agrees to keep confidential and not to use for any purpose other than the performance of this contract all information belonging to another partner („Disclosing Party“) with which it may come in contact during the course of the project, provided that such information has been clearly labeled as confidential by the Disclosing Party or, if disclosed orally, has been confirmed in writing as being confidential within ten (10) days from its disclosure („Confidential Information“). Each partner shall be responsible for the compliance by its employees with these confidentiality obligations.
2. The obligations under Article IV.1 shall not apply to any Confidential Information that (i) was in the public domain or open to the public at the time it was transmitted to the Recipient, or (ii) became public or open to the public for reasons other than an action or omission attributable to the Recipient that is a breach of this contract, or (iii) was in Recipient's possession, without any limitation regarding its disclosure at the time it was transmitted to the Recipient, provided that such prior possession is supported by written evidence, or (iv) was obtained in good faith by the Recipient and without any commitment relating to confidentiality from a third party entitled to disclose it, or (v) was independently developed by the Recipient without using the Confidential Information of the Disclosing Party.

Such obligation shall neither apply to any portion of Confidential Information required to be disclosed by law, as a result of a court order or pursuant to a government action, provided that, if permitted by the law, court or a government action, the Recipient shall inform the Disclosing Party of any such order or action to give the Disclosing Party the opportunity to request a protective order.

3. Each partner shall take reasonable measures to ensure that only employees, to whom disclosure is reasonably necessary for the purpose of this project, are exposed to Confidential Information. Such persons are obliged to be bound by similar obligations but not less stringent as under this contract.
4. The obligations under this Article shall remain effective for five (5) years after termination or expiration of this contract.
5. The duty of confidentiality under this contract does not apply to informing the public that the project (or its outputs and results) was or is co-financed by the provider. The beneficiary and other participants shall acknowledge the support of TACR in accordance with the document “Rules for publicity of projects supported by TACR”.

#### **V. Intellectual property**

1. The partners agree that during the execution and implementation of the project they will grant each other a limited, royalty free, non-exclusive right to use their pre-existing intellectual property (especially industrial rights, know-how and working procedures)

("Background IP"), which are directly related to the execution and implementation of the project, to the extent necessary for the performance of the other partner's own tasks under the project. The Background IP of the partners is limited to the Background IP listed in Article V (4)(a).

2. The protection of intellectual property by patents, registered designs, copyrights, including copyrights for the creation of software and the protection of new technical knowledge forming a trade secret, arising in connection with the execution and implementation of the project, will be approached in accordance with applicable law.
3. Subject to third parties' rights, each partner shall own all results that are generated solely by its own employees in the performance of the project as well as any intellectual property rights pertaining thereto ("Own Results"). If inventors or authors employed by the two or more partners jointly generate results in the performance of the project and if it is not possible to separate the respective contributions of the partners in view of their protection or commercialization, such results as well as all related intellectual property rights shall be jointly owned by the generating partners ("Joint Results"), subject to any third parties' rights.

4. Background IP invested in the project:

- a) The partners enter the project with the following Background IP that are necessary for the execution and implementation of the project:

NenoVision, s.r.o. - technology of production of AFM microscope LiteScope (mechanical construction, electronics, SW), CPEM technology and other know-how related to LiteScope development.

Other participant 1: École polytechnique fédérale de Lausanne (EPFL) – no Background IP of EPFL is necessary to other partners for the execution and implementation of the project

Other participant 2: Český metrologický institut (ČMI)

Other participant 3: c-sense brings in their self-sensing cantilevers and application in atomic force microscopy

- b) Each partner shall remain the sole owner of all its Background IP. As far as legally possible, the partners shall negotiate in good faith a non-exclusive, non-sublicensable, non-transferable license to use its Own Results or its share of the Joint Results taking into consideration the value of said Own Results or each partner's contribution to the Joint Results only if needed for the use by the requesting party of its Own or Joint Results.
- c) The partners are not entitled to use the Background IP for any other purpose and in any other way, unless they agree otherwise in writing in advance.

5. Intellectual property protection:

- a) Each partner shall, at its own expense and responsibility, design and implement appropriate protection of the intellectual property embodied in the Own Results. The protection of intellectual property consists mainly in the filing of domestic and / or foreign applications for a technical solution such as a patented invention,

utility model and industrial design, or protecting the confidential information of the Results, as applicable.

- b) The partners agree that, with the exception of patent rights and software, each joint owner shall be free to use for any purpose, including licensing, any Joint Results without the consent from and without an obligation to compensate the other joint owner(s). Before filing any patent application on Joint Results, the joint owners shall agree in advance in a separate written agreement upon their respective rights and obligations under any such patent application. The joint owners shall agree in a separate agreement before any commercial use of or any grant of license under any Joint Results consisting of software.
  - c) In the case of results of a copyright nature, the provisions of generally binding legal regulations shall apply, while in the case of results belonging to the partners, the regime of co-author's work shall apply jointly with all the consequences thereof; The partners share in the costs associated with the possible enforcement of copyrights according to the amount of co-ownership shares. The written consent of both partners is always required to grant the right to use the co-author's work. The partners recognise that with regards to EPFL, copyright created by its employees, with the exception of software, rests with such employees pursuant to article 36 of the Swiss Federal Act on the Federal Institutes of Technology.
6. The provisions of this Article do not in any way affect the personal rights of authors and authors of results under applicable law.

## **VI.**

### **Rights to results and use of results**

- 1. The rights of the authors and creators of the results are not affected by the provisions of the preceding paragraphs; each of the partners is responsible for settling the claims of the authors and creators on their side.
- 2. When determining the co-ownership ratio to Joint Results of the project, the proportion of costs of individual partners is taken into account and the proportion of the creative contribution made.
- 3. The partners are entitled to the non-exclusive use of the results owned or jointly owned by the other partner(s) free of charge, if they are necessary for the purpose of performing the other partners' own tasks during the contract and for internal non-commercial research and teaching purposes.

## **VII.**

### **Publication**

- 1. Any publication or other dissemination activities related to the project results shall be in accordance with scientific best practices.
- 2. Any draft publication related to the project shall be submitted to the other partners (hereafter "the Reviewing Parties") for their review in writing at least thirty (30) days prior to the intended publication date. Each Reviewing Party shall have the right to require the deletion of any of its Confidential Information contained in the publication draft, within said 30 day period. Each Reviewing Party may further, within the same 30 day period, require the postponement of the publication if necessary to protect its Own or Joint Results. From the receipt of any written objection by the Reviewing Party, the

publication shall be postponed for a period not exceeding ninety (90) days. After said 90 day period, the publication is permitted. In any case, the publication draft shall be deemed to be accepted by the Reviewing Party in the absence of any objection raised in accordance with this Article.

3. The results of the project published in printed form, in the form of scientific or professional publications or in the form of presentations (especially at international scientific conferences) must contain information that they have been achieved by the solution of a project supported from public funds to support research and development.

## **VIII.**

### **Rights and obligations of partners**

1. The Beneficiary is obliged to prepare all reports of the project in accordance with the provider's instructions and in accordance with the grant agreement and the TACR GCs. Other participants are obliged to hand over to the beneficiary according to his instructions and within the deadlines set by him the documents for the preparation of these reports.
2. The Beneficiary is obliged to continuously submit to the other participants draft contracts, amendments to contracts and other documentation, created between the Provider and the Beneficiary and relating to the project or related to another participant.
3. The other participants 1, 2, and 3 are obliged to adequately comply, insofar as applicable, with all obligations set out in Article 4 of the TACR GCs and to provide necessary cooperation to the beneficiary to allow the latter to comply with its obligations under the TACR GCs.
4. The other participants 1, 2, and 3 are obliged to inform the beneficiary of all changes concerning their legal status and of any other changes and facts that could affect implementation, execution and objectives of the project and which occurred as from the date of entry into force of the contract, no later than 14 days from the date on which the other participants 1, 2, and 3 became aware of such a change or fact. If the other participants 1, 2, and 3 do not inform the recipient according to the previous sentence, it will be considered a serious breach of contractual obligation.
5. Each other participant 1, 2, or 3 is obliged to return the part of the Grant provided to it by the beneficiary, within 30 days from the date of notification, or from the date when such notification was due, under the previous paragraph, in case the other participants concerned will no longer be able to fulfill its obligations arising from this contract. The other participant concerned is not obliged to return to the beneficiary the part of the Grant which was duly used by this other participant until the sending of the notification under this paragraph for the project implementation.
6. The other participants 1, 2, and 3 are obliged to enable the provider and the beneficiary or their authorized persons, at their own expense, to perform a comprehensive control of both project results and accounting records and the use of their part of the Grant provided for the execution and implementation of their part of the project from the Grant at any time during the project and also within 10 years from the end of the provision of the Grant for their part of the project. This contract does not affect or limit the rights of control and financial bodies of the state administration of the Czech Republic.
7. Each partner is entitled to terminate this contract if there is a serious breach of the contract by the other partner. For the purposes of this contract, a serious breach shall

mean, in particular, the facts specified in Article 8 of the TACR GCs, which shall apply *mutatis mutandis*.

8. If any partner uses the Grant under this contract contrary to the purpose or for a purpose other than that for which it was provided to it under this contract, or violates another obligation imposed on it by this contract, or if there are significant changes to its property status, the beneficiary is entitled to terminate the contract at any time. Each partner is also entitled to terminate the contract if it is proven that the data provided to him by another partner before the conclusion of the contract, which represented the conditions on which its conclusion was made, are false, or if the other partner was found guilty for a serious financial irregularity or fraud.
9. Partners are obliged to cooperate and furnish each other with documentation, information and data necessary to accomplish the project.

## **IX.**

### **Spatial and material equipment**

1. The owner of the tangible assets necessary for the execution and implementation of the project and acquired or created from the Grant is the partner who acquired the said assets or created them during the execution and implementation of the project. If tangible assets were acquired or created jointly by two or more partners, their share in the ownership of these assets is determined in proportion to the funds spent for the acquisition or creation, unless they agree otherwise.
2. The Beneficiary and other participants are obliged to use all tangible assets acquired or created using the Grant with due diligence, in particular to secure it against damage, loss or theft and to use it mainly for activities related to the project.
3. The assets that other participants 1, 2, and 3 acquire in direct connection with the fulfillment of the project objectives and which they acquire from the Grant are not entitled to be used by third parties in violation of this contract and without the prior written consent of the beneficiary, until all obligations arising for the other participant under the contract have been fully settled.

## **X.**

### **Liability and sanctions**

1. Unless otherwise provided in this contract, each partner shall be liable towards the other partner only in the event of wilful act or gross negligence for any damages suffered in connection with this contract. This limitation of liability shall also apply to partners' auxiliary persons (including but not limited to consultants and students), agents and subcontractors.
2. Each partner shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said partner's obligation by or on its behalf with the project or resulting from its use of the project results.
3. In the event that partners decide to commercialise products and/or services based on the results of the project, EPFL shall not bear any responsibility for the conception, use and commercialisation of such products and/or services and shall not be liable towards third parties in connection with this conception, use or commercialisation. The other partners agree to indemnify and defend EPFL against any such claim from third parties brought against EPFL.



4. Subject to the preceding paragraphs, in the event of a breach of the terms of this contract by one of the partners, such partner shall compensate the other partner for provable damage. For the avoidance of doubt, the beneficiary is entitled, as part of such damage, to compensation, by the participant in breach, of contractual penalties and refunds of the portion of the Grant paid by the beneficiary to the provider pursuant to Article 5 of the TACR GCs as a result of a breach of duty by such participant.

## **XI. No Warranties**

1. The partners shall perform the project by applying their best scientific knowledge and best scientific standards. The partners have only an obligation of means in the performance of the project.
2. The partners make no warranties, either express or implied, as to any matter including but not limited to, warranties of novelty, patentability, accuracy, non-infringement, merchantability, fitness for a particular purpose of the project results and/or any Background IP.

## **XII. Final provisions**

1. The contract is concluded on the day of signing the last of the partners and takes effect on the effective date of the grant agreement, that is as of 1 January 2024. The publication of the contract in the register of contracts will be ensured by the beneficiary. The partners agree that in the event that the project proposal is not financed by the provider and no funds are provided for it, this contract will be terminated from the beginning.
2. This contract shall remain effective for the duration of the project and for a period of 3 years from the end of the project, that is, until 30 June 2029. The provisions of Articles IV (Confidentiality), V (Intellectual property), VI (Rights to results and use of results), VII (Publication), X (Liability), XI (No warranties) and XII (Final provisions) shall survive expiration or termination of this contract for any reason.
3. The partners acknowledge that partners may be required to disclose the content of this contract, the field of research, identity of the partners or other information pursuant to any applicable laws and regulations.
4. The termination of this contract (for any reason) does not affect liability for damage and other rights and obligations established by this contract, which are required by law, contract or by their nature to continue after its termination.
5. This contract may only be amended by written amendments containing the partners' agreement and signed by the partners' authorized representatives, and changes subject to the provider's approval must be sent to the provider in accordance with its change management rules.
6. The partners undertake to keep all documents related to the project properly for at least 10 years from the end of the project.
7. All disputes between the partners arising from this contract will be settled amicably as a matter of priority; if the dispute is not settled amicably, the partners will refer the dispute to the competent courts of the defending partner's domicile.

8. This contract shall be governed by the laws of the defending partner's domicile without regard to its conflict of law provisions.
9. This Agreement shall be executed in electronic form, with each party receiving an electronic original thereof.
10. The partners expressly acknowledge that this agreement is the result of their actions, that each partner has had the opportunity to influence its basic conditions, and that this is a manifestation of their free, true and serious will, as evidenced by their signatures below.

[Signatures on next page]

**NenoVision**

Place and date:

---

**Ecole polytechnique fédérale de Lausanne**

Place and date:

---

Head of the Laboratory for Bio- and ano-Instrumentation (LBNI)

---

**ČMI**

Place and date:

---

**c-sense**

Place and date: