

Contract for Work

concluded in compliance with the provisions of Section 2586 et seq. of the Act No. 89/2012 Coll., the Czech Civil Code (hereinafter the "**Contract**")

1. PARTIES

1.1. The Client:

Fyzikální ústav AV ČR, v.v.i.,

having its registered office at: Na Slovance 2, Prague 8, ZIP Code 182 21

represented by: prof. Jan Řídký, DrSc, in his capacity of Director

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

Banking details:

UniCredit Bank Czech republic, a.s.

Account No.: 2106551053/2700

Identification Number: 68378271

VAT Number: CZ68378271

(hereinafter the "**Client**")

and

1.2. the Contractor:

INFN, Istituto Nazionale di Fisica Nucleare, ,

having the registered office in: Via Enrico Fermi, 40 - 00044 Frascati (Rome) Italy, ,

Identification Number: F12901KA

registered in registered in the Register of the Italian Ministry of Education, University and Research (MIUR)

represented by by Prof. Fernando Ferroni , in his capacity of [President],

Banking details: Unicredit Bank c/o INFN

Account Number: IT45P0200839105000102445030

Identification Number: : UNCRITM1385 (SWIFT code),

VAT Identification Number: 04430461006

(hereinafter the "**Contractor**");

(the Client and the Contractor may be referred to herein jointly as the "**Parties**", or each of them separately as the "**Party**").

2. FUNDAMENTAL PROVISIONS

- 2.1. The Client is the recipient of funding provided by the Ministry of Education, Youth and Sports of the Czech Republic (hereinafter the “**Sponsor**”) for the Project “ELI: Extreme Light Infrastructure”, Reg. No. CZ.1.05/1.1.00/02.0061, granted within the framework of the Operational Program Research and Development for Innovation (hereinafter the “**RDIOP**”), Priority Axis I European Centers of Excellence, Area of Intervention 1.1. European Centers of Excellence (hereinafter the “**ELI-Beamlines Project**”).
- 2.2. The aim of the ELI-Beamlines Project is to construct and operate an international research laboratory (research facility) using the latest generation of laser technologies and to subsequently implement a number of future projects in basic and applied research. The objectives, extent and aims of the ELI-Beamlines Project are given in more detail in the European Commission Decision dated 20.4.2011, Ref. No. C(2011) 2753 on major project “ELI: Extreme Light Infrastructure” and in the decision of the Sponsor dated 2.8.2011, Ref. No. 26310/2009-45 and in the documents related to these decisions. At the same time, the ELI-Beamlines Project forms an integral part of the Czech roadmap of large infrastructures for research, development and innovations, approved by the Government of the Czech Republic.
- 2.3. The ELI-Beamlines Project is one of the pillars within the so-called ESFRI Roadmap created by the European Strategy Forum on Research Infrastructures which was formed at the behest of the European Commission to establish a network of pan-European research centres at the most advanced scientific levels whose aim is to facilitate, within the framework of specific scientific focus of each such research centre, a fully open access into these facilities to academic workers exclusively on the basis of their scientific excellence (i.e. without regard to the legal or commercial status of institutions or corporations they may come from).
- 2.4. In order to successfully implement the ELI-Beamlines Project it will be necessary to execute certain work according to this Contract. The executed work shall form an integral part of the infrastructure for research, development and innovations of ELI-Beamlines (hereinafter the “**ELI Beamlines Infrastructure**”) and shall be further used to implement research projects in the area of interaction of highly intensive laser radiation with materials.
- 2.5. The Contractor was selected as the winner of a negotiated procedure without publication announced by the Client in accordance with Act No. 137/2006 Coll., on Public Procurement, as amended and supplemented (the “**Public Procurement Act**”), for the procedure called “Laser Driven Ion Beamline for Multidisciplinary Applications” (hereinafter the “**Negotiated Procedure**”).
- 2.6. The Contractor is a national public funded research institute at the behest of the Italian Ministry of Education, Research and University and its scope of operation is the promotion, coordination and performance of scientific research and technological

development in the context of nuclear physics also through arrangements and coordination with other research entities in the domestic and international environment.

- 2.7. The Contract contains valid and effective obligations to which Parties are unconditionally bound hereunder according to its terms and conditions.
- 2.8. Herein below is a list of Annexes which, among the others referred to hereunder in the Contract, constitute an integral part of this Contract:
- a) **Annex 2.8.1 (“Scope of Work”)** contains the detailed technical description and specifications of the System, including the *Minimal Technical Specifications* and the *Target Technical Specifications*;
 - b) **Annex 2.8.2 (“Additional System”)** contains the detailed technical description and specifications of the Additional System under par. 4.6 to be realized in the event that the Call Option is exercised pursuant to this Contract as well as the deliverables of which the Additional System is comprised;
 - c) **Annex 2.8.3 (“Deliverables and Payments Schedule”)** contains the schedule of delivery and payment instalments as well as the deliverables of which the System is comprised to be realized throughout the Deadlines set out therein (the “Deliverables”);
 - d) **Annex 2.8.4 (“Consolidated Deliverables and Payments Schedule”)** contains the schedule of delivery and payment instalments as well as the deliverables of which the System and the Additional System are comprised, to be realized throughout the Deadlines set out therein, to be applicable in replacement of Annex 2.8.3 if the Call Option is exercised pursuant to this Contract;
 - e) **Annex 2.8.5 (“Motivation and Penalty Schedule”)** contains motivation and penalty mechanisms to ensure due and timely delivery of Deliverables as well as bonuses to the benefit of the Contractor;
 - f) **Annex 2.8.6 (“The Contractor’s Bid Package”)** contains the technical specifications submitted within the Negotiated Procedure.
- 2.9. In the event of inconsistency or difference among the Contractor’s Bid Package and any other technical specification in this Contract the conditions and specifications contained in the Contractor's Bid Package shall prevail in the case they are more favourable to the Client, i.e. the Contractor offers higher (more technically advanced or demanding) technical specification values.
- 2.10. The Contractor declares it is capable to fulfil this Contract in the meaning of Section 5 (1) of Act No. 89/2012 Coll., the Czech Civil Code (hereinafter as “CC”), thereupon it will act with knowledge and carefulness which is related to his profession or status within the limits contemplated in this Contract, with particular reference to par. 4.4 below.

2.11. The Contractor is aware that the Client does not act as an entrepreneur in relation to the subject-matter of this Contract. The Client recognizes and accepts that the Contractor does not work as an entrepreneur on a regular basis since the Contractor's public corporate scope envisages development and research and not pursuance of profits.

2.12. By executing this Contract Parties are committed to valid and enforceable obligations in that this Contract has been approved by all duly representative bodies of the Parties in accordance with their respective article of association and by-laws.

3. DEFINITIONS AND REFERENCE TO ADDITIONAL SYSTEM

3.1. All terms with capital letters set out herein, unless otherwise stated herein, shall have the meaning ascribed to them in **Annex 3**. Terms with capital letters in the Annexes shall have the same meaning ascribed to them in the Contract.

3.2. Should the Client exercise the Call Option in accordance with par. 4.6 below, reference to System is construed as reference to the System and the Additional System, unless otherwise stated in the Contract or a specific article or paragraph is not applicable as the context may require.

4. WORK SUBJECT-MATTER; WORK SCOPE

4.1. The Contract concerns the design, assembling, performance optimization, and delivering to the Client at the Client's Place of Business of a complete transport beamline and a number of dosimetric endpoints that will enable the users to apply laser-driven ion beams in multidisciplinary fields in accordance with this Contract (hereinafter the "**System**"). Furthermore, the scope of this Contract mainly encompasses (i) various training services to be provided to the Client's personnel in compliance with Article 13 of this Contract (ii) a royalty free licence, if any according to Article 14, to use the System for the purposes of the use of the ELI-Beamlines Project after completion and (iii) the possible realization of the Additional System, subject to the exercise of the Call Option right by the Client under par. 4.6 (the System and the other parts of the works/services are hereinafter referred to as the "**Works**").

4.2. Without prejudice to the final delivery and assembly of the final System at the Client's Place of Business, the Contractor shall be entitled to deal with various sub-contractors or other persons in furtherance and in compliance with this Contract and to execute and test the various components of which the System is comprised at the places and venues in the world of third parties as it deems appropriate in consideration of the technical specification applicable from time to time. To this end, the Contractor shall be entitled to disclose to any such third party all the information relating to the Client strictly required to achieve the purpose (design, construction, testing or other) without Client's prior consent in derogation from par. 22.3, while however keeping strictly confidential all the other information concerning the Client.

- 4.3. The Contractor is bound to deliver the System described in the Scope of Work under the Annex 2.8.1 with reaching all of the parameters described in the technical specifications, unless the technical specifications are distinguished between Minimal Technical Specifications and Target Technical Specifications. If technical specifications are indicated and qualified as Target Technical Specifications, the Contractor is bound to meet only the Minimal Technical Specifications and it is bound to try to meet the Target Technical Specifications in accordance with par. 4.4. Unless explicitly stated otherwise hereunder, or in the Annexes, any technical specification shall be deemed the Minimal Technical Specification. If some component(s) or/and subsystem(s) and/or the System as a whole prove to reach the Target Technical Specifications, the Contractor does not release any guarantee on the fact that any such obtained performance of Target Technical Specification is being kept by the System uninterruptedly (i.e. a sudden interruption - temporary or definitive - of the performance related to Target Technical Specifications reached by the System is not covered by any guarantee released by the Contractor).
- 4.4. The Contractor shall act with due professional care and use its best effort in order to try and achieve the parameters described in the technical specifications as Target Technical Specifications. For the sake of clarity, in relation to Target Technical Specifications, the Contractor shall not guarantee (nor shall it be responsible) that the Target Technical Specifications will be attained nor shall it release any defect or performance guarantee in connection thereof other than the exercise of the due professional care to achieve the Target Technical Specifications.
- 4.5. Without prejudice to the foregoing and notwithstanding anything to contrary stated in the Annexes, it is agreed between the Parties that the obligations of the Contractor set out in par. 4.3 and 4.4 concerns only the realization of the System to achieve the performances related to the Minimal Technical Specification when run with beams accelerated by “ordinary” accelerators as indicated in par. 3.1 of the Scope of Work. The System shall be designed given the present theoretical knowledge to work with laser ion driven beams, i.e. to allow user’s experiments. The System shall furthermore, without prejudice to Contractor’s limitation of liability under Article 21, also properly function when it will be run through laser ion driven beams, it being understood between the parties that for “functioning” is meant that all the basic and operational functions, e.g. voltage system, magnetic and electric field values, alignment system, vacuum system, etc., which has been already verified during the tests made by Contractor at the Contractor's Place of Business as well as at third party’s venue, shall be guaranteed after the delivery and assembly of the System at the Client's Place of Business. Contractor shall use its good craftsmanship and skills on the basis of its state-of-the-art knowledge to design and assembly the System in a way that the same shall also work with laser driven ion beams at 60 MeV of energy.
- 4.6. The Client is entitled to require the Contractor to update, improve and supplement the System according to specific technical requirements as detailed in Annex 2.8.2 by building and supplying a second in-vacuum transport and diagnostics, switching magnet, TOF, small user vacuum chamber and additional research work of the

Contractor (“**Additional System**”), if and when the Client will be endowed with sufficient financial resources to finance the Additional System. The Additional System can be required by the Client through a call option (the “**Call Option**”) that the Client is entitled to exercise by the expiry, on penalty of forfeiture, of the last day of the 6th (sixth) month starting from the first day of the month following the month in which the Execution Date falls. The consideration for the Additional System is equal to EUR [●], excluding VAT, in words: [●] EUR and shall be paid in accordance with the Consolidated Deliverables and Payment Schedule which shall apply in replacement of the Deliverables and Payment Schedule.

4.7. Should the Client wish that the Contractor performs:

- a) After delivery of the System (i.e. after the issuance of the Final Acceptance Certificate), any specific complex research which is beyond the Scope of Work (i.e. which do not relate to the defect liability to which the Contractor is bound under Article 12 below) and concerns further development and complex improvement of the System;
- b) Before delivery of the System (i.e. before the issuance of the Final Acceptance Certificate), the works and services performed at the Client’s Place of Business which are necessary in order to duly fulfil the Works under this Contract. In case of such necessity, the Contractor shall inform the Client and provide the reasons for which the additional works and services are necessary. The Contractor may perform the additional works and services with the Client’s consent which cannot be withheld, unless giving substantive reasons for it; or
- c) Technical and related support for the Client performed at the site of the Contractor. This support means works and services in a not negligible extent which are provided if the Client needs some document, information or other data (e.g. for the purposes of a verification procedure on the Works’ compliance with the relevant technical norms and standards) which has to be newly created or issued by the Contractor, even though it would not be necessary for the completion of the Works itself. It being however understood that (i) any service under this letter c) shall not exceed 100 (one hundred) working hours and (ii) the Contractor shall discretionally schedule modality and timing of the services requested on the basis of the availability of its personnel and in order not to hinder or delay performance of the Works,

(“**Additional Services**”)

the Client may request such Additional Services in accordance with **Annex 4.7**. The Contractor shall be bound to provide Additional Services under this par. 4.7 to the Client, but in case of Additional Services under letter a) and b), the Contractor is entitled to immediately legitimately refuse to perform (or withdraw from) its obligation by a written withdrawal without giving any reason. In case of Additional Services under this par. 4.7 letter c), the Contractor shall not be bound to provide Additional Services to the Client, if the Contractor, by submitting objectively

grounded reasons, proves that it is not capable to do that. All Additional Services are beyond the Scope of Work and not included in the Price under Article 8 hereunder, thus the Additional Services shall be paid separately to the Contractor in accordance with Annex 4.7. For the sake of clarity, any other obligation of the Contractor to perform other activity expressly stated in this Contract is not deemed to be an Additional Service under this par. 4.7 and as such is ruled by the provisions of this Contract other than this par. 4.7. and therefore included in the Price under Article 8 hereunder.

The total extent of Additional Services provided by the Contractor to the Client under the terms stipulated hereby is limited to the maximal amounts related to the respective type of services as Additional Services. The maximal amount of each type of services is expressed by the number of units as stipulated in the Annex 4.7 hereto regarding this type of service.

- 4.8. The Contractor shall, simultaneously with the delivery of the Contractor's Documents during handover under par. 9.3, provide the Client with a list of components that have only disposable use and therefore will be considered as "consumables" as well a list of subsystems. The list of consumables and subsystems shall include the following items: name, list of potential manufacturers and expected lifetime (assuming a typical operational regime of 12 hours per day), it being however understood that the Contractor does not release any explicit or implicit guarantee on (i) the life of the consumables and subsystems (other than the general guarantee on the System under Article 12); (ii) the continuous availability on the market of a given consumable (in general or by a specific manufacturer).

5. OBLIGATIONS OF THE CONTRACTOR

- 5.1. The Contractor shall design (to the extent specified in the Scope of Work), execute and complete the System in accordance with this Contract and shall remedy any defects in the System pursuant to the Contract. Attached hereto as **Annex 5.1** there is a list of previous authorised sub-contractors of whom the Contractor is entitled (but not obliged) to avail itself for the performance of the Contract without the previous authorization of the Client. For the sake of clarity, no authorization by the Client is needed in the event that a listed sub-contractor, its going concern or assets experience a corporate reorganization (e.g. merger, change of control, demerger, sale of going concern, etc.) which does not alter its capacity to supply or render service to the Contractor. In the event that Contractor decides to entrust a sub-contractor which is not set out in Annex 5.1, it shall require the authorization of the Client which shall not be unreasonably denied (i.e. it must be grounded on objectively proven reasons). The authorization (or the denial) by the Client must be given within 5 (five) Business Days from request by the Contractor according to par. 24.4. Should no answer is given with the above 5 (five) Business Day term, the authorization is intended to have been released by the Client.

- 5.2. The Contractor undertakes to fulfil all of his covenants entered into hereunder with professional care, at his own cost and risk as stated hereunder. The standard of the

Contractor's professional care shall be that of a leading international public research laboratory.

- 5.3. The Contractor shall provide mainly the following documents: (i) a description for the arrangements, methods and the solution used to complete the System (and the Additional System, as the case may be), (ii) the calculations, computer programs and other software, design, drawings, manuals, models and other documents of a technical nature, protocols on System activation elaborated on the basis of the Scope of Work and drafted in reasonable level of detail for the Client to operate, maintain, dismantle, reassemble, adjust and repair the System as they are specified in the Scope of Work under section [RQ5.1] "Documents" (the "**Contractor's Documents**"). The Contractor's Documents shall be in English.
- 5.4. The Contractor shall submit upon request to the Expert Panel feasibility studies, details of the design, arrangements and methods which the Contractor proposes to adopt in relation to each Deliverable as set out in detail in the Deliverables and Payment Schedule for each Deadline, and shall be available to attend discussions with the Expert Panel at all reasonable times with respect to the technical details of the System (and the Additional System, as the case may be), provided that: (i) any sharing of, discussion on technical data with (and proposals by) the Client shall not delay the scheduled Works and the respective Deadlines or in any manner hinder or hamper the performance of the Contractor hereunder; (ii) any final decision on design, methods and technical matters, in general, are left to the discretion of the Contractor, provided that they are not in contradiction with the Contract, in particular with the Client's technical specifications. The Client is not allowed to refuse such Contractor's request, if no objectively grounded reasons are justifying such refusal.
- 5.5. Technical Reports as set out in the Deliverable and Payment Schedule shall be provided for each Deliverable in such level of detail so that a professional in the given area is able to assess the correctness of the Contractor's approach (or the solution agreed with or required by the Client, if applicable) in solutions used for each Deliverable.
- 5.6. The Client's Personnel shall, on condition that any examination would not hinder or delay the execution of the Works, have access to the Contractor's Place of Business expressly dedicated to the realization of the System and/or to any other third party's place directed by the Contractor (as the case may be, depending on the concerned Deliverable) in order to examine the Deliverable at the Inspection Deadlines set out in the Deliverable and Payment Schedule in order to assess the status of realization and assembly of a specific Inspection Deliverable.
- 5.7. The design, the Contractor's Documents, the execution and the completed System shall comply with the Client's technical requirements pursuant to this Contract. In the event the necessity arises or it can be deemed as suitable from the professional point of view of the Contractor, the Contractor is entitled to modify particular design, arrangement or Contractor's Document which has previously been submitted to the

Client if it deems, at its professional discretion, that any such modification would serve better to attain the Scope of Work, provided that any such change has been previously approved in writing by the Client. The Client shall provide a response to the Contractor within 10 (ten) Business Days after delivery of the Contractor's proposal under this par. 5.7, unless the Client - within the same 10 Business Days term - communicates to the Contractor (i) objectively grounded reasons why 10 Business Days are not sufficient to assess the requested change and to provide an answer accordingly and (ii) an alternative deferred term for providing an answer that, in any event, shall not exceed 30 (thirty) Business Days from delivery of the proposal by the Contractor. If the Client fails to respond within the above terms, the approval shall be deemed to have been issued by the Client on the last day of the aforesaid terms.

- 5.8. The Parties mutually agreed on provisions 5.4 and 5.7 above with recognition of the highly sophisticated technological experimental scope of this Contract as envisaged, for instance, in the Risk Management Plan which may require the Contractor to shift to practicable alternative solutions in the event that the one set out in the Contract or in the Contractor's Bid Package is not viable as a result of a feasibility study; the Contractor shall inform the Client accordingly. Any such modification has to be previously approved in writing by the Client and shall be at the Contractor's cost.
- 5.9. Without prejudice to par. 5.4, the Contractor shall not be responsible for any reason whatsoever if the Client's technical requirements in the Scope of Work do not comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards defined by the applicable Laws and if, as a consequence, the Works and the System, once realized, do not comply with said Laws or requirements; to this effect, the Contractor may claim damages that may derive from non compliance of the Works or the System. Without prejudice to the generality of the foregoing, if changed or new applicable standards come into force in the Country (or in any other country whose legislation affects or has its bearings on the Works or System) after the Commencement Date so that the Client's technical requirement in the Scope of Work are no longer – or at any time are not found - applicable, attainable, legal or not implementable for whatever reason, the most diligent Party shall inform the other accordingly and the Parties shall convene to agree on necessary modifications for compliance and additional time for completion and each related cost caused by the change of specific non-European standard legislation shall be borne by the Client. In the event that any modification cannot be realized at all, Article 17 shall apply.
- 5.10. The Contractor shall comply with all applicable and reasonable safety regulation on the Client's Place of Business which shall have been communicated in due time to the Contractor by the Client.
- 5.11. If the Contractor fails to deliver (A) the System by the Final Long Stop Date (as postponed pursuant to this Contract as the case may be) according to par. 9.1.2 and 9.3.4 or (B) Deliverable "D9" by the 10 day term indicated in par. 9.1.1, the Contractor

shall be bound to pay to the Client monetary penalties set forth in the Motivation and Penalty Schedule. Delay contractual penalties shall accrue each day elapsed from either the Deadline related to Deliverable “D9” or from the Final Long Stop Date to the dates stated, respectively, in the Report Acceptance Certificate or in the Final Acceptance Certificate. Delay contractual penalties shall be paid by Contractor within 20 days from (i) the issue of the Final Acceptance Certificate, or (ii) the date on which an agreement is reached by the Parties on delay contractual penalties after the Final Acceptance Certificate is issued or (iii) the date of a final non appealable and binding award or decision thereon under Article 25 (which shall fall after the Final Acceptance Certificate) or, as the case may be, (iv) the date of termination of the Contract after Deadline “D9” or Deadline “D16”, whichever comes earlier. The total amount due under this par. 5.11 shall not exceed the maximum amount of delay contractual penalty stated in the Motivational and Penalty Schedule. Without prejudice to par. 7.3 of this Contract delay penalty shall be the only sanction due from the Contractor which may directly or indirectly derive from such default, i.e. delay on delivery. Delay contractual penalty shall, if so expressly required by the Contractor and to the extent they are not partially or entirely deducted against the Bonuses, be settled in favour of the Client by offsetting any such delay contractual penalties with any Payment Instalment still due to the Contractor as provided in the Deliverable and Payment Schedule or with any amount still owing to the Contractor under the Contract at the time delay contractual penalty are validly payable under this Contract. For no reason whatsoever the Client shall be entitled to delay, withhold or reject a Payment Instalment– or any other sum due to the Contractor hereunder - in favour of the Contractor on account of an alleged accrual of delay contractual penalties (along with denial of Bonuses, as the case may be) inasmuch as they are rejected by the Contractor.

- 5.12. For the purpose of individuating the day of effective delivery of a Deliverable for any purpose under this Contract (including determining whether delay contractual penalties for “D9” and “D16” -under par. 5.11- and delay damage -under par. 7.3- are due or are not due), reference must be made to (i) the day of dispatching of the Technical Report to the Client by the Contractor - with respect to the Technical Report Deliverables – and to (ii) the first day when Inspection activities can be commenced by the Client as notified by the Contractor to the Client under par. 9.1.2 - with respect of the Inspection Deliverables -, and any such dates shall be reported in the Report Acceptance Certificate, in the Acceptance Test Certificate and in the Final Acceptance Certificate, as the case may be.
- 5.13. The Contractor shall be obliged to assure transparent information exchange and shall execute quarterly reports on the progress of the System’s execution in accordance with the Scope of Work. The quarterly report shall be drafted in accordance with the scheme set out in **Annex 5.13** and shall contain a brief description of the activity carried out by the Contractor during the quarter preceding the relevant Deadline. The Client will assess all quarterly reports and will provide the Contractor with its statement on the respective quarterly report. The Contractor shall provide the Client with any information, explanation or documents requested by the Client in its

statement to any quarterly report.

- 5.14. The Contractor shall execute a quarterly update of the Risk Management Plan as well as the Project Execution Plan attached hereto as **Annex 5.14** and **Annex 5.14bis** in accordance with the Scope of Work.
- 5.15. The Contractor undertakes, under the terms and conditions hereof, in accordance with instructions issued by the Client, to:
- a) Archive, without prejudice to Articles 14 and 23, all written material prepared in connection with the execution of the Works hereunder so that its compliance with the archiving principles required within the framework of the RDIOP are ensured and to provide access to the Client to these archived documents until 2025. The Client, without prejudice to Articles 14 and 23, shall be entitled to take possession of these documents from the Contractor free of charge after ten years from the completion of the System hereunder;
 - b) Cooperate, without prejudice to Article 22, during financial inspections carried out in accordance with Act No. 320/2001 Coll., on Financial Inspections, as amended, i.e. among others to allow the Sponsor to access also those portions of the bid submitted within the Negotiated Procedure, the Contract and related documents which may be protected by special legal regulation, given that all requirements set forth by legal regulation with respect to the manner of executing such inspections will have been observed; the Contractor shall bind any of its sub-contractors to comply with this obligation accordingly;
 - c) Observe, without prejudice to Articles 14 and 22, any publicity obligations stemming from RDIOP;
 - d) Provide yearly reports on sub-contractors to enable the Client to fulfil its obligations pursuant to Section 147a of the Act. No. 137/2006 Coll., on Public Procurement, as amended;
 - e) Keep separate records regarding any activities undertaken pursuant hereto. Until final delivery of Deliverable D16, the Contractor shall keep any and all payments received from the Client pursuant hereto on its bank account and monitor these payments separately by an internal virtual accounting records to be called "ELIMAIA" or similarly. The Contractor is obliged to carry out such monitoring and accounting records which shall enable successful execution of any possible audits and/or financial inspections by the competent national as well as EU authorities. The Contractor is entitled to use the funds received from the Client only for the purposes of the activities undertaken hereunder, i.e. to cover direct and indirect costs of the work undertaken hereunder and the fee/margin appropriate to the duly delivered Deliverables.
 - f) The Contractor is obliged to inform the Client about any potential insolvency proceedings or application for extraordinary governmental administration

initiated under Italian Law as against the Contractor.

6. OBLIGATIONS OF THE CLIENT

The Expert Panel.

- 6.1. The Client shall set up and appoint an Expert Panel to carry out assessment of the results of the Contractor's activities hereunder, without prejudice to the Contractor's claims under Article 25. The Client shall notify the Contractor of the panel's composition and take into consideration the Contractor's reasonable suggestions for its composition. The Client shall be entitled to appoint the body in its full discretion (hereinafter the "**Expert Panel**"). The Expert Panel's members shall include suitably qualified engineers and other professionals who are competent to carry out these duties. The Expert Panel shall include five (5) members and shall be appointed within 10 (ten) days of the Commencement Date.
- 6.2. The Expert Panel:
- a) Is a body of the Client with mere advisory functions;
 - b) Reviews and advises the Client on the execution of the System from its technical perspective.
 - c) Except as otherwise stated herein, whenever carrying out duties specified in or implied by the Contract, shall be deemed to act for and on behalf of the Client.
 - d) Has no authority to relieve or impose on either Party any duties, obligations or responsibilities under the Contract.
 - e) May issue to the Contractor (at any time) not binding suggestions which may be useful for the execution of the Works, all in accordance with and subject to the other provisions of the Contract.
- 6.3. If the Client intends to replace the Expert Panel (or any member thereof), the Client shall, not less than 30 (thirty) days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement. The Client shall not replace any member of the Expert Panel with a person against whom the Contractor raises reasonable objection by notice to the Client, with supporting particulars.
- 6.4. Whenever this Contract provides that the Expert Panel shall proceed in accordance with this par. 6.4 to agree or determine any matter which is contentious among the Parties, the Expert Panel shall consult with each Party in an endeavor to reach agreement, by proposing fair determinations in accordance with the Contract, taking regard of all relevant circumstances. The Expert Panel shall give notice to both Parties of each determination, with supporting particulars. Each Party shall give effect to each determination, unless it is challenged under Article 25 by any Party.

Organization of the Client's Place of Business and assistance of the Client.

- 6.5. The Client undertakes to deliver to the Contractor the Client's Documents set out in **Annex 6.5**. The Contractor may copy, use and obtain communication of these documents for the purpose of the Contract.
- 6.6. The Client shall have obtained (or shall obtain) all necessary permissions for the delivery and assembly of the System to the Client's Place of Business in accordance with the Contract.
- 6.7. The Client shall give the Contractor right of access to, and possession of, the Client's Place of Business within such times as may be required to enable the Contractor to proceed in accordance with the program. If the Contractor suffers delay and/or damage as a result of a failure of the Client to enable the Contractor due performance of the Contract, the Contractor shall be entitled to: (i) an extension of time for completion for any such delay; and (ii) any coherent damages.
- 6.8. The Client shall provide reasonable assistance to the Contractor at the request of the Contractor: (i) by obtaining copies of the Laws of the Country which are both relevant to the Contract and explicitly requested by the Contractor; and (ii) for the Contractor's applications for any permits, licenses or approvals required by the Laws of the Country which the Contractor is personally required to obtain, for the delivery of goods, including clearance through customs, and for the import and export of Contractor's Equipment when it is removed from the site.
- 6.9. For any part of Works undertaken by the Contractor pursuant hereto at the Client's Place of Business the following principles shall apply:
- a) the Client's Personnel: (i) shall be managed and directed at the risk and cost of the Client, at the same time ensuring that the Contractor is in a position to discharge its task; (ii) shall co-operate with the Contractor's Personnel;
 - b) The Client shall:
 - (i) Ensure that appropriate general premises related insurances be taken out in order to cover damages and/or injuries which may occur to Contractor's Personnel, third parties or to the System during execution of the Works as being specified in Article 19;
 - (ii) Ensure on site that Client's Equipment are made available to the Contractor as well as electricity, water, gas, etc. as the Contractor may require for the realization of the Works;
 - (iii) Comply with health and safety measures and regulations, including those of the Client's premises;
 - (iv) Take care of the safety of all persons entitled to be on the Client's Place of Business (including Client's and Contractor's Personnel);

- (v) Take care of the safety of Client's Personnel when operating at third party's venue (e.g. for Inspection or for other purpose of the Contract);
 - (vi) Use reasonable efforts to keep the Client's Place of Business and Works clear of unnecessary obstruction so as to avoid danger to these person and let the Contractor execute the Works in a seamless manner;
 - (vii) Provide standard fencing, lighting, guarding and watching of the Works carried out at the Client's Place of Business until completion and taking over by the Client;
 - (viii) Provide any temporary works as needed (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works at the Client's Place of Business, for the use and protection of people on site, the public and of owners and occupiers of adjacent land/property/spaces.
 - (ix) Bear al travel expenses for the Client's Personnel when it is required to operate in Contractor's site or in other third parties' site for the purpose of this Contract.
 - (x) Comply with all the relevant Czech labour laws applicable to the Contractor's Personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
 - (xi) Ensure that any waste created in connection with this Contract at the Client's Place of Business is being dealt with and disposed in accordance with applicable Laws.
- c) The Client shall during activities carried out under this Contract at the Client's Place of Business take all reasonable precautions to maintain the health and safety of the Contractor's and Client's Personnel. The Client shall ensure that suitable arrangements are made for all necessary welfare, work safety and hygiene requirements and for the prevention of injury or disease (e.g. sick bay ad medical staff first aid). The Client shall appoint an accident prevention manager at the Client's Place of Business, responsible for maintaining safety and protection against accidents according to the applicable law. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents.
 - d) The Client shall have made available to the Contractor for his information, prior to the Commencement Date, all existing relevant data in the Client's possession on Client's Place of Business conditions, including environmental aspects.
 - e) The Client shall bear all costs and charges for special and/or temporary rights-of-way which the Contractor may require, including those for access to the Client's Place of Business.
 - f) As the various components and materials of the System and of the Additional

System (as the case may be) are being transported to the Client's Place of Business by the Contractor throughout the execution of the Contract, the Client shall be responsible for receiving them at the Client's Place of Business, unloading, storing and protecting the goods and other things required for the Works. Unpacking operation shall be carried out by the Contractor and any such operation shall be jointly recorded in minutes by the Parties.

- g) The Client shall take precautions to protect the environment, in particular on the Client's Place of Business, in order to limit potential damage and nuisance to the site and to the Contractor's and Client's Personnel or third parties as well as to their properties as a result of the operations under this Contract.
- h) The Client shall make the Client's equipment and means available for the use of the Contractor in the execution of the System in accordance with the details and arrangements stated in **Annex 6.9** ("**Client's Equipment**"). The Client shall be responsible for the efficiency of the equipment and means made available to the Contractor.
- i) The Client shall be responsible for keeping unauthorized persons off the Client's Place of Business where the System is being assembled or built and where the Contractor and the Contractor's Personnel is working. Authorized persons shall be limited only to the Contractor's Personnel and the Client's Personnel.
- j) During the execution of the System, the Client shall keep the Client's Place of Business free from all unnecessary obstruction, and shall make available to the Contractor storage rooms for Contractor's Equipment. The Client shall clear away and remove from the Client's Place of Business any wreckage, rubbish and temporary works which are no longer required during the intermediate or final phase of the execution of the System.
- k) The Client shall be the only responsible, after the taking – over of the System, (i) to clear away and remove all surplus material, wreckage, rubbish and temporary works (ii) to leave the Client's Place of Business related to the System in a clean and safe condition. The Contractor may retain on the Client's Place of Business, during the period necessary to make good defects, such goods and equipment as are required for the Contractor to fulfil obligations under the Contract.
- l) The Client shall be responsible under the relevant provision of the applicable laws for its personnel when operating at Client's, Contractor's or at third party's venue.
- m) The Client shall be liable for any damage, costs or expenditure which may derive from the Client's breach of par. 6.9 a) to l).

Client's financial guarantees

6.10. The Client shall submit, at the Execution Date, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Client to pay the part of the Price related to Phase One in accordance with Article 8. If the Client intends to make any material change to his financial arrangements, the Client shall give notice to the Contractor with detailed particulars for approval by the Contractor.

7. PERIOD OF EXECUTION

7.1. The Contractor shall commence the design and execution of the System as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the System with due expedition. In the event of exercise of the Call Option in accordance with par. 4.6, the Contractor shall commence the design and execution of the Additional System as soon as is reasonably practicable after receipt from the Client of communication of exercise of the Call Option.

7.2. The Parties have agreed that the System shall be executed by the Contractor according to timing set out in the Deliverables and Payment Schedule. The Contractor shall complete the whole System within the Final Long Stop Date. The Final Long Stop Date shall include achieving the passing of the Test of Sub-System under par. 9.2 and the issuance of the Acceptance Test Certificate.

7.3. The Contractor shall be responsible for the timely and complete delivery of the System as a whole within the Final Long Stop Date. For any reason whatsoever shall late delivery of the Deliverable in respect of each Deadline be reported and duly justified by the Contractor to the Client, while the Contractor has to suggest what steps at what time schedule shall be taken in order to catch up such delay. While doing so, thereupon for no reason whatsoever shall sanctions, fines or penalty of whatsoever nature be attributable to or imposed on the Contractor for late delivery of the Deliverables in respect of each Deadline – except for Deliverable “D9” and “D16” and except as otherwise stated in this par. 7.3. If the Contractor breaches its obligation under this par. 7.3, the Client shall be entitled to command the Contractor to suspend progress of part or all of the System and the Contractor is nonetheless bound to ensure that the System is protected, stored and secured against any deterioration, loss or damage. If the Client suffers damage from the delays, the Client shall be entitled to claim damages in the event that the delay is not justified by grounded and evidenced reasons by the Contractor and/or the delay period exceeds [60] days. If the delay causes obviously, i.e. taking into account all relevant circumstances, that the System cannot be delivered on time, the Client may withdraw under Article 15, par. 15.1.2 hereof.

7.4. The Contractor shall be responsible for unpacking and visual checking of transported components of the System upon Deliverable “D16”.

7.5. The Contractor with the previous consent of the Client granted upon Expert Panel's recommendation shall be allowed to re-schedule the Deadlines of the Deliverables – except Deliverable “D9” and “D16” – by changing the order of execution of the

Deliverables (by postponing or advancing execution of one or more Deliverable) and any such consent shall not unreasonably withheld if the Contractor, by submitting objectively grounded reasons, proves that such re-scheduling is useful to expedite the accomplishment of the System, because of technical reasons or if it is necessary with respect to the internal organization of the Contractor's resources.

- 7.6. If the Contractor suffers delay and/or damage from complying with forced suspension of works and/or from resuming the work, the Contractor shall be entitled to (a) an extension of time for completion for any such delay and (b) any coherent damages in the event that the forced suspension is not justified by grounded and evidenced reasons by the Client.
- 7.7. The Contractor shall promptly give notice to the Expert Panel and the Client of specific probable future events or circumstances which may adversely affect the System, potentially increase the Price in accordance with the Public Procurement Act or delay the execution of the System, update the Project Execution Plan and the Risk Management Plan accordingly and indicate what measures intends to adopt in order to mitigate such delay.
- 7.8. Without prejudice to any postponement of the Final Long Stop Date pursuant to this Contract and the applicable Law, any other deferment of the Final Long Stop Date shall be mutually agreed by the Parties exclusively by written agreement.

8. PRICE OF WORKS; INVOICING; PAYMENT

- 8.1. The price of Works, with the exclusion of the Additional System and the Additional Service whose additional considerations are set forth in par. 4.6 and 4.7, shall not exceed the aggregate maximum amount of EUR [●], excluding VAT, in words: [●] EUR (hereinafter the "**Price**"). The Price shall be a lump sum but shall be subject to adjustment under the terms and conditions of this Contract and the applicable Law and for no reason whatsoever shall be subject to reduction except for the Price reduction of the statutory reason.
- 8.2. Save as otherwise stated herein, the Price shall cover any and all performance to be provided by the Contractor in order to properly execute and deliver the Works hereunder, and includes all costs accrued by the Contractor during the execution of the Works and its handover at Client's Place of Business including all fees, customs, transportation costs and duties as well as all costs of the Contractor arising in connection with creating any intellectual property and acquiring and maintaining its protection, if existing (it being understood that there is no obligation on the part of the Contractor to apply for registration of intellectual property rights – copyrights, know-how or patents – that may be arise from, or be available for registration in relation to, single components, Deliverables, or the entire System when completed).
- 8.3. The Parties agreed that the Price shall be payable in different Payment Instalments as stipulated in the Deliverables and Payments Schedule on condition of acceptance of relevant Deliverable by the Client according to the following Article 9; the First

Payment is being paid by the Client upon Execution Date in accordance with the Deliverable and Payment Schedule. It is understood by the Parties that for one or more Payment Instalments are paid to the Contractor in a pre-payment fashion in that it embodies also a portion representing the value of one or more Deliverable still to be realized by the Contractor as better detailed in the Deliverables and Payment Schedule, nonetheless no interest at all shall accrue in favour of the Client on any such prepaid portions.

- 8.4. Upon application for any interim Payment Instalment in relation to each Deliverable according to the Deliverables and Payments Schedule, the Contractor shall submit to the Client a statement (the “**Payment Statement**”) which sets forth:
- a) As the case may be, the relevant Technical Report for the Technical Report Deliverables or an invitation for Inspection for the Inspection Deliverables, in accordance with, respectively, par. 9.1.1 and 9.1.2;
 - b) The request of Payment Instalment quoted in the Deliverables and Payments Schedule (including past Deliverable completed and not yet paid);
 - c) Any other additions which may have become due to the Contractor under the Contract or otherwise.
- 8.5. Upon issue of Report Acceptance Certificate pursuant to par. 9.1.5, of the Acceptance Test Certificate pursuant to par. 9.2.5 or of the Final Acceptance Certificate pursuant to par. 9.3.4. below, as the case may be, the Contractor shall issue a corresponding invoice which shall be paid according to par. 8.11 below.
- 8.6. **Early Delivery Option and Bonuses.** Should the Contractor be in position to deliver any Deliverable in advance in respect of the envisaged Deadline, simultaneously with the delivery of the Payment Statement (if applicable), it shall inform the Client accordingly with at least [30] days’ notice and par. 8.3, 8.4 and 8.5 shall apply hereto *mutatis mutandis* save as otherwise stated in this par. The Client, upon deliverable of the early Deliverables shall be bound to issue, respectively, the Report Acceptance Certificate, the Acceptance Test Certificate or the Final Acceptance Certificate (as the case may be) pursuant to the Contract and shall make its best effort to effect early payment in advance in respect of the original Deadline of the concerned Deliverable. Provided that, in any event, the Contractor shall be entitled (i) to issue the invoice under par. 8.11 below from the expiry of the 20th day following issuance of the respective Report Acceptance Certificate, Acceptance Test Certificate or Final Acceptance Certificate, as the case may be, and (ii) be paid as stated in par. 8.11. The Bonuses shall accrue throughout the life of the Contract – in terms of early delivery or better performance in relation to single Deliverable as better defined in the Motivational and Penalty Schedule –and shall be “payable” solely in the form of setoff as against delay contractual penalties according to the same payment terms provided in par. 5.11 for the delay contractual penalties. It is agreed by the Parties that:
- a) The Contractor can allocate and offset at its full discretion, partially or entirely, the Bonuses accrued from time to time as against possible delay contractual penalties

accrued in relation to Deliverable "D9" and/or "D16";

b) The maximum number of days resulting from Bonuses that can be offset as against delay contractual penalties accrued in relation to Deliverable "D9" and "D16" is 30 (thirty) days for each Deliverable.

- 8.7. **Partly Payment Release Option.** In the event that not all of the criteria of a specific Deliverable are met at the given Deadlines (and the Report Acceptance Certificate, the Acceptance Test Certificate or the Final Acceptance Certificate is delayed for reasons imputable to the Contractor), the Contractor shall be nonetheless entitled to submit, at each respective Deadline, a Payment Statement for a (partial) payment of the value of the portions of the Deliverable effectively realised/delivered which meet the agreed requirements according to par. 17.7. The amount shall be limited by Client considering the following criteria: (i) value of the work performed toward completion of the corresponding and/or preceding Deliverables, (ii) plan submitted by the Contractor addressing anticipated completion of the corresponding and/or preceding Deliverables and (iii) risks connected with delay of payment with regards to fulfilling future Deliverables on time.
- 8.8. **Delayed Payments.** If the Contractor does not receive payments in accordance with the Deliverables and Payments Schedule or with this Article 8 or by reason of any other sum to which is entitled under this Contract, the Contractor shall be entitled (i) to receive interests on late payment compounded daily on the due amount(s), being any such financial charges calculated at the daily rate of 0,01% accrued on the due sum and (ii) after not less than [30] days' notice to the Client, to suspend work unless and until the Contractor has received reasonable evidence of the payment. The Contractor's action shall not prejudice its entitlements to financing charges under this article 8.8 and its right to termination under Article 16 below. Payment of interest shall, at the discretion of the Contractor, be paid to the Contractor either (i) by setoff with any sum due by Contractor to the Client under this Contract or (ii) in immediate available funds each month of accrued interest. The interests under this par. 8.8 shall not affect the Contractors right to damages and/or right to claim extension of time for completion of the Works.
- 8.9. **Payment Schedule Modifications Option.** In the event that modifications to the time schedule of the Payment Instalment within the Price are required (in terms of different time and payment allotments) in order to execute the Works, as determined by the Contractor in planning and updating the process and due to internal Contractor's accounting procedures, then Contractor shall promptly notify the Client. Contractor shall endeavour to provide as much advance notice as possible, and will in all cases be no shorter than 30 (thirty) days. At Client's sole discretion, changes to the Payment Instalment (without any variation of the expected Deliverable) as required by the Contractor under this par. 8.9 may be implemented, but the total funds shall not exceed the maximum Price as determined under Article 8.1, unless otherwise stated in this Contract. For changes required by the Contractor with a notice period from 30 (thirty) to 40 (forty) days, changes will be limited to an additional sum in favour of the Contractor equal to max. +10% in excess of the upcoming Payment

Instalment.

- 8.10. The Client is liable to pay the VAT to the respective applicable VAT authority (Tax Office). The Client expressly represents and warrants to the Contractor that the payment of the Price in relation to the Works are not subject to any other indirect tax, levy or charge under the laws of the Czech republic and it shall compensate any damage to the Contractor suffered as a result of the aforesaid representation and warranty being untruth, misleading, false, incorrect, incomplete or inaccurate.
- 8.11. The due date of payment of all invoices issued hereunder shall be 30 (thirty) days from the date of its delivery to the Client, provided that the Contractor is entitled to send the invoice also via certified e-mail. A payment of the amounts invoiced shall be acknowledged to be effective on the day such payment is effectively remitted to the bank account of the Contractor. The tax documents – invoices issued by the Contractor hereunder shall be in compliance with all applicable legal regulations of the Country which include the following:
- a) Commercial name and registered office of the Contractor;
 - b) Tax identification number of the Contractor;
 - c) Commercial name and registered office of the Client;
 - d) Tax identification number of the Client;
 - e) Number of the tax document;
 - f) Quantity (extent) and nature of performance supplied or services rendered;
 - g) The date of issue of the tax document;
 - h) The day of the supply of goods or services or the date of the payment on account, whichever comes earlier, insofar as they differ from the date of issue of the tax document – invoice;
 - i) Unit price excl. VAT, eventually discount, should it not be included in the unit price;
 - j) Tax base;
 - k) Tax rate;
 - l) Tax amount (in Currency); and
 - m) Statement that the performance is provided in connection with the “ELI: EXTREME LIGHT INFRASTRUCTURE” project, Reg. No. CZ.1.05/1.1.00/02.0061;
- All the tax documents – invoices shall also be in compliance with agreements on avoidance of double taxation, if applicable in particular cases.
- 8.12. Each payment due to the Contractor under this Contract shall be credited in Euros to the bank account identified herein in the headings.
- 8.13. The last invoice of each calendar year must be delivered by the Contractor to the Client’s mail room no later than on December 15th (fifteenth) of that calendar year. Should a tax document – invoice not be issued in compliance with payment terms defined herein or should it not meet the statutory requirements, or if it is not

delivered to the Client by deadlines set hereunder, the Client is entitled to return the tax document – invoice back to the Contractor as incomplete, or incorrectly issued, for its correction and re-issue, within 15 (fifteen) days from the date of its delivery to the Client. In such a case, the Client shall not be in default with the remittance of the related payment, and the Contractor shall issue a corrected invoice with a new due date which shall commence to run on the day of delivery of the corrected or re-issued tax document – invoice to the Client.

8.14. The Client’s invoicing details are given in Article 1 above.

9. PRELIMINARY ASSESSMENT OF EXECUTION, ACCEPTANCE PROCEDURE, TEST OF SUB-SYSTEM AND HANDOVER

9.1. Technical Reports - Inspections - Acceptance Procedure of Deliverables

9.1.1. **Preliminary assessment of Technical Report Deliverables.** The execution of Technical Report Deliverables shall be recorded and assessed in a Technical Report which shall be prepared by the Contractor in the course of performing the Deliverable (as supplemented and amended pursuant to par. 5.4 and 9.1.4) and the Contractor, without prejudice to par. 7.3, shall exert its best effort to deliver it to the Client for its review under par. 9.1.4 within 10 (ten) Business Days of the relevant Deadline; if the Deadline of the Technical Report coincides with a Deadline when a Payment Instalment falls due, the Technical Report shall be enclosed in the Payment Statement.

9.1.2. **Inspection.** Contractor shall notify to the Client with a minimum of 15 (fifteen) days’ notice the invitation to examine the Inspection Deliverables by sending a communication setting forth the venue and date during which examination activities shall be carried out, including the maximum time available for completing Inspection. If the Deadline of the Inspection coincides with a Deadline when a Payment Instalment falls due, the aforesaid communication shall be enclosed in the Payment Statement. Without prejudice to par. 7.3, Contractor shall exert its best effort to cause that the first day of Inspection falls within 10 (ten) Business Days of the respective Deadline.

9.1.3. The Client shall effect the Inspection jointly with the Contractor and the minutes of the Inspection shall be recorded accordingly.

9.1.4. In order to facilitate preliminary assessment of the Technical Reports or to provide information useful for the Inspection in relation to each Deliverable to come, in timely fashion before elapse of each respective Deadline the Contractor will convene meetings with the Client with 4 (four) days’ notice as it deems appropriate to inform adequately the Client about the progress and to examine and review each Deliverable. The meetings may be held, as appropriate, via teleconference or video teleconference or, should they involve future Inspection, at the Client’s Place of Business or at the Contractor’s venue or at other third parties’ place as the Contractor sees fit, at times corresponding to mid and final stage (i.e. close before the relevant

Deadline) of the progress in execution of each particular Deliverable. The meeting taking place at the Client's Place of Business at the Contractor's own expense shall not exceed 2 (two) meetings. The objective of each such meeting shall be the review of the preliminary contents that shall be included in the Technical Report to be submitted by the Contractor or to share information about the Deliverable due to be Inspected. The result of each such meeting shall be the Client's statement containing comments and requirements in writing, to which the Contractor will respond, i.e. the Contractor shall evaluate and, if reasonable, it shall accept comments and requirements made by the Client. Without prejudice to par. 5.4, should the Contractor deem any of the Client's comments or requirements unacceptable for the Work, he shall be obliged to specify in writing the reasons for such refusal.

9.1.5. **Report Acceptance Certificate.** The Client shall issue to the Contractor, without undue delay and in any event not later than 15 (fifteen) days (i) after the Contractor has delivered to the Client the Technical Report, in the event of Technical Report Deliverable or (ii) from completion of the Inspection, in the event of Inspection Deliverable:

- (a) a confirmation attesting to the due execution and the unconditional acceptance of a specific Deliverable, should the final Technical Report or the Inspection of the Deliverable comply with the Scope of Work (hereinafter the "**Report Acceptance Certificate**"), or
- (b) a rejection report containing duly motivated objections not to accept and the specific remedies to be adopted for the Report Acceptance Certificate to be issued, reflecting, in the event of Inspection, the results of the Inspection.

9.1.6. Ungrounded failure to attend the Inspection in compliance with the communication sent by the Contractor under par. 9.1.2 above, to issue the Report Acceptance Certificate under par. 9.1.5 letter (a), or to issue the rejection report under letter (b) is tantamount as having issued by the Client a Report Acceptance Certificate without reserve. In the event of issue of a rejection report, without prejudice to the Contractor's claim under Article 25, the procedure under this par. 9.1 shall be repeated and the Contractor after having remedied any possible fault or upon reaching an agreement with the Client shall issue a new Payment Statement.

9.1.7. **Fulfilment of the obligation.** Without prejudice to par. 9.4.2, the Contractor's obligation arising on the basis of Technical Report or Inspection in relation to a specific Deliverable as specified in the Scope of Work shall be deemed to have been fulfilled by the issue of the Report Acceptance Certificate by the Client confirming the completeness, correctness and compliance of the Technical Reports as well as of the Plant Inspected and the unconditional acceptance of the related Deliverable.

9.2. **Tests of Sub-System**

9.2.1 The Contractor shall carry out the Tests of Sub-System as set out in Sec. 10 and points "D12.1" and "D12.2" of the Deliverables and Payment Schedule (or Consolidated Deliverables and Payment Schedule) in accordance with this par. 9.2 and par. 9.4.

- 9.2.2 Starting from June 1, 2015, and from September 1, 2016 onwards, the Contractor shall communicate to the Client, with a 15 (fifteen) days' notice, dates, venues and expected duration of various testing sessions related to, respectively, the Tests of Sub-System "D12.1" and "D12.2", which may take place at various third parties' sites (including the Contractor's venue) during a period starting from the aforesaid dates until expiry of their respective Deadlines.
- 9.2.3 As soon as the System (or part thereof) has been subject to the conclusive session of the Tests of Sub-System described in par. 9.2.1, the Contractor shall exert its best effort to submit to the Expert Panel a certified report of the results of these tests within 10 (ten) Business Days after the concerned Deadlines have expired (the "**Preliminary Test Certificate**"). Payment Statement shall be delivered to the Client pursuant to par. 8.4.
- 9.2.4 If the Tests of Sub-System are being unduly delayed by the Client, par. 9.4.5 shall be applicable.
- 9.2.5 The Client shall, not later than 15 (fifteen) days after the Preliminary Test Certificate has been delivered to the Expert Panel, issue a certificate to the Contractor stating that the System has been successfully tested in accordance with the Contract the last day of the Test of Sub-System and to what extent the technical requirements set out in the Scope of Work have been met (the "**Acceptance Test Certificate**"), unless it has grounded reasons to reject the tests or to accept them with reserve. If the Client fails to issue within the above 15 day term (i) the Acceptance Test Certificate or (ii) a report setting out the objective sound reasons why the Works are not substantially in accordance with the Contract and specifying the works required to be done for the Acceptance Test Certificate to be issued, the Acceptance Test Certificate shall be deemed to have been issued without reserve on the last day of Test of Sub-System.
- 9.2.6 If the Works fail to pass the Tests of Sub-System, because any design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Contractor shall then promptly make good the defect, and the Expert Panel or the Contractor may require the Test of Sub-System on any related work to be repeated under the same terms and conditions.
- 9.2.7 If the System fails to pass the Test of Sub-System repeated under par. 9.2.6 above, the Client shall be entitled to:
- a) if the failure deprives the Client of substantially the whole benefit of the System, reject the System, in which event the Client shall have the same remedies as are provided in point (iii) of par. 12.2; or
 - b) issue an Acceptance Test Certificate.
- 9.2.8 In the event of par. 9.2.7 letter b), the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Client as a result of this failure.

9.2.9 **Fulfilment of obligation.** Without prejudice to par. 9.4.2, the Contractor's obligation arising on the basis of the expected performance and running conditions of the System in relation to the specific Deliverable "D12.1" and "D12.2" as specified in the Scope of Work shall be deemed to have been duly fulfilled by the issue of the Acceptance Test Certificate by the Client, confirming the completeness, correctness and compliance of the Technical Reports, as well as of the Inspected components and their performance and the unconditional acceptance of the related Deliverable.

9.3. **Handover**

9.3.1 Except as stated in par. 9.2.7 and 9.2.8, the System shall be taken over by the Client:

- a) At the Client's Place of Business according to the provisions of this par. 9.3, unless specified otherwise in this Contract, or unless the Parties agree otherwise;
- b) When the Works have been completed in accordance with the Contract, also beyond the Final Long Stop Date, the Test of Sub-System have been successfully carried out and the Contractor has provided the Client with "*as built*" records and drawings of the execution of the System (comprised of all the Deliverables) and the operation and maintenance manuals as they are contemplated by the Contractor's Document; and
- c) Through the issue of the Final Acceptance Certificate attesting completion of the last Deliverable "D16".

9.3.2 In case that there is any minor outstanding work, back logs and defects which will not substantially affect or hinder the use of the System for its intended purpose, the Client is entitled to issue the Final Acceptance Certificate and the Works shall be deemed to be duly executed and completed in accordance with the Contract. If the Client does not accept Deliverable "D16" or its part for a minor defect or backlog, the defects and backlogs have to be specified in writing by the Client and the Contractor is obliged to repair/remove the defects and backlogs within a period of 30 (thirty) days, unless it is not possible for objective grounded reasons, in which case the Parties shall agree on another reasonable period. Should these defects and backlogs not be repaired/removed within the above term (or the other term agreed by the Parties), the Client will be entitled to repair/remove them at the Contractor's costs. In the event that proper and timely repair/removal of the minor outstanding works, defects and backlogs is eventually carried by the Contractor under this par. 9.3.2, the time spent by the Contractor for any such remedy and repair shall not be considered a delay for which the Contractor is accountable for any purpose under this Contract. For the sake of clarity, if timely remedying of minor outstanding works, defects and backlogs is completed by the Contractor after the Final Long Stop Date and the Final Acceptance Certificate is issued, the delivery of Deliverable "D16" is meant to be delivered on time by the Final Long Stop Date.

9.3.3 The Client shall provide all apparatus, assistance, documents and other information, electricity, equipment, consumables, instruments, labour, materials and suitably

qualified and experienced staff, as are required by the Contractor to carry out the specified assembly operation of Deliverable "D16" in an efficient and flawless manner.

9.3.4 The Client shall be notified by the Contractor under par. 9.1.2 and shall proceed to inspect the final Deliverable "D16" according to the instructions set out by the Contractor in the relevant Payment Statement and, within 5 (five) Business Days from completion of the Inspection, shall issue the taking-over certificate to the Contractor, stating that the Works have been completed in accordance with the Contract the first day of Inspection (the "**Final Acceptance Certificate**"), unless it has grounded reasons to object or to express acceptance with reserve. If the Client fails to attend the Inspection or to issue within the above 5 day term (i) the Final Acceptance Certificate or (ii) a report evidencing the objective sound reasons why the Works are not substantially in accordance with the Contract and specifying the work required to be done for the Final Acceptance Certificate to be issued, the Final Acceptance Certificate shall be deemed to have been issued without reserve on the first day of the Inspection.

9.3.5 **Fulfilment of the obligation.** Without prejudice to par. 9.4.2, the Contractor's obligations arising on the basis of the Scope of Work shall be deemed to have been duly and appropriately fulfilled by the issue of the Final Acceptance Certificate confirming completeness, correctness and compliance of the last Deliverable "D16" and the unconditional acceptance of the System as a whole by the Client.

9.4. **Common provisions for the acceptance procedure and tests**

9.4.1 The Client shall not be obliged to verify correctness of all calculations and technical solution details during the course of the acceptance procedure.

9.4.2 Without prejudice to par. 5.4, the assessment of and subsequent acceptance of the individual Deliverable preceding the issue of the Final Acceptance Certificate does not release the Contractor from his liability to correctly and completely assemble the various components of the System under the final Deliverable "D16".

9.4.3 Should it be necessary to modify any part of the already accepted Deliverable in order to meet the parameters expected of the completed Work, the Contractor undertakes to perform such modifications and accepts that the costs related thereto are included in the Price.

9.4.4 If the Client does not attend the duly notified sessions of Tests of Sub-System under par. 9.2.2 without duly submitting a reasonable written justification within 10 (ten) days of receipt of notice by the Contractor, the Contractor may proceed with the tests and the Tests of Sub-System shall then be deemed to have been made at the Client's presence.

9.4.5 If the Contractor suffers delay and/or incurs costs because Inspections or Tests of Sub-System, provided that are validly and timely initiated under this Contract, are

thereafter delayed or suspended by the Client, the Contractor shall be entitled to (i) an extension of time for completion for any such delay and (ii) any coherent damages.

9.4.6 Venue and time of Inspections and Test of Sub-System shall be discretionally decided by the Contractor, on the basis of the kind of tests, of the availability of facility – also belonging to third parties - which would enable the Contractor to carry out tests and, along with the Client, Inspection in a safely and efficient manner and of the reasonable organizational needs of the Client.

9.4.7 The Parties may upon mutual agreement replace meetings in person by other forms of communication, as long as they agree on such in writing.

9.4.8 Save as otherwise stated in this Contract, each Party shall bear its expenditures related to their participation in meetings at the other Party's seat; costs which would however arise due to error, faulty performance or breach by the Parties shall be borne by the Party which caused such breach.

10. TRANSFER OF OWNERSHIP RIGHTS

10.1. The ownership rights to the System shall, to the extent consistent with the Laws of the Country, pass to the Client upon handover of the System, i.e. on the date stated in the Final Acceptance Certificate.

11. VARIATION

11.1. Variations to the Scope of Work shall be performed only upon agreement of the Parties in compliance with the applicable Law.

12. DEFECTS LIABILITY AND WARRANTY

12.1. Warranty for quality under Section 2619 par. 1 in connection with Section 2113 et al. of the CC is provided by the Contractor with limitations stipulated by this Contract. All defects shall be remedied by the Contractor at its risk and costs, if and to the extent that the respective defected work is not complying with the Contract. The Client is obliged to claim any defect of the Works without undue delay.

12.2. The Client is, in compliance with Section 2615 in connection with Section 2106 et al. of the CC, entitled to demand (i) removal of the defect (in form of new supply or reparation), (ii) proportional discount from the Price or (iii) withdraw from the Contract (in cases of substantial incapability of the System to reach the Minimal Technical Specifications).

12.3. The guarantee released by the Contractor under this Article 12 in favour of the Client shall apply only if the System is regularly maintained according to the Contractor's Documents or to the instructions that the Contractor may give to the Client from time to time during the execution of the Contract and if the System is not altered, modified or improperly run or is howsoever damaged other than for defects for which the Contractor is liable under this Contract.

- 12.4. Although the System is designed and executed to work also with laser ion driven beams pursuant to par. 4.5, no guarantee on reaching the Minimal Technical Specifications shall be granted by the Contractor when utilised with laser ion driven beams. Notwithstanding to it, the Contractor guarantees that the System will have no defect, will work well and will be “functional” in the sense of par. 4.5.
- 12.5. Warranty claim can be submitted only within the Defect Notification Period (“**Warranty Claim**”) containing information of the nature of the defects or malfunctioning and/or of the underperformance, the possible causes or origins thereof, which portion of the System are affected, any suggestion or any other element useful to tackle and solve the problem. Any submission of Warranty Claim with undue delay or after the Defective Notification Period is elapsed would cause forfeiture of any Client’s right in this respect. Warranty Claim transmitted without undue delay by the Client even on the last day of the Defect Notification Period shall be deemed to have been exercised in time. The Defect Notification Period in relation to the whole System shall extend by any period that passed between the claim notification and removal of the defect, provided that (and by the period during which) the whole System cannot be run at all by reason of remedying the defect, otherwise it shall extend only in relation to the portion of the System affected by defect and/or malfunctioning and/or underperformance.
- 12.6. The Contractor undertakes to review all submitted Warranty Claims, duly notified and timely notified under this Article 12, and to notify the Client whether it recognizes and accepts or rejects the Warranty Claim within 15 (fifteen) Business Days of the date on which the Warranty Claim is delivered to it by the Client and to repair/remove any defect within 60 (sixty) Business Days of the date on which the claim is delivered to it by the Client, unless such repair/removal within such time is not reasonably possible considering the kind of defects or malfunctioning. In such case the Parties may agree on another deadline for repair/removal of the defect. The Client shall cooperate in good faith with the Contractor to individuate, assess and solve the defects, e.g. by making available all the necessary means at the Client’s Place of Business.
- 12.7. The Contractor shall be obliged to remove defects on the Work also in instance when the Contractor is of the opinion that he is not liable for such defects. Cost accrued in connection with the removal of defects in these disputable cases shall be borne by the Client until such dispute is resolved.
- 12.8. Removal / remedy of claimed defect(s) and / or malfunctioning shall be reported into a protocol attesting Parties’ confirmation of the removal of defect(s) and / or malfunctioning.
- 12.9. Upon issue of the Final Acceptance Certificate, the Contractor shall also pass to the Client, where objectively feasible according to the contractual relationships between the Contractor and the third parties sub-contractors, any existing remaining warranty related to the System and its components and, in the event warranty needs to be

used, Contractor, without being in any manner whatsoever this par. construed (or purported to be construed) as an extension of guarantee by the Contractor under this Contract or establishing any joint or several liability with any such third party sub-contractor, shall provide any reasonable assistance to apply the warranty towards these third parties.

12.10. The rights from a defective performance of the Contractor, unless derogated by this Article 12, are governed by the relevant provisions of the CC.

13. TRAINING OF THE CLIENT'S EMPLOYEES – ASSISTANCE BY CONTRACTOR

13.1. Training after completion of the System

13.1.1 The Contractor undertakes to train at the Client's Place of Business 2 (two) of the Client's Personnel (with the following background/specialisation: engineer and physicist) for the development, operation and maintenance of the System.

13.1.2 The Contractor shall ensure the training during execution of Deliverable "D16" and during assistance by the Contractor according to 13.2.1 hereof, subject to signing of non-disclosure Agreements by the relevant Client's employees and the Client shall remain jointly liable with the employees for any breach of duty of confidentiality or for any damage and injury that any such Client's employees may cause to the Contractor, to the Contractor's property (including the Contractor's Equipment and the System), the Contractor's personnel or to any third party.

13.1.3 The Contractor has the right to exclude any of the Client's personnel from training for any well-grounded reason, in particular for any unresolved issues relating to safety, health and security or for disciplinary reasons in the Contractor's workplace or in the Client's Place of Business. Reasons for the exclusion of the Client's personnel must be specified by the Contractor in writing and delivered to the Client and to the member of Client's personnel involved.

13.1.4 Should the Contractor exclude any of the Client's Personnel from training, the Client shall be entitled to send, for the purposes of the relevant training, a substitute for each member of his personnel thus excluded; it being understood that the Contractor is bound to provide in aggregate the maximum training services set out in par. 13.1.5 below.

13.1.5 Any training activity shall not exceed an aggregate number of 10 (ten) days per trainee (max. 8 hours per day).

13.1.6 Any such provision of services under this par. 13.1 is included in the Price.

13.2. Assistance by the Contractor

13.2.1 The Contractor shall cause a maximum number of 2 (two) Contractors' engineers/physicists to supervise and provide technical advice to the Client during the final commissioning at the Client's Place of Business when the Client's laser ion

beams will be focused on target and the laser-target interaction will be optimized by the Client, provided that any such focusing on target by the Client starts within 12 (twelve) months from the issuance of the Final Acceptance Certificate. The commencement of laser-target interaction optimization shall be communicated by the Client to the Contractor with 30 (thirty) days' notice. The services under this par. 13.2 will be limited to a maximum aggregate number of 60 (sixty) man-days, i.e. in fact 30 (thirty) days, to be divided in three different slots of services of 10 (ten) days each, provided that each service is rendered jointly by the 2 (two) engineers/physicists, and shall be available to the Client until the expiry of the 15th (fifteenth) month after the issuance of the Final Acceptance Certificate, i.e. the last day of the last slot shall fall within the last day of the 15th (fifteenth) month after the issuance of the Final Acceptance Certificate.

13.2.2 Each Party bears its travelling, accommodations, feeding and subsistence expenses.

13.3. **Internship**

13.3.1 The Contractor shall ensure the training in the form of internship or participation at the Contractor's venue of a maximum number of 2 (two) Client's students / assignees of scholarships/ employees in the ambit of R&D purposes for subject matters related to the building and implementation of the System. Any such training shall be effected during the building of the System from the Commencement Date until handover of the System under par. 9.3 for an aggregate period of days not exceeding 30 (thirty) days for each of the 2 (two) individuals (unless agreed otherwise in written form). Travelling, accommodations, feeding and subsistence expenses of designated 2 (two) Client's students / assignees of scholarships/ employees will be paid by the Client and are excluded from the Price. Par. 13.1 and 6.9 shall, where applicable, apply hereto *mutatis mutandis*.

14. **INTELLECTUAL PROPERTY RIGHTS**

14.1. For the purpose of this Article 14, "Intellectual Property Rights" shall have the meaning set out in par. 14.8. In the event that in connection with the execution of this Contract the System as a whole or any part thereof (including the Contractor's Documents) shall constitute a copyrighted work within the meaning of the Act No. 121/2000 Coll., on Copyrights, Rights Related to Copyright and on amendment of certain other Acts, as amended (hereinafter referred to as the "**Copyright Act**"), such will be considered as the System under commission as defined in § 61 of the Copyright Act. In such case, the Contractor grants the Client a royalty-free non exclusive license to use copyright work (or its part) for the limited purposes of this Contract (i.e. use of the System) and/or for the purposes of research and education under par. 14.4, for the economic rights' duration of the copyright works on the territory of the World (with no implicit or explicit renewal after expiry of the of the first term of duration).

14.2. In the event that (i) the execution of this Contract will result into System or any part thereof to be eligible to be registered through any form of industrial rights (i.e. trademark, patent or invention, utility or industrial design, etc.) protected according

to the valid legal regulation in the Country or in another country, or international, supra-national or regional body, and (ii) the Contractor, at its full discretion, decides to register the System accordingly, the Contractor undertakes to grant the Client for the protection period of the relevant form of industrial rights a royalty-free non exclusive license to use the System for the limited purposes of the ELI-Beamlines Project and other research and education activities under par. 14.4 on the territory of the World.

14.3. The Client, irrespective of the fact that it will be the licensee under this Article 14, hereby undertakes not to disclose the results of the Works and/or the Contractors' Documents, the System and any related and ancillary data or information, the information disclosed in the license and those disclosed by virtue of the training activity under Article 13 to any third parties without a prior consent of the Contractor, other than for purposes permitted by this Article 14 and in any event, subject to the limits and conditions set out in Article 22.

14.4. Unless agreed otherwise, the right to use license stipulated above in this Article 14 includes:

- a) permission to operate the System at the Client's Place of Business and to use its output for providing beamtime to the Client, its employees and external users in order to carry out experiments with the System in fundamental and applied research fields;
- b) permission to operate the System at the Client's Place of Business and to use its output for providing beamtime to third parties mainly for experimental purposes;
- c) permission to provide necessary technical documents about the System to third party only for the purpose of maintenance of the System at the Client's Place of Business on a strict "need to know basis". From the documentation related to the System and handed over to the Client, the Contractor may specify documents not relevant to maintenance and containing description of Contractor's proprietary information, which are not to be disclosed to any third parties; and
- d) permission to provide necessary technical documents about the System to the third party in case of future upgrade of the System at the Client's Place of Business on a strict "need to know basis". From the documentation handed over to the Client with the System, the Contractor may specify documents not relevant to future upgrade of the System and containing description of Contractor's proprietary information, which are not to be disclosed to any third parties.

14.5. Any provision of documents or information or permission to use, upgrade or repair the System to third parties as set out in par. 14.4 is subject to 1) the signing of a non-disclosure agreement by the Client and by any such third party recipient/user (not

less binding and having a degree of protection of confidentiality information not lower than what set out in Art. 22 for the recipient of confidential information); and 2) the third party recipient/user assuming (and the Client shall cause the third party recipient/user to assume), directly also vis-à-vis the Contractor, the same confidentiality obligations under point 1); and 3) the Client simultaneously assuming joint and several liability vis-à-vis the Contractor for any third party recipient/user's breaches of confidentiality obligations.

- 14.6. The intellectual property rights according to this Article 14 shall pass to the legal successor of the Client and/or the future operator of the ELI-Beamlines Infrastructure (namely to future ELI ERIC - European Research Infrastructure Consortium - or any other such ELI-Beamlines operator) for the remaining protection period of the relevant form of industrial rights and/or the economic rights' duration of the copyright works on the territory of the World (if any), provided that any legal successor accepts to be bind by the same provision of this Article 14 and by Article 22. The Client shall remain severally and jointly liable with the successor for any breach of confidentiality or of this Article 14 by legal successor until final handover of the ELI-Beamlines project to the new operator.
- 14.7. The Parties declare that they have agreed that the Contractor's remuneration for the provision of any license or sub-licence pursuant to this Article 14 has already been included in the Price.
- 14.8. In this par. 14.8 and in the following par. 14.9, "infringement" means an infringement (or alleged infringement) of "Intellectual Property Rights", i.e. any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works (even if they pertain to property rights related to third parties' components assembled into the System for which the Contractor is entitled to avail itself of the same or has undertaken duties of protection); and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement. The Contractor, as owner / proprietor of the intellectual property rights arising under this Contract, is authorized to enforce these rights before the competent authorities if and when they are infringed. The Client – licensee is obliged to inform the Contractor without undue delay if it learns of any such infringement and the Contractor shall cooperate with the Client – licensee in order to mitigate or terminate the third party's conduct in violation of the rights of both the Contractor and the Client.
- 14.9. The Client shall indemnify the Contractor from any claim alleging an infringement which is or was:
- 14.9.1. an unavoidable result of the Contractor's compliance with the Scope of Work; or
- 14.9.2. a result of any Works being built, or used by the Client:
- a) for a purpose other than that indicated by the Contract; or

b) in conjunction with anything not supplied by the Contractor.

14.10. If the Contractor is entitled to be indemnified by the Client under this Article 14 and the latter accept unconditionally to indemnify the Contractor, the Client may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. In this case, the Contractor shall, at the request and cost of the Client, assist in defending the claim. The Contractor (and its personnel) shall not make any admission which might be prejudicial to the Client, unless the Client failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Contractor.

14.11. The Contractor may copy, use, and obtain communication of the Client's documents necessary for the attainment of the scope of the Contract. Any such documents shall not, without the Client's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purpose of the Contract.

15. TERMINATION OF THE CONTRACT BY THE CLIENT

15.1. The Client is entitled to withdraw from the Contract only if any of the below specified events occur:

15.1.1 Any expenditure or any part thereof, which may arise on basis of this Contract, are declared by the Sponsor or other controlling body to be ineligible or the Client's financial support (aid) provided toward implementation of any part or phase of the ELI-Beamlines Project or its further phases is withdrawn or not awarded.

15.1.2 The Contractor is in delay with a single delivery for a period longer than 90 (ninety) days with respect to the due date under this Contract and having considered all the relevant circumstances (with respect to the Project Execution Plan and/or the Risk Management Plan) it becomes clear (and it is assessed as such by the Client and Expert Panel) that the System cannot be delivered on time, i.e. that the System cannot be delivered with the required technical specifications pursuant to this Contract within the Final Long Stop Date postponed for 3 (three) months in accordance with this Contract. Both Parties agree on an assumption on the condition "cannot be delivered on time" under this par. 15.1.2 shall not be assessed or met earlier than on April 1, 2016;

15.1.3 If the System after handover is definitively unsuitable for the intended use (including par. 12.2. hereof) and cannot be definitively remedied, corrected or restored by the Contractor;

15.1.4 If there are material defects (i.e. defects that make the System unsuitable for the intended use) upon Test of Sub-System or after the handover during the Defect Notification Period and the defects, without prejudice to the possible longer period for repair agreed by the Parties pursuant to par. 12.6, are not remedied (i) within 90 (ninety) Business Days of the Contractor being notified by the Client of any defect concerning the permanent magnet quadrupole set or the Energy Selector system or

- (ii) within 60 (sixty) Business Days of the Contractor being notified by the Client of any defect other than those set forth in point (i) above;
- 15.1.5 Should any insolvency proceedings or governmental administration procedure be held or formally initiated against the Contractor;
- 15.1.6 It is revealed that in the Bid the Contractor stated information or submitted documents which do not correspond to reality and which have had a material impact on the results of the Negotiated Procedure that led to entering this Contract [Section 82 (8) of Public Procurement Act];
- 15.1.7 The Works are not terminated within 90 (ninety) days after the Final Long Stop Date (as postponed pursuant to the Contract).
- 15.2. In any of the above events or circumstances, the Client may, upon giving 7 days' notification to the Contractor, withdraw from the Contract. However, in the case of par. 15.1.5, the Client may withdraw from the Contract immediately.
- 15.3. In case of termination of the Contract by the Client under par. 15.1.2 to 15.1.7, the Contractor shall be entitled to payment for the value of the actually executed part(s) of the Works to the Client, unless agreed otherwise by the Parties. The actually executed part(s) of the Works is deemed the one(s) which the Contractor is able to handover within 3 (three) months from receipt of the notice under par. 15.2 above, except for sub-deliveries under Deliverable D3.2 where the period is extended to 6 (six) months from receipt of the notice under par. 15.2 above. The value of the actually executed part of the Works includes also the cost of Plant and Materials ordered for the Works which will have been delivered to the Contractor within 3 (three) months or 6 (six) months in case of Deliverable D3.2 after receipt of the notice under par. 15.2 above, or of which the Contractor is liable to accept delivery and which have been offered to be delivered within 3 (three) months or 6 (six) months in case of Deliverable D3.2 after receipt of the notice under par. 15.2 above. The executed part of the Works shall become the property of -and be at the risk of- the Client upon handover, and the Contractor shall place the same at the Client's disposal.
- 15.4. In case of termination of the Contract by the Client under par. 15.1.1, the Contractor shall be entitled to payment of:
- a) the value of the Works executed under par. 15.3 above;
 - b) any other cost or liability including reasonable margin in order to cover indirect costs calculated in accordance with Contractor's internal measures and not exceeding 5% of the total costs which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
 - c) the cost of removal of temporary works and Contractor's equipment from the Client's Place of Business and the return of these items to the Contractor's

venue in his country (or to any other destination at no greater cost); and

- d) the cost of repatriation of the Contractor's Personnel and labor employed wholly in connection with the Works at the date of termination.

15.5. For the sake of clarity, the Parties agree that each Payment Instalments – in addition to the payment settlement for the work previously carried out by the Contractor - may include, as the case may be, a portion of pre-financing which is attributed for the realization of future Deliverable.

15.6. The entitlement to payment in accordance with this Article 15 is subject to handover of any systems and their components and any and all documentation executed so far as part of the Works. The parties are obliged to provide reasonable cooperation to each other for this purpose, i.e. agree on possible cancelation of Contractor's orders etc.

15.7. The act of withdrawal from the Contract shall become effective “*ex nunc*” as at the day of receipt of the withdrawal in writing to the Contractor under pa. 15.2.

15.8. Termination of the Contract by a withdrawal from the Contract by the Client shall not prejudice any other right to which the Client is entitled under the Contract or otherwise.

16. SUSPENSION AND TERMINATION BY THE CONTRACTOR

16.1. Suspension by the Contractor

16.1.2 If the Client fails to issue the Report Acceptance Certificate, the Acceptance Test Certificate or the Final Acceptance Certificate, or fails to comply with par 6.10 or to effect any payment to which the Contractor is entitled pursuant to this Contract or for any other reason set out in the Contract, the Contractor may, after giving not less than 15 days' notice to the Client, suspend works on System and the training activity under Article 13 (or reduce the rate of work) unless and until the Contractor has received the above certificates, reasonable evidence of payment, compliance with the Client's financial undertakings or has ceased any action or omission in relation to which this Contract provides for the Contractor's right to suspend the Works, as the case may be and as described in the notice.

16.1.3 The Contractor's action shall not prejudice his entitlements to financing charges under par. 8.8 and to termination under par. 16.2.

16.1.4 If the Contractor subsequently receives evidence of payment or of compliance with previous unfulfilled obligations (as described in the relevant par. and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

16.1.5 If the Contractor suffers delay and/or incurs cost as a result of suspending work (or reducing the rate of work) in accordance with this par. 16.1, the Contractor shall give

notice to the Client and shall be entitled to (a) an extension of time for any such delay, and (b) payment of any such cost.

16.2. Termination by the Contractor

16.2.1 The Contractor is entitled to withdraw from the Contract under the applicable Law and if the following cases occur:

- a) The Client is in delay with the payment in respect of the instalments set out in the Deliverables and Payment Schedule for a period longer than 90 (ninety) days running from delivery of the relevant invoice.
- b) The Client breaches seriously the obligations set out in par. 6.5 to 6.8 and 6.10 of the Contract, which are substantial for the Contractor.
- c) The Client becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- d) In cases set out in par. 7.6.

16.2.2 Withdrawal from the Contract by the Contractor shall not prejudice any other right to which the Contractor is entitled under the Contract or otherwise.

16.2.3 The act of withdrawal from the Contract shall become effective "*ex nunc*" as at the day of delivery of the withdrawal in writing to the Client.

16.2.4 In any of the above events or circumstances, the Contractor may, upon giving 7 days' notification to the Client, withdraw from the Contract. However, in the case of par. 16.2.1 letter c), the Contractor may withdraw from the Contract immediately. In case of termination of the Contract by the Contractor under par. 16.2.1, par. 17.6 below shall apply and the Contractor shall be entitled to payment under par. 15.4 and 15.5.

16.2.5 For the sake of clarification the Parties agree that the Payment Schedule contains elements of pre-payment and the value of deliverables is not defined by the Payment Schedule. The entitlement to payment in accordance with this par. is subject to handover of any systems and their components and any and all documentation executed so far as part of the Works. The parties are obliged to provide reasonable cooperation to each other for this purpose, i.e. agree on possible cancelation of Client's orders etc.

17. FORCE MAJEURE

17.1. In this Article, "**Force Majeure**" means an exceptional event or circumstance which arose independently of the will of the obliged Party, and which temporarily or constantly prevent fulfilment of that Party's obligation, provided that it could not be

foreseen and overcome or avert this obstacle or its consequences.

- 17.2. Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as condition in par. 17.1 above is satisfied:
- a) War, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - b) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
 - c) Riot, commotion, disorder, strike or lockout by persons,
 - d) Munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
 - e) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 17.3. Should a situation occur, which a Party could reasonably consider to constitute Force Majeure, and which could affect fulfilment of its obligations hereunder, such Party shall immediately notify the other Party and it shall reasonably attempt to continue in its performance hereunder in order to minimize delay. Simultaneously, such Party shall inform the other of any and all its proposals, including alternative manners of performance, however, without consent of the other Party, it shall not proceed to effect such alternative performance. The notification shall be made within 15 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 17.4. The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them. Party shall notify to the other Party when it ceases to be affected by the Force Majeure. Each Party shall bear additional costs related to Force Majeure events which affect the respective Party's "environment" or which are howsoever related to it.
- 17.5. If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under par. 17.3, and suffers delay and/or incurs cost by reason of such Force Majeure, the Contractor shall be entitled to an extension of time for any such delay.
- 17.6. If the execution of substantially all the Works in progress is prevented for a continuous period of [180] days by reason of Force Majeure of which notice has been given under par. 17.3, or for multiple periods which total more than [180] days due to the same notified Force Majeure, then either Party may withdraw from the Contract. In this event, the termination shall take immediate effect and the Contractor:
- a) Shall cease all further work;

- b) Hand over the Contractor's Document, Plants and Materials for which has been paid; and
 - c) Remove its equipment and goods and leave the site.
- 17.7. Upon such termination, the Contractor is entitled to receive the value of the work done in accordance with par. 15.4 and with respect to par. 15.5 above.
- 17.8. Upon such termination, the Client is entitled to retain the Works which were carried out by the Contractor and do not have the temporary characteristics.

18. INSURANCE BY CONTRACTOR

- 18.1. The Contractor undertakes to insure the goods to be delivered to the Client:
- 18.2.1. against damage to the System during its development at the Contractor's Place of Business or on third parties' sites, including testing activities (up to the full value of the System);
 - 18.2.2. by a cargo Insurance (transport of goods, Contractor's Equipment, and material to and from the Client's Place of Business including unloading of the goods).
- 18.2. The above insurance coverage shall: (i) not cover risks which are upon the Client's under this Contract or by operation of the applicable Law; (ii) not include part of the System or the entire System if it is accepted by the Client.
- 18.3. In case of any breach of this obligation by the Contractor, the Contractor shall be deemed liable for the damage incurred. The Contractor shall be obliged, upon the Client's request, to document the requested insurance cover.

19. INSURANCE BY CLIENT

- 19.1. Without derogating from the Client's liability pursuant to this Contract and the applicable Law, the Client shall secure and maintain, at its own cost and expenses, with an authorized and reputable insurance company of international standing, the insurance coverage specified herein. For the avoidance of any doubt, it is hereby clarified that all of the following provisions shall apply in respect of all the insurance policies which the Client is required to procure and maintain under this Contract:
- 19.1.1. Third Party Liability Insurance.
 - 19.1.2. Employer's liability Insurance (covering the Client's Personnel at the site).
 - 19.1.3. Contractor's Equipment damages at the Client's Place of Business limited to amount of CZK 5,000,000.
- 19.2. From the Execution Date and throughout the entire term of construction until issue of Final Acceptance Certificate, the Client shall take out and maintain the insurance policies set out par. 19.1.

20. COMMON PROVISIONS TO INSURANCE

- 20.1. The relevant insuring Party shall submit to the other Party: (i) evidence that the insurances have been effected; (ii) copies of the relevant policies and evidence of payment of the relevant premium.
- 20.2. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurances are maintained in accordance with this Contract.
- 20.3. Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 20.4. If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Article, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party.
- 20.5. Nothing in Article 18, 19 and 20 limits or derogates from the obligations, liabilities and responsibilities of the Client or the Contractor, under the terms of the Contract or otherwise under the applicable Law. Any amounts not insured or not recovered from the insurers (e.g. deductible or excess) shall be borne by the Client or by the Contractor in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to its default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

21. LIMITATION OF LIABILITY OF THE CONTRACTOR

- 21.1. The Contractor for no reason whatsoever shall take responsibility under Article 6 and for the Force Majeure under Article 17.
- 21.2. Without limiting the generality of the foregoing, the Contractor, given the nature of prototype of the System, shall not be liable for any direct, consequential or indirect, cost, damage, expenditures, fines or whatsoever indirect liability caused as a result of use of the System for research, experiments and development projects carried out by the Client, unless such damage resulted from a defect of the Works, i.e. from the System and/or the other parts of the works/services provided by the Contractor hereunder, occurring within one year from the handover of the System under par. 9.3.

- 21.3. While the Contractor warrants the achievement of the Minimal Technical Specifications (and not the Target Technical Specifications for which the Contractor is only bound to exercise of due professional care), the Contractor does not and shall not release any form of guarantee (and shall not be imputable for any indirect damage, costs or expenditure accordingly) in relation to the various multidisciplinary applications for which the System can be used and further developed by the Client (i.e. medical purposes, imaging etc.) nor in relation to, without limitation, the integration, connection with and use in conjunction to the ELI Beamline Infrastructure and/or in the context of the ELI Beamline Project.
- 21.4. Without prejudice to par. 21.2, the Contractor is liable exclusively for damages caused prior to the handover of the System pursuant to this Contract or in relation to the System and its use by the Contractor by a defect of the System occurring within one year from the handover of the System to the health or property of the Client or third persons at the Client's Place of Business or any other location of the ELI-Beamlines project and/or to goods/equipment or other systems at these locations. Except for the damage caused by a defect of the System to the System itself which is however limited in time to the Defect Notification Period, any kind of damage to third party individuals or to third parties' properties (including the Client and the Client's personnel) in relation to the System and its use (including damages caused by its defects) and/or due to the operation of the System by the Client or by any other third party, which occurs after handover of the System (i.e. after fulfilment of Deliverable D16), shall be excluded from the liability of the Contractor.
- 21.5. The Contractor shall issue a list of potential origins, sources or causes of defects of the System and their potential technical impact which may result damage on property or harm on human health. The Contractor shall act with due professional care to achieve the completeness of this list without guaranteeing its completeness. The Contractor shall pass the list on the Client during the handover of the System.
- 21.6. The Contractor shall issue manuals and provide it to the Client in writing with any advice and information which is necessary or could be suitable to prevent or minimize the risk of damage that could result from potential defects of the System. The Contractor shall pass the manuals on the Client during the handover of the System.
- 21.7. The Contractor shall not be liable for any reason whatsoever for event, acts or circumstances, damages, costs, or indemnities arising out of the Client's behaviour, or related to whoever is acting on behalf of the Client (or it is supposed to have acted or to act on its behalf) or has assumed joint liability with the Client under the Contract or otherwise, or connected to others for whom the Client is responsible (such as, without limitation, any occurrence related to the Client's Documents and the design of any part of the Works by the Client's personnel or by others for whom the Client is responsible).
- 21.8. Without prejudice to the limitation and exclusion of liability of the Contractor stated in this Article 21, the total liability of the Contractor to the Client, under or in

connection with the Contract in relation to whatsoever title, liability, warranty or obligation (e.g. delay damages, defects of the System, etc.) shall not exceed:

- a) in the case of delay damages the maximal amount of delay contractual penalties payable in accordance with this Contract; and
- b) in case of any other damages 100% of the Price.

This par. shall not limit the Contractor's liability in any case of fraud, deliberate default or gross reckless misconduct by the Contractor.

- 21.9. To the extent that and in all cases under this Contract in which the Contractor does not assume ("take over", "undertake" and similar language) any liability and/or the risks are by operation of law or by this Contract agreed to be undertaken by the Client, the Client shall pay to the Contractor damages accordingly.

22. CONFIDENTIALITY

- 22.1. As used in this Article 22, the words "**Confidential Information**" mean all information which is disclosed at any time by the Party (for the purpose of this Article 22 also the "**Disclosing Party**") to the other Party (or, for the purpose of this Article 22, the "**Receiving Party**"), which is not generally known or available to persons outside of the Disclosing Party, whether such information is disclosed orally, in writing, graphically, electronically or in other machine-readable format, by way of sample or specimen, or in any other format, and includes, by way of example and without limitation, the following:

- a) all financial and business information of Disclosing Party;
- b) all product development lists of Disclosing Party;
- c) all information in any way connected with or relating to the formulation, synthesis, production, marketing, distribution and sale of the Disclosing Party's products, among which the System and the Deliverable;
- d) all data, studies, documentation, research, reports, analyses, test results, technical scientific information, intellectual property rights and know-how regarding the Disclosing Party's products, among which the System;
- e) all processes, specifications, information regarding routes of synthesis, and patent analyses relating to the Disclosing Party's products;
- f) all trade secrets, processes and ideas that are not generally known outside of Disclosing Party;
- g) all information in any way relating to the Disclosing Party's products that is invented, discovered, created or developed by Disclosing Party;

- h) all present and future business plans, models, strategies, projects and opportunities of Disclosing Party;
- i) all customer names, lists, contacts and profiles of Disclosing Party; and
- j) all other information disclosed by Disclosing Party to the Receiving Party that is not generally available outside of the Disclosing Party.

The absence of any marking or legend indicating that any particular information disclosed by Disclosing Party is to be treated as confidential shall not limit or diminish the obligation of the Receiving Party to treat such information as Confidential Information.

22.2. Confidential Information shall not include information that:

- a) is or becomes legitimately available to the public other than as a result of a disclosure by Receiving Party or by any third party which has not been authorized, expressly and in written form, to disclose it by the Disclosing Party;
- b) is disclosed to Receiving Party by a third party who received such information from Disclosing Party, with an express right to disclose it to the public granted in written form by the Disclosing Party; or
- c) is or was independently developed by Receiving Party prior to the disclosure of the Confidential Information by the Disclosing Party, in any case to the extent that the specific circumstances of such prior independent development are evidenced by Receiving Party's written records.

22.3. The Receiving Party may request in written the Disclosing Party to disclose and supply its Confidential Information solely to the extent strictly necessary for the purpose of this Contract and, upon such written request of the Receiving Party, the Disclosing Party shall evaluate whether and which Confidential Information to disclose and to supply to the Receiving Party.

22.4. In consideration of the Disclosing Party's disclosure and supply of Confidential Information, the Receiving Party agrees that, for the longest period of protection of the concerned Confidential Information as set forth by any applicable laws (even in perpetuity), and in any event for a period not lower than 10 years, the Receiving Party – without prejudice to any longer protection which is afforded to intellectual property rights – shall, unless agreed otherwise in this Contract:

22.4.1 hold and maintain in strict confidence such Confidential Information;

22.4.2 not use such Confidential Information for any purpose other than exclusively for the purpose of this Contract;

22.4.3 not copy, photocopy, photography or reproduce in any manner whatsoever the Confidential Information; and

- 22.4.4 not disclose any Confidential Information, including the existence of this Contract, save as indicated in mandatory applicable Law, without the prior written consent of the Disclosing Party, to any person or entity other than to those employees, directors, officers, partners, representatives, agents and advisors of the Receiving Party who need to know such Confidential Information for the purpose of this Contract and who are at the time of disclosure and thereafter subject to obligations of confidentiality substantially similar to the obligations set forth in this Contract.
- 22.5. The Receiving Party agrees to advise those of its employees, directors, officers, partners, representatives, agents and advisors who receive Confidential Information pursuant to sub-par. 22.4.4 above of this Contract, that such information:
- 22.5.1 is proprietary and confidential to the Disclosing Party; and
- 22.5.2 shall not be disclosed to anyone except as authorized herein.
- 22.6. The Receiving Party further agrees to take such precautions as are requested by the best standards in the applicable market to prevent any unauthorized disclosure or use of Confidential Information. Upon request of the Disclosing Party, the Receiving Party shall describe in written form all the precautions and measures implemented by the Receiving Party according to the above, and shall implement all additional precautions and measures, if any, specified by the Disclosing Party which are reasonably necessary to protect the Confidential Information in accordance with the above. Receiving Party shall be responsible for the breach of any of the terms hereof by any person to whom Receiving Party discloses any Confidential Information.
- 22.7. In the event that the Receiving Party becomes legally compelled to disclose any Confidential Information, it will provide the Disclosing Party with prompt advance notice in writing so that the Disclosing Party may, at its discretion, intervene prior to disclosure. In the above-mentioned event, the Receiving Party shall, in any case, exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to such Confidential Information.
- 22.8. Without the Disclosing Party's prior written consent and unless agreed otherwise in this Contract, the Receiving Party shall not reproduce or build any of Disclosing Party's products or documents and, immediately upon the termination of, or withdrawal from, the Contract for whatever reason, the Receiving Party shall, if in accordance with the Contract, as the case may be, promptly return to the Disclosing Party any concerned documents, any technical report, drawing, design, manual, formula, protocol, documents related or howsoever inherent the performance of the Contract received by the Receiving Party, as well as the originals and all copies of all other Confidential Information provided that they pertain to Works which are not duly retained by the Receiving Party in accordance with this Contract. In addition, the Receiving Party shall confirm to the Disclosing Party that the Receiving Party has not reproduced or retained any samples, originals or copies of the Disclosing Party's products or documents.

22.9. In the event of breach of this Article 22 by the Receiving Party, the Disclosing Party shall be entitled to be paid by the Receiving Party a contractual penalty equal to [100] EUR, without prejudice to further damages according to par. 26.3.

22.10. Save as otherwise stated in Article 14, nothing in this Contract shall be interpreted expressly or impliedly granting Receiving Party any license with respect to the Confidential Information or any patent applications or other rights and the Disclosing Party shall retain all intellectual or industrial property rights, as well as any other proprietary, exclusive or exploitation rights, or any other rights set forth by any applicable laws, in respect of Confidential Information disclosed and related improvements.

23. PUBLICATION ACTIVITIES

23.1. The Contractor shall refer all publications arising as a direct result of this Contract to the Client, at least 20 (twenty) calendar days before the publication is submitted to scientific journals, proceedings or other periodicals. Where both Client and Contractor agree, comments or amendments suggested by the Client will be added to the text of publication.

23.2. The Contractor shall acknowledge in the publications the present Contract and the ELI-Beamlines Project as the source of funding supporting the work reported, in the Acknowledgments section of the publication.

23.3. Reciprocal provisions apply to publications submitted to scientific journal, proceedings or other periodicals by the Client provided that they are not in breach of Article 14 and 22.

24. REPRESENTATIVES, NOTICES

24.1. The Contractor has appointed the following representative responsible for the management and performance of the Works hereunder and communication with the Client:

In technical matters:

Dr. Giuseppe A. Pablo Cirrone

E-mail: pablo.cirrone@lns.infn.it

In contractual matters:

Dr. Sabrina Argentati

E-mail: sabrina.argentati@lnf.infn.it

24.2. The Client has appointed the following representative responsible for communication with the Contractor for the purposes of realization of the Work:

In technical matters:

duly elected head of the Expert Panel

In contractual matters:
prof. Jan Řídký, DrSc., the Director
Tel: +420 266 052 121,
Email: ridky@fzu.cz

- 24.3. Any and all notices transmitted between the Parties hereunder must be made in writing and delivered to the other Party by an internationally recognized courier service (Federal Express, DHL, etc.), delivered in person (with a written confirmation of receipt), by a registered letter or in the form of electronic communication carrying electronic signature.
- 24.4. With respect to technical matters (e.g. matters related to preliminary assessment of the Deliverables, etc.) communication via e-mail without the formalities set out in par. 24.3 above will be acceptable between the appointed representatives for technical matters.

25. CHOICE OF LAW, DISPUTE RESOLUTION

- 25.1. This Contract and any and all legal relations arising here from shall be governed by the laws and regulations of the Czech Republic.
- 25.2. The Parties acknowledge and recognize that areas not explicitly regulated hereby shall be regulated by the respective provisions of Czech law, in particular by the CC. Without prejudice to Article 17 and save as otherwise stated in this Contract, Parties reciprocally understand and agree that Section 1765 (1) of CC is not applicable and thereupon both Parties hereby take on the risks referred to in Section 1765 (2) of the CC.
- 25.3. Parties shall exert their best effort to solve amicably any dispute or difference arising in connection with the execution or interpretation of the Contract (both in technical and juridical matters).
- 25.4. If no amicable settlement is reached by the Parties within forty-five (45) days following any of the Parties' first invitation to the other one to solve any technical matter under par. 25.3 above, the Parties agree to submit the matter, in the first instance, to administered expertise proceedings in accordance with the ICC Rules for Expertise. The costs shall be borne by the Parties equally, according to par. 25.7. If the dispute has not been resolved through such administered expertise proceedings it shall, after the Centre's notification of the termination of the expertise proceedings, be finally settled under the Rules of Arbitration of the International Chamber of Commerce under par. 25.6 below.
- 25.5. If no amicable settlement is reached by the Parties within forty-five (45) days following any of the Parties' first invitation to the other one to solve any matter under par. 25.3 above other than technical issues (which shall be first submitted to an

expert under par. 25.4), Parties agree to submit the matter to settlement proceedings under the ICC Mediation Rules (as they are in force as of January 1, 2014). The costs shall be borne by the Parties equally, according to par. 25.7. Place of mediation shall be Vienna and the proceedings shall be conducted in English.

- 25.6. If the dispute has not been settled pursuant to the Rules for Expertise or pursuant to the ICC Mediation Rules under par. 25.4 and 25.5 above within forty-five (45) days following, respectively, (i) recourse to the Centre at the ICC International Secretariat, or (ii) the filing of a Request for Mediation (or within such other period as the Parties may agree in writing), such dispute shall be finally settled by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules of Arbitration. Place of mediation shall be Vienna and the proceedings shall be conducted in English. The Arbitral Tribunal shall consist of three judges. Each Party shall select one judge, and the third judge will be selected by agreement between the two selected judges or should the judges fail to agree thereon, it shall be designated in accordance with the ICC Rules of Arbitration. The costs shall be borne by the Parties equally, according to par. 25.7.
- 25.7. Each Party shall bear in equal all administrative costs, fees and expenses of arbitration (advance payments, deposit, filing fees etc.), and no success based reimbursement shall be allowed. Each party shall bear its own cost for its counsels and representatives (e.g. legal fees).

26. MISCELLANEA

- 26.1. This Contract represents a complete agreement between the Client and the Contractor.
- 26.2. Any reciprocal payable monetary claims of the Parties may be subject to set-off of claims according to the respective provisions of the CC.
- 26.3. Without prejudice to the limitation under Article 21, the Parties exclude the application of Section 2050 of CC to such extent, that in addition to any contractual penalty hereunder, each Party is entitled to seek damages in the amount exceeding the contractual penalty imposed for the breach of the same duty as related to the damages; i.e. payment of the contractual penalty hereunder excludes the right of the Parties to seek damages, unless and to the extent the damages are higher than the contractual penalty. By way of exception to the foregoing, this par. 26.3 shall not apply to any contractual penalty under par. 5.11, i.e. the agreed contractual penalty for delay shall be a fixed compensation for the relevant delays under the Contract and, correspondingly, the Client shall not be allowed to claim any direct or indirect damages arising out or related to delays in excess of the relevant contractual penalty sanctioning such delays.
- 26.4. If a Party breaches its duty arising from this Contract or it may and should know about such a breach, it will, without any undue delay, inform the other Party which may

incur damage thereof and it will warn it of potential consequences; in such a case, the damaged Party has no right to be compensated for the damage which it could reasonably avoid after being informed hereunder.

- 26.5. If any of the provisions hereof shall appear or shall be determined invalid, ineffective, or unenforceable at a later date, then such invalidity, ineffectiveness or unenforceability shall not cause the invalidity, ineffectiveness, or unenforceability hereof as a whole. In such a case, the Parties undertake, without any undue delay, to replace, by mutual agreement, any such invalid, ineffective or unenforceable provision hereof with a new provision that most closely reflects the intentions of the Parties at the time of conclusion hereof, to an extent permitted by the laws and regulations of the Czech Republic.
- 26.6. The Contract becomes valid and comes into force on the date of its signature by the authorized representatives of both Parties.
- 26.7. The Contract may be amended or modified exclusively in the form of written and numbered amendments specifying the time and place thereof, and signed by the authorized representatives of the Parties.
- 26.8. Par. 22, 24 and 25 shall survive any invalidity, void, termination or withdrawal related to or affecting this Contract.
- 26.9. The Contract was made out in the English language in four (4) counterparts, each having the force of original. Each Party shall receive two (2) counterparts.
- 26.10. By affixing their signature hereto the Parties express their consent with the content hereof in its entirety.
- 26.11. The Annexes listed below form an integral part of this Contract:
- 1) Annex 2.8.1 ("Scope of Work");
 - 2) Annex 2.8.2 ("Additional System");
 - 3) Annex 2.8.3 ("Deliverables and Payments Schedule");
 - 4) Annex 2.8.4 ("Consolidated Deliverables and Payment Schedule");
 - 5) Annex 2.8.5 ("Motivation and Penalty Schedule");
 - 6) Annex 3 ("Definitions");
 - 7) Annex 4.7 ("Economic guidelines for the Additional Services");
 - 8) Annex 5.1 ("List of authorized sub-contractors");
 - 9) Annex 5.13 ("Scheme of quarterly reports");
 - 10) Annex 6.5 ("List of Client's Documents");
 - 11) Annex 6.9 ("Client's Equipment");

The Annexes listed below will be provided in the Contractor's Bid Package:

- 1) Annex 2.8.6 ("The Contractor's Bid Package");
- 2) Annex 5.14 ("Risk Management Plan");
- 3) Annex 5.14bis ("Project Execution Plan").

Signed in Prague on

Signed in _____ on

On behalf of: Fyzikální ústav AV ČR, v. v. i.

On behalf of:

Signature: _____

Signature: _____

Name: prof. Jan Řídký, DrSc.

Name:

Title: Director

Title: