



CONTRACT FOR BUILDING OF A SUPERCOMPUTER – LARGE CLUSTER II

Contracting parties:

Vysoká škola báňská – Technická univerzita Ostrava (VSB – Technical University of Ostrava)
having its registered office at: 17. listopadu 2172/15, 708 00 Ostrava – Poruba, Czech Republic

represented by: prof. RNDr. Václav Snášel, CSc., Rector

corporate ID: 61989100, tax ID: CZ61989100

Bank: ČSOB, a.s., bank account no.: 100954151/0300

(hereinafter “**VSB-TUO**”)

The European High-Performance Computing Joint Undertaking

having its registered office at: 12, Rue Guillaume J. Croll, L-1882 Luxembourg

represented by: **(TO BE ADDED BEFORE CONTRACT SIGNATURE)**, Executive Director

(hereinafter “**EuroHPC JU**”,

VSB-TUO and EuroHPC JU hereinafter jointly as the “**Client**”)

and

(TO BE ADDED BY THE SUPPLIER)

having the registered office at: **(TO BE ADDED BY THE SUPPLIER)**

represented by: **(TO BE ADDED BY THE SUPPLIER)**

recorded in the Register of Companies held by **(TO BE ADDED BY THE SUPPLIER)**,

File **(TO BE ADDED BY THE SUPPLIER)**, Insert **(TO BE ADDED BY THE SUPPLIER)**

Corporate ID: **(TO BE ADDED BY THE SUPPLIER)**, Tax ID: **(TO BE ADDED BY THE SUPPLIER)**

Bank: **(TO BE ADDED BY THE SUPPLIER)**, bank account no.: **(TO BE ADDED BY THE SUPPLIER)**

(hereinafter the “**Supplier**”)

concluded this contract on today’s date under Section 2586 et seq. of Czech Act No. 89/2012 Coll.,
Civil Code, as amended (hereinafter the “**Civil Code**”),

(hereinafter the “**Contract**”)

The contracting parties, aware of their obligations contained herein and intending to be bound by this Contract, have agreed on the following wording of the Contract:

1. INTRODUCTORY PROVISIONS

1.1 The Client declares that:

1.1.1 Vysoká škola báňská – Technical University Ostrava (hereinafter “**VSB-TUO**”) is a corporate entity, public university founded under Act No. 111/1998 Coll., on Higher Education Institutions and on Amendments and Supplements to Some Other Acts (the Higher Education Act), as amended,

1.1.2 The European High-Performance Computing Joint Undertaking (hereinafter “**EuroHPC JU**”) is a corporate entity established by the European Union Commission pursuant to Council Regulation (EU) 2018/1488 of 28th September 2018, and

1.1.3 The Client overall meets all conditions and requirements stipulated herein and is entitled to conclude this Contract and duly meet the obligations contained herein.

1.2 The Supplier declares that:

1.2.1 it is a corporate entity duly established and existing under the law of the country of its registered office; and

1.2.2 it meets all the conditions and requirements stipulated herein and is entitled to conclude this Contract and duly meet the obligations contained herein.

1.3 On dd. mm. yyyy, VSB-TUO announced its intention to award a public contract entitled “**EURO_IT4I Supercomputer**” (hereinafter the “**Public Contract**”) by sending the notification of a start of a procurement procedure in the Tenders Electronic Daily under Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the “**Act**”). Pursuant to this procurement procedure, the tender of the Supplier was selected as the most suitable for the implementation of the Public Contract under Section 122 (1) of the Act.

1.4 In relation to VSB-TUO, EuroHPC JU is a subsidy provider of the project entitled “IT4Innovations centre for European science and industry” financed from EuroHPC JU under Hosting Agreement no. 05/2019. In addition, EuroHPC JU is a contracting party in this Contract and it shall be directly financially involved in the acquisition of a supercomputer – Large Cluster and shall obtain ownership rights to the Work in such percentage as the percentage of financing by EuroHPC JU of the total price as defined in par. 12.1 hereof.

2. PURPOSE OF THE CONTRACT

2.1 The Client, as the contracting entity of the Public Contract intends to expand its facilities and equipment in the “IT4Innovations National Supercomputer Centre – Path to exascale” project, reg. no. CZ.02.1.01/0.0/0.0/16_013/0001791 (hereinafter “**P2E**”) financed from the European Fund for regional development under the Operational Programme Research, Development and Education (hereinafter the “**OP RDE**”) and in the IT4Innovations center for European science and industry project (hereinafter “**EURO-IT4I**”) financed from EuroHPC JU in accordance with Hosting Agreement no. 05/2019 (hereinafter “**EuroHPC**”).

2.2 The subject matter of the Public Contract is the acquisition of a Large Cluster which is the second one for IT4Innovations, i.e. comprehensive technical provision of research infrastructure in “*supercomputing*” (hereinafter the “**Large Cluster**”). The solution that was selected as performance under the Public Contract is a comprehensive solution for complex

calculations (supercomputer) consisting of technical equipment, program equipment, licences, design, implementation and configuration of the system, including warranty, maintenance and training.

- 2.3 The implementation of the Public Contract shall result in a creation of a computing environment with high computing performance, high data capacity, high communication speed, unified user environment, support of parallel environments and tasks, high-performing shared user data space, single administration of sources, tasks and users and comprehensive monitoring, intended for calculations of various complex tasks. The computing environment shall be, as a whole, integrated and fully operational in the VSB-TUO's infrastructure providing for sufficient power and cooling capacities.
- 2.4 The Supplier acknowledges that the adherence to the time schedule determined hereunder has an impact on the compliance with the obligations of VSB-TUO to the provider of the subsidy from OP RDE and EuroHPC JU and compliance with other educational and research and development obligations of VSB-TUO. The Supplier additionally acknowledges the possibility of a considerable damage that might be caused if the deadlines stipulated herein are not adhered to.
- 2.5 The purpose of this Contract is the implementation of the Public Contract consisting in the building of the Large Cluster, in accordance with the requirements of the Client defined herein, including the provision of ownership entitlements of the Client to the provided performance and provision of authorisations of the Client to any use and change in the supplied performance and its parts, which are copyright works, without the need for further consent of the Supplier or third parties.
- 2.6 By this Contract, the Supplier guarantees to the Client that it shall complete the assignment by the Public Contract and meet all arising conditions and obligations assumed by the Supplier in the procurement procedure of the Public Contract in line with the tender dossier, specifically Technical Assignment by the Client, contained in Annex 1 hereto, and tender of the Supplier. This guarantee is superior to other conditions and guarantees stated herein. For the avoidance of doubt, it means that:
- 2.6.1 in the event of any uncertainty regarding the interpretation hereof, these provisions shall be interpreted to reflect, to the maximum extent possible, the purpose of the Public Contract expressed by the tender dossier of the Public Contract;
- 2.6.2 in the event of missing provisions hereof, sufficiently specific provisions of the tender dossier of the Public Contract shall be used.
- 2.7 The Supplier shall be bound by its tender submitted to the Client in the procurement procedure for the Public Contract which shall have subsidiary application in the definition of mutual relationships arising herefrom.

3. SUBJECT MATTER OF THE CONTRACT

- 3.1 By this Contract, the Supplier undertakes to complete the work for the Client consisting in:
- 3.1.1 building and supply of the Large Cluster, as a system for complex calculations, as it is defined in Annex 1 hereto, containing the Basic Technical Specification (composed of the Design of the Technical Solution, Technical Parameters of the Proposal and Technical Assignment of the Client), including the supply of all components, software, user, operational and administrator documentation and project management (hereinafter the "**System**");

3.1.2 implementation of the System in the infrastructure of the data room of VSB-TUO, IT4Innovations, specified in Annex 1 to the tender dossier of the Public Contract (hereinafter the “**Data Room**”), including the provision of functional connection to the electrical power supply and cooling and training of employees of VSB-TUO (the implementation and training hereinafter as the “**Implementation**”);

(the System including the Implementation hereinafter as the “**Work**”);

all this in line with the specification stated in the Basic Technical Specification, and after its completion, in line with the Detailed Technical Specification, specified below; the Work involves the provision of warranty for quality of the Work in accordance with article 11 and other obligations of the Supplier in accordance with article 7 hereof.

- 3.2 As part of the provision of performance hereunder, the Supplier undertakes to prepare, pursuant to the Basic Technical Specification, a detailed technical specification of the Work (hereinafter the “**Detailed Technical Specification**”) that shall specify, in detail, individual parts of the Work as well as the procedure and conditions in its performance, including the definition of the required cooperation of the Client and other issues the specification of which is necessary for the provision of performance hereunder (e.g. par. 7.4 hereof). The Detailed Technical Specification shall contain a structured summary of all documentation of individual used system components, especially product sheets and manuals for the components.
- 3.3 After it is approved by the Client, the Detailed Technical Specification shall become an integral part hereof and a binding specification of the Work. The preparation of the Detailed Technical Specification shall be considered as part of performance hereunder in terms of the contractual obligations of the Supplier and the Supplier shall be not entitled to other remuneration than the agreed price of the Work for its preparation. The preparation and approval of the Detailed Technical Specification shall not decrease the quality of the Work, shall not change the agreed price under par. 12.1 hereof, deadlines for binding milestones of the time schedule for works listed in Annex 2 hereto, or the scope of the maximum cooperation of the Client listed in Annex 3 hereto; however, the possibility of the contracting parties to conclude an amendment hereto under par. 20.1 hereof for this purpose shall be not affected.
- 3.4 Where this Contract uses the “**Technical Specification**” term, it means both the Basic Technical Specification and the Detailed Technical Specification, if approved by the Client, and provisions of the Detailed Technical Specification, after approved by the Client, prevail over provisions of the Basic Technical Specification.
- 3.5 The Supplier additionally undertakes to prepare, as part of the Work, the specification of acceptance tests defining the specification of the manner of accepting individual parts of the Work, if, given their nature, their handover and acceptance should be preceded by acceptance tests, primarily verification of due Implementation (hereinafter the “**Specification of Acceptance Tests**”). The Specification of Acceptance Tests shall be prepared in line with the requirements of the Client for acceptance procedures and acceptance tests listed herein, primarily Annex 9 hereto. The requirements for acceptance tests shall primarily reflect individual binding milestones defined in the time schedule in accordance with Annex 2 hereto.
- 3.6 The performance provided by the Supplier includes the transfer of ownership rights to all elements of the Work to the Client as well as the transfer of intellectual property rights that are transferable (e.g. patents etc.) for the case that it is necessary to exercise these intellectual property rights to ensure proper and smooth use of the Work. In addition, the performance provided by the Supplier includes the provision of an authorisation to the Client to use and change intangible parts of the Work where the intellectual property rights are not transferable

(e.g. copyright), in the scope stipulated hereby. The provision or transfer of the rights in accordance with this paragraph shall not apply to the warranty conditions for the Work.

- 3.7 By this Contract, the Client undertakes to provide the Supplier with necessary cooperation in the provision of performance hereunder in the scope determined in Annex 3 hereto.
- 3.8 The Client undertakes to pay the agreed price for the provided performance to the Supplier hereunder in a due and timely manner, under the conditions stipulated herein.
- 3.9 The Supplier undertakes to provide performance hereunder itself or using its subcontractors. Any additional change in a subcontractor or scope of performance entrusted to a subcontractor shall be approved by the Client in writing in advance, unless the performance originally entrusted to a subcontractor is provided by the Supplier itself. The Client undertakes that it shall not withhold or refuse its consent without a serious reason that it shall immediately communicate to the Supplier; in such case, the parties shall act in good faith in order to approve the change without unnecessary delays.

4. TIME AND PLACE OF PERFORMANCE

- 4.1 The Supplier undertakes to provide all performance that form the Work and hand it over to the Client in line with the deadlines stated in the time schedule appended in Annex 2 hereto.
- 4.2 The Supplier undertakes to provide the Implementation at an agreed place of performance in the period agreed in the time schedule.
- 4.3 The detailed time schedule of provision of performance hereunder, containing, among other things, a detailed time schedule of works in the Data Room, shall be specified in the Detailed Project Plan that shall be prepared by the Supplier and it becomes binding for the contracting parties by its acceptance in line with the procedure listed in par. 6.3 hereof (if this Contract uses the “**Time Schedule**” it means the relevant part of the Detailed Project Plan which contains a detailed time schedule in Annex 2 hereto). In the event of any conflict between the detailed Project Plan and the Detailed Technical Specification, the Detailed Project Plan shall prevail, unless the Detailed Technical Specification is approved by an amendment to the Contract with the will of the parties to derogate from the Detailed Project Plan, primarily in the following cases:
 - 4.3.1 if obstacles on the part of the Client arise during the performance of the Work that, taking into account all circumstances, objectively prevent the Supplier to continue the due performance of the Work;
 - 4.3.2 if an interruption of work by the Supplier during the performance of the Work was caused by obstacles excluding the obligation to provide indemnification under Section 2913 (2) of the Civil Code.
- 4.4 The detailed Project Plan must adhere to and be prepared in accordance with the project management rules as determined in Annex 8 hereto.
- 4.5 The Supplier shall be entitled to provide the performance before the agreed deadline only with the prior consent of an authorised person of the Client.
- 4.6 The place of performance shall be the Data Room at the registered office of VSB-TUO, unless the Detailed Technical Specification explicitly stipulates otherwise. The access to the Data Room during the System Implementation shall be provided to the Supplier on a one-off basis, or repeatedly, depending on circumstances, always for a pre-determined period in line with an agreement between the Supplier and VSB-TUO. The request of the Supplier for granting of access to the data Room shall be sent to VSB-TUO no later than 2 working days in advance.

The contracting parties shall prepare a protocol on the provided access to the Data Room and termination of access of the Supplier to the Data Room which shall contain no less than the data and time of start and termination of access, definition of things entrusted to the Supplier for use for the purpose of due performance hereunder, or installed and left by the Supplier in the Data Room, including the description of their condition and definition of other facts having an impact on the possibility of the Supplier to duly start the performance of the subject matter hereof. The contracting parties undertake to sign the written protocol prepared in accordance with this paragraph hereof and prepare at least 4 copies, one original copy always for the Supplier, one for EuroHPC JU, one for VSB-TUO and one possibly for another supplier to VSB-TUO. For the avoidance of doubts, the condition of the place of performance and any return of things entrusted to the Supplier shall be subject to acceptance in accordance with article 6 hereof or protocol certification in a manner analogic in accordance with this paragraph hereof. Over the period when the Supplier has reserved access to the data Room for the Implementation of the System, VSB-TUO and its other Suppliers shall abstain from the access to the Data Room without prior agreement of VSB-TUO with the Supplier. After the completion of the Implementation, the access of the Supplier shall be provided as needed after prior agreement with VSB-TUO; authorised persons of the contracting parties may conclude a separate agreement for this purpose regarding the mode of access to the Data Room for purposes of meeting of the Supplier's obligations arising from the Contract.

- 4.7 If the nature of a specific part of performance hereunder allows it, it shall be possible to provide it or its part by remote access. If the Contract does not explicitly stipulate whether a specific part of performance should be carried out by the Supplier at a specific place, or by remote access, and the nature of the performance allows both options, VSB-TUO shall be entitled to select between these two manners at its discretion without an impact on the agreed price hereunder. If the performance or its part is to be provided by remote access, VSB-TUO shall enable such remote access to the Supplier. The costs relating to the remote access are borne by the Supplier, unless the Contract stipulates otherwise.

5. CHANGE MANAGEMENT

- 5.1 Any of the contracting parties is authorised to propose changes in the specification of the Work in writing during the Contract term. If a change in the specification is proposed by the Client, the Supplier shall be obliged to make every effort to accept the change in the specification. The Client shall not be obliged to accept a change in the specification proposed by the Supplier.
- 5.2 At a written call of the Client, the Supplier undertakes to assess the consequences of proposed changes in the specification of the Work within 10 working days, which shall include an assessment of impacts of these changes on the price and scope of the Work, agreed deadlines for performance, scope of necessary cooperation and any other relevant aspects of the contractual relationship (hereinafter the "**Assessment of Consequences**"). If the Assessment of Consequences requires additional costs or if its preparation could have a negative impact on the meeting of the obligations of the Supplier hereunder, the Supplier shall prepare the Assessment of Consequences pursuant to a written agreement with the Client on the payment of costs for the preparation of the Assessment of Consequences and adjustment to other contractual conditions that the preparation of the Assessment of Consequences may affect.
- 5.3 Any changes in the specification of the Work shall be agreed in the form of a written amendment hereto in accordance with par. 20.1 hereof adjusting contractual conditions in line with the Assessment of Consequences, unless the Contract stipulates otherwise.
- 5.4 Detailed rules of change management are stipulated in Annex 8 hereto.

- 5.5 The Supplier acknowledges that any change to the Contract shall not be in conflict with the binding rules of legal regulations regarding the public procurement law or rules of financing and eligibility of costs from OP RDE and EuroHPC. Where the contracting parties agree with an expansion of the Work or another change in the specification of the Work in the interest of achieving the purpose hereof and provision of the requested features of the Work under this article 5 hereof, while maintaining or reducing the original price for the Work, it shall not constitute an unjust enrichment of the Supplier.

6. ACCEPTANCE AND HANDOVER OF PERFORMANCE

- 6.1 The handover and acceptance of the Work shall adhere to the acceptance procedure defined in this article 6 hereof. For the avoidance of doubts, the contracting parties declare that provisions of article 6 shall not apply to performance listed in Annex 6 hereto.
- 6.2 The Supplier undertakes to hand over the subject matter of acceptance to the Client for acceptance in a time period not threatening the binding milestones for the provision of the performance determined in the Time Schedule. Each individual milestone in accordance with the Time Schedule is a moment as of which the stage of the Work implementation should adhere to the provision of the Work hereunder.
- 6.3 Regardless other provisions hereof, the following rules shall apply to the preparation of any documents pursuant to individual milestones created by the Supplier hereunder:
- 6.3.1 The Supplier undertakes to consult the preparation of documents with the Client on an ongoing basis and deliver the relevant document to the Client in a period determined in the Time Schedule.
- 6.3.2 The Client undertakes to send a notification of its consent with the specific document or its comments to the document to the Supplier within 5 working days from its delivery. If the Client does not raise any objections or does not make any comments to the document in the determined period or does not communicate its consent with the specific document to the Supplier, the contracting parties treat the document in this version as duly delivered and binding for the contracting parties after the expiration of this period and signing of the handover protocol in accordance with par. 6.3.4.
- 6.3.3 If the Client raises its objections or makes comments regarding the document in accordance with par. 6.3.2, the Supplier undertakes to present the adjusted document to the Client for acceptance.
- 6.3.4 After acceptance or expiry of the time limit for raising of objections or comments to the document in accordance with article 6.3.2, the contracting parties undertake to confirm the handover and acceptance of the document by preparation of a written handover protocol. The acceptance takes effect by signing of the handover protocol by both contracting parties. The signing of the handover protocol cannot be refused by a contracting party, otherwise, it is deemed that the document is binding and approved after the expiration of the 3rd working day after the call made by the other contracting party for the signing of the handover protocol.
- 6.4 The Work acceptance procedure shall include ongoing acceptance tests that shall be based on the Specification of Acceptance Tests. The Specification of Acceptance Tests shall allow for a verification whether the Work has the required features agreed herein. The Client reserves the right to perform its own verifications tests, in cooperation with the Supplier, that do not arise from Annex 9 hereto and/or the Specification of Acceptance Tests and the result of which has

no impact on the final acceptance of the Work itself. For the avoidance of doubt, the contracting parties state that the acceptance procedure of the Work will be divided into two parts, which will reflect the gradual delivery and implementation of the System pursuant to Annex 2 hereto. Each part of the acceptance procedure shall be governed by the principles set forth in this Article of the Contract and shall be independent of each other, except that the acceptance procedure of the System within the meaning of milestone no. 11 of Annex 2 hereto must be completed and agreed on before the acceptance procedure within the meaning of milestone no. 16 of Annex 2 hereto. Within the scope of the Technical Specification, the Supplier is obliged to describe what impacts the implementation of milestone no. 14 will have on the already functional part of the System operated by the Client.

- 6.5 Unless the contracting parties agree otherwise, underlying documents, scenarios and examples for acceptance tests shall be prepared by the Supplier in cooperation with the Client, taking into account acceptance procedures according to par. 6.4 hereof.
- 6.6 The Supplier shall call upon the Client to take part in the acceptance procedure no later than 5 working days before its commencement, unless the contracting parties agree otherwise. The Supplier shall prepare a written record of acceptance tests and shall primarily state in it whether the tests proved errors and defects, including a description of these errors and defects. The Client shall be provided with copies of all documents prepared in relation to performed acceptance tests.
- 6.7 If the Work or its part in the meaning of milestone no. 8 meets the acceptance criteria of acceptance tests in accordance with Annex 9 hereto and the Specification of Acceptance Tests, the Supplier undertakes to provide the Client to accept this performance no later than on the day following the completion of acceptance tests and the Client undertakes to accept it. The contracting parties undertake to prepare an acceptance protocol on the acceptance which shall state, among other things, that the Work was handed over free of defects and accepted by the Client without reservations, or whether it was accepted with reservations. The handover and acceptance shall take effect when the acceptance protocol is signed by the Client.
- 6.8 The Work as a whole shall be considered as definitively handed over and accepted after its last part so far not handed over is duly handed over and accepted. The contracting parties undertake to prepare a final acceptance protocol on the acceptance of the Work as a whole, together with the written protocol on termination of access of the Supplier to the Data Room of the VSB-TUO, as stated in par. 4.6 hereto. Provisions of par. 6.7 shall apply mutatis mutandis.
- 6.9 No later than on the day of signing of the final acceptance protocol, the Supplier shall be obliged to hand over the documentation of the Work specified in Annex 1 hereto and par. 3.1.1 hereof to the Client.
- 6.10 Part of the Work involving the training of the Client's staff by the Supplier shall be considered as accepted by the Client after the handover of the attendance sheet to the Client. The Supplier shall present the attendance sheet on the completion of training for all persons who were supposed to attend it, the attendance sheet shall include the list of training attendants who shall sign it after the completion of the relevant training.

7. OTHER OBLIGATIONS OF THE SUPPLIER

- 7.1 The Supplier further undertakes:
- 7.1.1 to provide performance hereunder in a due and timely manner, it shall be predominantly obliged to deliver the Work for the acceptance procedure, taking into

- account deadlines stipulated herein for the handover of the Work and in such form to meet the required acceptance criteria;
- 7.1.2 to provide performance or its parts hereunder with due care corresponding to conditions agreed herein;
- 7.1.3 to notify the Client in time of all imminent defects in its performance or potential outages and provide the Client with all information necessary for the performance hereunder;
- 7.1.4 to immediately inform the Client in writing of obstacles preventing performance of the subject matter hereof and other activities relating to the performance of the subject matter hereof;
- 7.1.5 to notify the Client of potential risks of damage within 3 working days after the Suppliers learns such fact and take such measures in a due and timely manner according to its capabilities that shall entirely eliminate or mitigate the risk of damage;
- 7.1.6 in providing performance hereunder, to proceed with due care and use “*best practice*” processes;
- 7.1.7 to provide cooperation in order to obtain all necessary authorisations of the Client or, in accordance with the instruction of the Client, make any necessary announcements to the public administration authorities to provide for the fulfilment of the Contract’s purpose;
- 7.1.8 to provide necessary cooperation to the Client or third parties designated by the Client; the cooperation of the Supplier shall be provided primarily in preparation and implementation of the System and other systems of the Client in the Data Room, operations of the System and other systems of the Client and optimisation of their operations in the Client’s infrastructure. This paragraph hereof additionally contains the specification of technical conditions and interface, organisational and project cooperation necessary for the implementation of other public contracts of the Client and for operations of supplied systems. The Supplier acknowledges that any dispute between the Supplier and another supplier of the Client shall be decided by the Client;
- 7.1.9 to facilitate the presence of the Client’s representative and representative of another supplier of the Client in any stage of the Work installation in the Data Room;
- 7.1.10 to inform the Client on the meeting of its obligations hereunder and other important facts that may have an impact on the exercise of rights and meeting of the obligations of the contracting parties;
- 7.1.11 to ensure that all persons involved in the meeting of its obligations arising herefrom who shall be present in the premises or at workplaces of VSB-TUO, adhere to applicable legal regulations regarding occupational health and safety, sanitary regulations, fire prevention regulations at workplaces and environmental protection, and all internal regulations of VSB-TUO about which the Supplier was informed by VSB-TUO; for the avoidance of doubts, the Supplier shall be responsible for the qualification and physical fitness of all its employees and employees of its subcontractors, if any. At a request of the Client and everywhere where suggested by the generally applicable regulations, the Supplier shall be additionally obliged to present a qualification card for performed works and an authorisation for production

- of selected technical devices to the Client at the request of the Client or supervisory bodies;
- 7.1.12 to protect intellectual property rights of VSB-TUO and third parties;
- 7.1.13 when performing this Contract, to proceed in line with the Detailed Project Plan and project management rules in accordance with Annex 8 hereto;
- 7.1.14 to notify the Client of potential unsuitability of instructions by the Client in justified cases;
- 7.1.15 to observe safety principles and ensure safety observation in terms of processes, organisation and technical issues;
- 7.1.16 to behave in such manner to prevent danger to/damage to property or danger to health of persons and prevent these risks;
- 7.1.17 to behave in such manner to prevent any damage to the already installed facilities and equipment, or impact on the operations, functionality and safety or other operated systems of VSB-TUO;
- 7.1.18 to systematically and right from the start ensure such measures to mitigate safety risks, to prevent unauthorised access to or intrusion in the System or to data contained in the System, and ensure granting of authorised access only in the necessary scope and for a necessary period of time; and
- 7.1.19 to ensure that all parts of the Work meet the parameters in the Technical Specification in respect of climatic conditions in the Data Room and energy intensity of their operations, the Supplier explicitly undertakes to refund all actual and provable costs to VSB-TUO that are incurred as a result of a breach of this provision; this obligation shall apply over the entire period of use of the relevant part of the Work by VSB-TUO.
- 7.2 The Supplier acknowledges that the remuneration of all costs incurred in connection with the completion of the Work and provision of warranty in line with the conditions agreed in article 11 hereof shall be an integral part of the performance and confirms that these were included in the price of the Work hereunder. The Client reserves the right to inspect the status of the Work implementation and the entire course of performance hereunder and monitor its quality. For this purpose, inspection days shall be organised. Minutes shall be prepared from each inspection day agreed by both VSB-TUO and Supplier. The frequency of inspection days shall be determined pursuant to an agreement of both VSB-TUO and Supplier.
- 7.3 The Supplier additionally undertakes to maintain an insurance policy (or policies, further used in singular for simplification) valid and effective over the entire term hereof, including the warranty period for the Work the subject matter of which shall be insurance of liability for damage caused by the Supplier to a third party (mainly, but not exclusively to the Client) by breach of its contractual obligations, insurance of liability for detriment caused by operations of the Supplier and a product defect. In addition, the insurance must cover any bodily harm, death and potentially other natural rights of third parties. The limit of insurance benefits arising from the insurance policy must not be lower than CZK 150,000,000 and the level of co-insurance of the Supplier higher than 10% of the total amount of insurance benefits. At request, the Supplier shall be obliged to present the insurance policy or certificate of insurance meeting the above requirements to the Client by no later than 30 days after the delivery of a written call of the Client.

- 7.4 The Supplier additionally undertakes to ensure compliance with occupational health and safety in relation to the subject matter hereof in cases when required in accordance with currently applicable legal regulations in line with Act No. 309/2006 Coll. stipulating further requirements for health and safety at work in labour relations and concerning occupational health and safety protection in activities or services provided outside labour relations (Act on Further Requirements on Occupational Health and Safety), as amended (hereinafter the “**Act on Further Requirements on Occupational Health and Safety**”). After identification of any risks relating to the performance of the Supplier, the Supplier additionally undertakes to inform the Client of these risks immediately, no later than on the following working day.
- 7.5 For the avoidance of doubts, the performance by the Supplier shall additionally include the performance through a subcontractor in accordance with par. 3.9 hereof.
- 7.6 If the provision of performance hereunder results in production of waste, the Supplier undertakes to remove all waste produced in the performance of the agreed activities in line with Act No. 185/2001 Coll., on Waste and Amending Some Other Laws, as amended, and other relating regulations. The Supplier undertakes to remove the waste produced as part of performance hereunder by no later than within 5 working days from the production of waste; the waste shall not be left in the Data Room for more than 24 hours. The Supplier shall be obliged to proceed similarly in the liquidation of packaging.
- 7.7 When providing performance hereunder, the Supplier undertakes to proceed in a manner preventing damage to the Work and property of the Client or third parties at the place of performance or its vicinity. For this purpose, the Supplier primarily undertakes to maintain order during the completion of the Work at the place of its implementation and its vicinity at its own expense.

8. SPECIFIC OBLIGATIONS RELATING TO THE FUNDING SCHEME

- 8.1 The Supplier undertakes to provide the managing body of OP RDE, i.e. the Czech Republic – Ministry of Education, Youth and Sports (hereinafter as “**MO OP RDE**”), inspections by EuroHPC JU, European Anti-Fraud Office (OLAF), European Public Prosecutor’s Office (EPPO), European Court of Auditors (ECA), or other supervisory bodies of the public administration in accordance with applicable legal regulations, with access to the parts of tenders, contracts and relating documents that are subject to protection under special legal regulations in cases when it is necessary in respect of the requirements of legal regulations (e.g. Section 8 to 10 of Act No. 255/2012 Coll., on Inspection (Inspection Code), as amended, European Regulations 883/2013, 2185/96, 2017/1939, Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 257 of EU Financial Regulation 2018/1046).
- 8.2 The Supplier undertakes to provide an authorisation to the MO OP RDE, EuroHPC JU and any other bodies stated above, in a manner determined in the prior paragraph, to inspect its subcontractors, if any.
- 8.3 The Supplier undertakes to provide all entities authorised to make inspection of projects, the funds of which are used to pay for the services and supplies hereunder, with the possibility to inspect documents relating to the performance under the contract, for a period not shorter than 3 years from the closing of MO OP RDE and EuroHPC JU under Article 90 of Council Regulation (EC) No 1083/2006, unless the Czech law stipulates a longer time period.
- 8.4 The Supplier acknowledges that the Client shall be obliged to meet the requirements for publicity in programmes of structural funds stipulated in Article 90 of Council Regulation (EC) No 1828/2006 and Publicity Policy in OP RDE, or publicity of EuroHPC in accordance with

Hosting Agreement No. 05/2019 that the Client shall deliver to the Supplier at request, in all relevant documents relating to the procurement procedure or policy.

- 8.5 The Supplier undertakes to provide all necessary cooperation in the performance of financial control under Act No. 320/2001 Coll. on Financial Control in Public Administration and on the Amendment to some Acts, as amended, and to provide any necessary cooperation in the performance of checks, audits, and investigations by bodies as per par. 8.1 hereof. The Supplier grants the Client's staff and outside personnel authorised by the Client the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The Supplier ensures that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format. On the basis of the findings made during the audit, a provisional report is drawn up. The Client or its authorised representative will send it to the Supplier, who has 30 days following the date of receipt to submit observations. The Supplier will receive the final report within 60 days following the expiry of that deadline to submit observations. The Supplier undertakes to provide for the meeting of this obligation in its subcontractors.

9. PREVENTION OF MORAL DEPRECIATION OF TECHNOLOGIES

- 9.1 The contracting parties acknowledge that, given the term of this Contract and development in information and communication technologies, moral depreciation or another unsuitability of technologies that are to be supplied as part of the performance hereunder may occur during the Contract term (hereinafter the "**Moral Depreciation**").
- 9.2 Morally depreciated technology hereunder is the technology which is, at the time of the verification of its up-to-date character in accordance with par. 9.3 hereof, on the lower technological development level than as of the day of inclusion in the Technical Specification, and in respect of which it can be objectively assumed that if the Supplier or another reasonably acting entity were preparing the Technical Specification at the time of the inspection, it would not include this technology and would give preference to an adequately more advanced technology. Morally depreciated technology includes the cases when:
- 9.2.1 it is possible to purchase more advanced products (it means products having substantially better technical parameters) for the price not exceeding the bid price; or
- 9.2.2 production of the original technology was discontinued, or provision of associated services was discontinued, primarily support of the product by the manufacturer or discontinued production of spare parts; or
- 9.2.3 the original technology is not compatible with other technologies used for the implementation of the Work.
- 9.3 The Client shall be entitled to call upon the Supplier in writing to verify the up-to-date character of technologies that are to be supplied in accordance with the Technical Specification, and verify whether they are morally depreciated, any time during the Contract term, however no later than achievement of milestone "*5. Discussion and Acceptance of the Detailed Technical Specification*". The Supplier shall be obliged to communicate the results of the inspection to the Client in the period of 5 working days.
- 9.4 If there are morally depreciated technologies in the Technical Specification at the moment of the verification, the Supplier undertakes to replace the obsolete technology by another technology that shall meet the criteria of not being morally depreciated.

- 9.5 If the technology is replaced in accordance with par. 9.4 hereof, the Supplier shall be obliged to ensure all other adjustments to the Technical Specification in order to maintain proper functioning of the Work.
- 9.6 In relation to the replacements of morally depreciated technologies, the Supplier shall not be entitled to increase the price of any part of the Work. The replacement of morally depreciated technologies shall be part of the Work hereunder, specifically the System Implementation section.
- 9.7 If there is a conflict between the contracting parties regarding the issues relating to article 9 hereof, the contracting parties undertake to remove these conflicts by an expert appraisal of a court expert in the field of cybernetics, computing, who shall be agreed by the contracting parties for this purpose. It shall be an obligation of the Supplier to order and acquire the appraisal from the expert agreed by the Client and the Supplier.
- 9.8 The costs of the acquisition of an expert appraisal shall be borne by the party which was not successful in the dispute in accordance with par. 9.7 hereof according to the expert appraisal. However, when it is not possible to clearly determine which party was successful in the dispute, the Supplier and VSB-TUO shall bear the costs in equal parts.
- 9.9 If the morally depreciated technologies are replaced before the approval of the Detailed Technical Specification, the Supplier shall not be entitled to request an adjustment to the Time Schedule hereunder. Provisions of article 5 shall apply to this adjustment *mutatis mutandis*.

10. OWNERSHIP RIGHTS AND COPYRIGHT

- 10.1 The Client shall acquire the ownership rights to the Work as a whole and its individual parts which are movable assets on the date of the acceptance of the Work as a whole in accordance with par. 6.8 hereof by the Client, i.e. by achievement of milestone “18. *Comprehensive Supply of the System*”, pursuant to a written acceptance protocol signed by authorised persons of the contracting parties. With respect to the gradual handover of the System to the Client, the Client acquires ownership rights to the part of the System within the meaning of milestone no. 8 on the day of signing the acceptance protocol related to this milestone. The danger of damage to the Work as well as all things handed over shall be transferred to the Client on the day when it acquires the ownership right to the Work, respectively on the day of acceptance of the part of the System within the meaning of milestone no. 8, in accordance with the prior part of this paragraph. Until the transfer of the ownership right to the Work, the Supplier shall provide for the protection of the Work or the part of the System and all its parts against damage. The Supplier shall select the type and scope of use of protective means in a manner sufficient to the protection of the Work before damage or destruction and continuously ensure the protection until the transfer of the danger of damage to the Work. The Client shall provide necessary cooperation to the Supplier to meet the obligation in accordance with par. 10.1 hereof. The Supplier undertakes to inform the Client of the suitability of selected protective means or potential damage to them during inspection days in accordance with par. 7.2 hereof. If there are comments of the Client to the suitability or sufficiency of used protective means, the Supplier undertakes to adapt the protective means to the requirements of the Client. In addition, the Client undertakes to the Supplier to provide all available records in the event of a damage to the Work before its completion which might suggest the cause of the damage (records of access to the Data Room and adjacent premises, CCTV footage of the Data Room and adjacent premises, records from the measurement and regulation system etc.) and provide the Supplier with cooperation during the Work completion in ensuring prevention of potential damage. For the avoidance

of doubts, all protective means shall be removed as of the day of the acceptance of the Work as a whole in accordance with par. 6.8 hereof, unless the Client stipulates otherwise.

- 10.2 The Supplier undertakes to ensure the provision of the right to the Client, in respect of each part of the System, to use these parts of the System in line with their intended purpose and ensure that the right to further modify the System is not affected by the claims of the Supplier.
- 10.3 The Supplier declares that it is the rightful owner of the Intellectual property rights to all Products and/or their components delivered under this contract, and that it is entitled to assign or licence those rights in accordance with the terms of this Contract. If those Intellectual property rights are the property of third parties, the Supplier guarantees that it has requested and obtained those third parties' written authorisation to grant to the Client the assignment or licence of their Intellectual property rights to the extent as provided under this Contract. The Supplier shall be solely responsible for taking the Supplier are to be performed, to ensure the opposability to third parties of the assignments or licences granted to the Client by the Supplier or by such third parties.
- 10.4 The Supplier guarantees that none of the Products, Documentation or other protected material delivered, whether or not developed in execution of this Contract, infringes any third party's Intellectual property rights.
- 10.5 Each Party shall inform the other Party of the existence or threat of any third party's action or claim alleging an infringement of its Intellectual property rights by the Client's use of any Products, Documentation or other protected material delivered under this Contract, provided such use is made in conformity with the terms of this Contract.
- 10.6 In the event of such a dispute or threat thereof, the Supplier undertakes to conduct all litigation, arbitration or negotiations for settlement, in its own name as well as in the Client's name, at its own and sole expense. The Client agrees to provide the Supplier with all information and assistance that may reasonably be required, at the Supplier's own and sole expense. However, the Client reserves the right to decide to conduct its own defence or to negotiate its own settlement, at its own discretion. The Supplier will be responsible for any payment arising out of any settlement or judgement following such a dispute or threat, except for the payment of a settlement made by the Client without the Supplier's written consent. Such consent may not be withheld without reasonable grounds. If the infringement of a third party's Intellectual property right on a Product and its Documentation is declared in a judgement, arbitration sentence or party settlement, or if such is likely to happen, the Supplier agrees to (1) either procure for the Client the right to continue using the Product and its Documentation, (2) either replace them with substantially equivalent non-infringing Products, or, if none of the foregoing is available, (3) grant to the Client a credit in the amount corresponding to the purchase price of the proportion of the Product which can no longer be used. The Supplier will not be responsible under the present guarantee for any third party claiming an infringement of its Intellectual property rights based on (1) the Client's use of Products in combination with equipment not delivered by the Supplier, if such combined use is the cause of the claimed infringement, or (2) the Client's use of any Product and Documentation delivered hereunder in a form other than the one delivered by the Supplier, if such change in form is the cause of the claimed infringement.
- 10.7 The guarantee against third party claims is due by the Supplier until five (5) years following the end of the Contract, or until five (5) years following the last use by the Client of the Product and its Documentation delivered by the Supplier, whichever period ends last.

11. WARRANTY AND LIABILITY FOR DEFECTS

- 11.1 The Supplier shall provide a warranty that the Work as a whole has functional properties and is capable to be used for purposes determined herein or hereunder as of the handover date. With respect to the fact that the Supplier will first deliver the part of the System within the meaning of milestone no. 8, the contracting parties declare that the warranty within the meaning of the previous sentence will also apply to the delivered part of the System within the meaning of milestone no. 8.
- 11.2 The Supplier shall provide a warranty for quality and warranty that the Work shall maintain its properties in accordance with par. 11.1 hereof over the warranty period. The warranty period shall start on the day of acceptance of the part of the System within the meaning of milestone no. 11 and shall last for a period of 5 years after the achievement of milestone “11. *Successful performing of Acceptance Tests of the part of the System*”.
- 11.3 Binding conditions of warranty provision over the warranty period in accordance with the prior paragraph shall be determined in Annex 6 hereto. For the avoidance of doubts, the warranty shall be part of the subject matter of performance hereunder and shall be provided without the claim of the Supplier for financial consideration.
- 11.4 Defects of the Work shall be removed in line with the following rules:
- 11.4.1 The Supplier shall start the removal of category A defect, i.e. defect that fully or significantly prevents the use of the Work, immediately after it is reported, and it shall remove the defect within 24 hours after it is reported or provides a substitute solution acceptable for VSB-TUO.
- 11.4.2 The Supplier shall start to remove the category B defect, i.e. defect that does not prevent the use of the Work, however significantly limits it, or that creates a risk of impossibility to use the Work, no later than within 2 hours after it is reported, and it shall remove the defect within 72 hours after it is reported or provides a substitute solution acceptable for VSB-TUO, unless the Supplier and VSB-TUO agree otherwise.
- 11.4.3 The Supplier shall start to remove the category C defect, i.e. defect that is neither category A nor category B defect, by no later than 24 hours after it is reported and the date of defect removal shall not exceed 7 working days after it is reported, unless the contracting parties agree otherwise in writing.
- 11.4.4 A substitute solution for the category A defect shall be the reported category B defect and a substitute solution for category B defect shall be the reported category C defect; an admissible solution shall be only the substitute solution that actually allows for a change in the category of the defects, unless the contracting parties agree otherwise through their authorised persons in justified cases.
- 11.4.5 If the removal of a defects of any category requires a shutdown of the Work, the Supplier shall make a written request for the shutdown of the Work. The defects shall be removed only if the request is approved by VSB-TUO and the shutdown takes place on the date determined by VSB-TUO. The period between the filing of the request for the shutdown and start of the Work shutdown shall not be included in the period for defect removal.
- 11.4.6 The Supplier shall remove category A and category B defects 24 hours a day and 7 days a week. Category C defects shall be removed only on working days from 8:00 am to 4:00 pm, unless the parties agree otherwise.

- 11.4.7 For the avoidance of doubts, significantly limiting are those defects that cause the worsening of the Work parameters by more than 20% as compared to parameters validated during the acceptance of the Work.
- 11.4.8 For the avoidance of doubts, defects that create a risk of impossibility to use the Work are those defects that cause a loss of redundancy or availability of the Work in parts where the tender conditions explicitly determine this redundancy or availability.
- 11.4.9 The Client shall be entitled to change the category of the defect during the defect duration pursuant to identification of new facts.
- 11.4.10 The Client shall be entitled to report several concurrent defects as new defects of another category than the existing defects.
- 11.4.11 If there are any doubts regarding the categorisation of the defects, it shall be resolved by VSB-TUO.
- 11.4.12 The contracting parties state that the Client shall not be obliged to report defects to the Supplier within certain period from their identification, however it undertakes to report the defects identified without unnecessary delays. The reporting or failure to report the defect by the Client shall not be decisive for the obligation of the Supplier to remove the defects that occurred in the Work and shall not relieve the Supplier of this obligation.
- 11.4.13 The period from reporting of category A or category B defect until its removal shall not be included in the warranty period.
- 11.4.14 No more than 8 cases of category A defect may happen in 365 calendar days; defects in the Work caused by the Client intentionally or due to its gross negligence, or when the Client intentionally or due to its gross negligence makes it possible for a third party to cause a defect in the Work, shall not be included in the maximum number of defects.
- 11.4.15 In 365 days, there may be no more than 16 cases of category B defects; the defects in the Work caused by the Client intentionally or due to its gross negligence, or when the Client intentionally or due to its gross negligence makes it possible for a third party to cause a defect in the Work, shall not be included in the maximum number of defects.
- 11.4.16 In 365 calendar days, there may be no more than 264 hours of the Work shutdowns, of which there may be 120 hours of unplanned shutdowns. The shutdown of the Work is every, including started, hour, when the Work is not usable by the user due to planned or unplanned repairs, updates or similar activities on the Work. This should ensure the overall availability of the Work. A shutdown of the Work includes a defect in accordance with prior paragraphs of this article hereof, if the nature and the scope of the defect results in a malfunction of the Work.
- 11.4.17 The first period of 365 calendar days for the determination of the total number of defects of individual categories in accordance with par. 11.4.14 and 11.4.15 and shutdowns in accordance with par. 11.4.16 of this article hereof shall start from milestone “11. Successful performing of Acceptance Tests of the part of the System”. Other periods, each of 365 calendar days, immediately succeed the end of the previous period. The numbers of defects in the Work caused by the Client intentionally or due to its gross negligence, or when the Client intentionally or due to

its gross negligence makes it possible for a third party to cause a defect in the Work, shall not be included in the cumulative number of defects.

- 11.5 The Supplier declares that all the Work supplied hereunder shall be free of legal defects and undertakes to the Client to provide all defence and protection against the claims of third parties as well as indemnify the Client in full if a third party makes a copyright or another claim arising from the legal defects of the supplied performance. If a claim of a third party, regardless its eligibility, resulted in a temporary or permanent restraining order or restrictions to the use of the Work or its substantial part, the Supplier undertakes to provide for a substitute solution and reduce the impacts of such situation, the claims of the Client for indemnification shall not be affected.
- 11.6 For the avoidance of doubts, the obligation of the Supplier to remove the defect in the Work shall not be extinguished when it was caused by the Client by an incorrect use or another manner intentionally or due to a gross negligence or intentionally or due to gross negligence made it possible to a third party to cause the defect in the Work; this shall not affect the liability of the one who caused the defect by the breach of its legal obligations for the damage caused in this regard. For the avoidance of doubts, the obligation of Client to compensate for the damage shall be excluded in cases when the Client did not cause the defect in the Work intentionally or due to gross negligence.
- 11.7 For the avoidance of doubts, the liability for defects shall be governed by Section 2615 and Section 2099 and following provisions of the Civil Code, unless the Contract stipulates otherwise.

12. PRICE AND PAYMENT CONDITIONS

- 12.1 The price for the performance shall be specified in detail in Annex 4 hereto, and the price for the Work has been agreed between the contracting parties for the amount listed in the "Total" line in the table in Annex 4 hereto.
- 12.2 Prices herein shall be determined as final and shall not be exceeded. Prices can be changed only due to changes in legal regulations stipulating the amount of the value added tax, in the scope stipulated by a change in the legal regulations.
- 12.3 For the avoidance of doubts, the price in accordance with par. 12.1 hereof shall include all costs relating to the due provision of performance hereunder and completion of all relating activities and supplies defined herein and in the Technical Specification, including the fee for the provision of all licences and authorisations hereunder, accommodation and travel costs of the employees of the Supplier involved in the provision of the performance hereunder (transportation to the place of performance, accommodation at the place of performance, meal allowances). The price as stated in par. 12.1 hereof additionally includes the fee for meeting of all obligations of the Supplier agreed herein and meeting of all obligations of the Supplier stipulated by law or rules of OP RDE /EuroHPC. The price as stated in par. 12.1 hereof does not include only the performance that the Client explicitly undertook to provide as its cooperation.
- 12.4 The Work as a whole supplied in a due and timely manner shall be handed over at the moment of acceptance, i.e. signature of the final acceptance protocol by both contracting parties.
- 12.5 The price of the Work shall be paid in accordance with the payment schedule in Annex 4 hereto, after the due completion of the Work as determined by milestone "18. Comprehensive Supply of the System", respectively after completion of milestone no. 11, in line with the conditions listed in Annex 4 hereto. The condition for the invoicing of the price for the Work

shall be the acceptance of the Work by the Client, or acceptance of the delivered part of the System within the meaning of milestone no. 11, respectively. The Client shall not make any advance payments.

- 12.6 The price for the Work hereunder shall be paid by a bank transfer, pursuant to invoices (tax documents) that the Supplier shall be obliged to issue under the conditions listed herein. The first invoice shall be issued to EuroHPC JU and the second invoice shall be issued to VSB-TUO. The invoice to EuroHPC JU shall be issued for an amount of EUR 5,130,000 and the invoice to VSB-TUO shall be issued in Czech currency by translation of EUR 9,725,000 net of VAT using the exchange rate of the Czech National Bank as of the provision of performance, however for no more than CZK 251,800,000 net of VAT. The issued invoice shall be sent by the Supplier to EuroHPC JU immediately, however no later than 5 working days after signing the acceptance protocol of the Work within the meaning of the milestone no. 11 in accordance with par. 6.7 hereof by authorised representatives of the contracting parties. The issued invoice shall be sent by the Supplier to VSB-TUO immediately, however no later than 5 working days after signing the final acceptance protocol of the Work within the meaning of the milestone no. 18 in accordance with par. 6.7 hereof by authorised representatives of the contracting parties.
- 12.7 The invoice, and therefore the price for the Work, shall be due in 30 calendar days from the date of the invoice issuance by the Supplier in respect of VSB-TUO, and 60 calendar days from the invoice issuance by the Supplier in respect of EuroHPC JU.
- 12.8 All invoices shall contain the particulars of a tax document stipulated in Act No. 235/2004 Coll., on Value added Tax, as amended (hereinafter the "VAT Act"), shall contain the Contract number, and an appended signed acceptance protocol confirming the procedural acceptance of the Work. The invoices issued to VSB-TUO in accordance with par. 12.6 hereof shall be issued by the Supplier in accordance with Annex 4 hereto with the calculation of the tax base and calculation of the tax amount, it shall contain the name of the project OP RDE and reg. no. of project OP RDE in accordance with par. 2.1 hereof. The invoice issued to EuroHPC JU shall not contain the calculation of the VAT as the performance is exempt from VAT under Section 68 (8) of the VAT Act and Council Regulation (EU) 2018/1488 of 28 September 2018 establishing the European High-Performance Computing Joint Undertaking, Article 18. The entitlement for exemption from value added tax results from these regulations. If the invoice or its annexes do not contain the determined particulars or do not list correctly stated required information, the Client shall be authorised to return it to the Supplier before its due date with the list of missing particulars or incorrect information (it additionally applies to incorrect information listed in the Statement of performance). In such case, the maturity period shall be interrupted, and a new maturity period shall start on the date of delivery of the corrected invoice to the Client.
- 12.9 Monetary amounts shall be paid by a bank transfer to the account of the other contracting party listed in the invoice. The monetary amount shall be considered as paid on the day when it was deducted from the sender's account in favour to the recipient's account.
- 12.10 The Supplier acknowledges that VSB-TUO shall pay the amount in line with the received invoice only to the published bank accounts in the register of payers and identified entities. If the Supplier does not have a published bank account, VSB-TUO undertakes to pay only part of the price to the Supplier in the amount of the tax base and it shall pay the part of the price in the amount of the value added tax after the publication of the relevant account in the register of payers and identified entities without being delayed in the settlement of its payable.
- 12.11 If the Supplier becomes an unreliable payer under Act No. 235/2004 Coll., on Value Added Tax, as amended, VSB-TUO shall pay only part of the price in the amount of the tax base to the

Supplier. VSB-TUO shall pay the part of the price in the amount of the value added tax only after a written documentation by the Supplier on its payment to the relevant tax administrator, without VSB-TUO being delayed in the settlement of its payable.

13. AUTHORISED PERSONS

- 13.1 Each of the contracting parties shall designate an authorised person or a deputy of the authorised person. The authorised persons shall represent the contracting party in contractual, business and technical matters relating to the performance hereunder.
- 13.2 The authorised persons shall be authorised to perform, on behalf of the parties, all acts or legal acts during acceptance procedures hereunder and prepare amendments hereto after written approval to persons authorised to bind the parties (statutory bodies) or their representatives acting based on power of attorney.
- 13.3 The authorised persons shall not be authorised to activities that would directly result in a change herein or the subject matter hereof.
- 13.4 Names of the authorised persons shall be listed in Annex 7 hereto and their roles shall be stipulated by this Contract.
- 13.5 The contracting parties shall be entitled to change the authorised persons; however, they are obliged to notify the other contracting party of such change. A deputy of the authorised persons shall be authorised in writing with the listed scope of authorisation.

14. COOPERATION AND MUTUAL COMMUNICATION

- 14.1 The contracting parties undertake to cooperate and mutually communicate all information necessary for the due meeting of their obligations. The contracting parties shall be obliged to inform the other contracting party on all facts that are or may be important for due performance hereunder.
- 14.2 The contracting parties shall be obliged to meet their obligations arising herefrom to prevent any delays in the meeting of individual deadlines and delays in adhering to the maturity of individual financial payables.
- 14.3 All communication between the contracting parties shall be the task of the authorised persons in accordance with article 13 hereof, statutory bodies of the contracting parties or employees authorised in writing.
- 14.4 All notifications between the contracting parties relating to this Contract, or that are to be made based on this Contract, shall be made in writing and delivered to the other party either in person or by a registered letter or another form of registered mail to the address listed on the title page hereof, unless stipulated or agreed otherwise between the contracting parties. If the communication in accordance with the previous sentence has no impact on the validity and effectiveness of the Contract, delivery by fax or email to numbers and addresses listed in Annex 7 hereto shall be allowed.
- 14.5 If the Contract requests a delivery of a certain document in writing, it shall be delivered in a printed version and in an electronic (digital) form as MS Word 2003 or higher MS Word version, MS Excel 2003 or higher MS Excel version, or editable PDF document on an agreed medium.
- 14.6 The contracting parties undertake that they shall inform the other contract party of changes in its postal address, fax number or email address by no later than within 3 working days.

- 14.7 The Supplier undertakes to, in the period of 10 days from the delivery of a justified written request of the Client for an exchange in the authorised person of the Supplier with whom the Client was not satisfied for objective reasons, replace this authorised person by another suitable person with adequate qualifications.

15. PROTECTION OF INFORMATION

- 15.1 The contracting parties are aware of the fact that as part of the meeting the obligations hereunder:

15.1.1 they may mutually knowingly or by an omission provide information that is treated as confidential under Section 1730 of the Civil Code (hereinafter the “**Confidential Information**”);

15.1.2 their employees and person on similar positions may gain access, through conscious activities of the other party or its omission, to the Confidential Information of the other party.

- 15.2 The contracting parties undertake that none of them shall provide access to a third party to the Confidential Information that it received from the other contracting party while providing performance hereunder. This shall not apply when its provision to a third party is necessary to meet the obligations arising herefrom.

- 15.3 Third parties as defined in par. 15.2 shall not include:

15.3.1 the employees of the contracting parties and persons on similar positions;

15.3.2 bodies of the contracting parties and their members;

15.3.3 in relation to the Confidential Information of the Client, subcontractors of the Supplier; and

15.3.4 in relation to the Confidential Information of the Supplier MB OP RDE, management body of EuroHPC JU and external suppliers to the Client;

provided that they take part in the performance hereunder or performance relating to performance hereunder, the Confidential Information shall be disclosed to them solely for this purposes and the disclosure of the Confidential Information shall be in the scope absolutely necessary to the fulfilment of its purpose and under identical conditions in relation to the obligation of confidentiality of these person, as stipulated for the contracting parties herein, primarily in respect of par. 15.6 hereof.

- 15.4 The contracting parties undertake to fully maintain confidentiality and protect the Confidential Information arising herefrom and from relevant legal regulations, primarily obligations arising from Act No. 110/2019 Coll., on Personal Data processing. The contracting parties undertake to inform all persons in this respect who shall take part in the performance hereunder on their parts of the above obligations of confidentiality and protection of the Confidential Information and undertake to ensure the meeting of these obligations by all persons taking part in the performance hereunder in a suitable manner.

- 15.5 If the information provided by the Client or third parties and necessary for the performance hereunder contains data subject to special protection under Act No. 110/2019 Coll., on Personal Data processing, and/or Regulation (EU) 2016/679 (General Data Protection Regulation) and Regulation (EU) 2018/1725, the Supplier undertakes to provide for the meeting of all reporting obligations that the above act requires, and obtain prescribed consents of personal data subjects forwarded for processing.

- 15.6 All Confidential Information shall remain in the sole ownership of the transferring party and the receiving party shall make identical efforts to maintain its confidentiality and its protection as if it were its own Confidential Information. Except for the scope that is necessary for the performance hereunder, both parties undertake to abstain from duplications of the Confidential Information of the other party, abstain for transferring it to a third party or its own employees and representatives, except for those who need to know it to be able to provide performance hereunder. Both parties additionally undertake not to use of the Confidential Information of the other party in another manner than for the purpose of performance hereunder.
- 15.7 Unless the contracting parties agree otherwise in writing, all information shall be considered as implicitly confidential that is or might be part of the trade secret, i.e. for example, but not limited to, descriptions or parts of descriptions of technological processes and formulas, technical formulas and technical know-how, information on operational methods, procedures and working methods, business or marketing plans, concepts and strategies or their parts, proposals, contracts, agreements or other arrangements with third parties, information on results of operations, on relationships with business partners, labour issues and all other information the disclosure of which by the receiving party could damage the transferring party.
- 15.8 If the Confidential Information is provided in writing or in the form of text files on electronic data carriers (media), the transferring part shall be obliged to notify the receiving party about the confidentiality of such material by marking it at least on the title page or from page of the medium. Any absence of such notification however shall not result in the extinguishment of the obligation to protect the information provided in such manner.
- 15.9 Regardless the above provisions, the following information shall not be the Confidential Information:
- 15.9.1 the information that became publicly known and its publication did not breach the obligations of the receiving contracting party or legal regulations;
 - 15.9.2 the information that the receiving party had provably legally available before the conclusion hereof, if such information was not subject to another contract for protection of information previously concluded between the contracting parties;
 - 15.9.3 the information that results from a procedure during which the receiving party concludes it independently and is able to document it by its records or the Confidential Information of a third party;
 - 15.9.4 after signing this Contract, provided to the receiving party by a third party which is not restricted in handling the information; and
 - 15.9.5 the information published in the profile of the Client, as the contracting authority of the Public Contract under Section 219 of the Act, if the Supplier did not prove that the Client is not obliged to publish using the procedure in accordance with par. 15.12 hereof.
- 15.10 The breach of the obligation of confidentiality by a contracting party shall be additionally the cases when this obligation is breached by any of persons listed in par. 15.3 hereof to which a contracting party provided the Confidential Information of the other contracting party.
- 15.11 The termination hereof for any reason shall not affect provisions of this article 15 hereof and they shall be effective after the termination of the Contract for 5 years after the end of the warranty period for the Work.

- 15.12 The Supplier shall state to the Client in writing within 5 working days from signing hereof what parts hereof, including its annexes, constitute the business secret of the Supplier under Section 504 of the Civil Code or another information protected in line with special legal regulations with reasons for such classification. The Supplier acknowledges that this procedure shall not apply in relation to the amount of the actually paid price for the performance hereunder and the list of subcontractors of the Supplier. Parts hereof constituting the business secret or other information protected in line with special regulations shall be secured against reading (redacted etc.) before the publication of the Contract. In the event of any dispute between the Client and the Supplier regarding the scope of these undisclosed parts of the Contract, the Client shall be authorised to publish only indisputable parts hereof and the remaining parts after this issue between the parties is resolved by a procedure for resolution of disputes.

16. SANCTIONS CLAUSE

- 16.1 If the Client is delayed in the payment of the invoiced issued to VSB-TUO, the Supplier shall be entitled to request a payment of the default interest in the amount stipulated by legal regulations.
- 16.2 The contracting parties have agreed that:
- 16.2.1 if the Supplier is delayed in the achievement of any of the milestones 3, 5, 7, 11 and 18 listed in the Time Schedule, the Client shall be entitled for a contractual fine of CZK 40,000 for each, including commenced, day of the delay;
 - 16.2.2 if the Supplier is delayed in the removal of warrant category A defect, the Client shall be entitled for the contractual fine of CZK 4,000 for each, including commenced, hour of the delay;
 - 16.2.3 if the Supplier is delayed in the removal of warrant category B defect, the Client shall be entitled for the contractual fine of CZK 700 for each, including commenced, hour of the delay;
 - 16.2.4 if the Supplier is delayed in the removal of warrant category C defect, the Client shall be entitled for the contractual fine of CZK 2,000 for each, including commenced, day of the delay;
 - 16.2.5 if the cumulative number of all warranty category A defects is exceeded in accordance with par. 11.4.14 hereof, the Client shall be entitled for the contractual fine of the amount determined by the sum of CZK 20,000 per each defect in addition to the determined maximum number;
 - 16.2.6 if the cumulative number of all warranty category B defects is exceeded in accordance with par. 11.4.15 hereof, the Client shall be entitled for the contractual fine of the amount determined by the sum of CZK 4,000 per each defect in addition to the determined maximum number;
 - 16.2.7 if the cumulative number of all Work shutdowns is exceeded in accordance with par. 11.4.16 hereof, and if it is not concurrently a defect of any of the above categories in accordance with par. 11.4 hereof, the Client shall be entitled for the contractual fine in the amount determined by the sum of CZK 4,000 for each, including commenced, hour of shutdown in addition to the maximum number;
 - 16.2.8 if the Supplier does present the insurance policy or insurance certificate in accordance with par. 7.3 hereof in time, or it is proved that it was not insured any time throughout the period stated in the first sentence of this paragraph in line with

- this Contract, the Client shall be entitled to request a contractual fine of CZK 250,000 for each started 14 successive days of the delay in the presentation of any insurance policy, if the insurance continued in the time of the delay, or for each started 14 successive days of the period when the Supplier was not insured in conflict with this Contract;
- 16.2.9 if the Supplier breaches the obligation to liquidate or remove waste and packaging in a due manner and before deadlines stipulated by par. 7.6 hereof, the Client shall be entitled for a contractual fine of CZK 10,000 for each, including commenced, day of the delay in the compliance with determined deadlines;
- 16.2.10 if the Supplier does not duly perform activities in accordance with conditions stipulated in par. 7.4 hereto, primarily if it breaches the obligation to inform the Client after identification of any risks relating to the performance immediately, however no later than on the following working day, the Client shall be entitled to a contractual fine of CZK 10,000 for each, including commenced, day of the delay in the compliance with such notification obligation or an individual case of breach of the obligation in line with the conditions of par. 7.4 hereof; and
- 16.2.11 if the Supplier breaches any of the obligations stipulated in paragraphs 7.1.8, 7.1.9, 7.1.10, 7.1.11, 7.1.13, 7.1.15, 7.1.17, 7.1.18 or 7.1.19 hereof, the Client shall be entitled for a contractual fine of CZK 10,000 per each individual case of breach of such obligation; if the breach of the obligation is a continuing defective condition, the individual case is each started day of defective condition.
- 16.3 If the Supplier breaches the obligation arising herefrom regarding the protection of business secret and the Confidential Information in accordance with article 15 hereof, the Client shall be entitled to request a payment of a contractual fine of CZK 500,000 for every breach of such obligation from the Supplier.
- 16.4 The contracting parties explicitly limit the total aggregate amount of contractual fines, the payment of which the Client is entitled to request, to the total of 10% of the price for the Work net of VAT in accordance with 12.1 hereof.

17. INDEMNIFICATION

- 17.1 VSB-TUO and the Supplier shall be liable for the damage caused under applicable legal regulations and hereunder, regardless of the fact whether the liability should have been or was the subject matter of an insurance policy in accordance with par. 7.3 hereto. Both aforementioned parties undertake to make maximum efforts to prevent damage and reduce caused damage. For the avoidance of doubts, the Client shall be entitled to request indemnification only of the actual damage under Section 2952 of the Civil Code.
- 17.2 None of the parties shall be liable for the damage caused as a result of factually incorrect or otherwise erroneous assignment received from the other party. If the VSB-TUO provided the Supplier with an erroneous assignment and the Supplier, given its obligation to provide performance with due care, could and should identify the incorrectness of such assignment, may invoke the provisions of the preceding sentence only if it notified the Client of the erroneous assignment and the Client insisted on the original assignment.
- 17.3 None of the contracting parties shall be obliged to compensate for the damage caused by the breach of its contractual obligations arising herefrom, the fulfilment of which was prevented due to some of the obstacles under Section 2913 (2) of the Civil Code which exclude enforcement to fulfil the indemnification obligation.

- 17.4 The contracting parties undertake to notify the other contracting party without undue delays of circumstances excluding the liability preventing the due performance hereunder from being carried out. The contracting parties undertake to make maximum efforts to avert and overcome the circumstance excluding the liability.
- 17.5 Any indemnification shall be paid in the currency valid in the territory of the Czech Republic, and the decisive rate for the translation to this currency shall be the exchange rate of the Czech National Bank as of the day when the damage occurred.
- 17.6 In derogation from Section 2050 of the Civil Code, the parties have agreed that agreement on any contractual fine shall not affect the right for indemnification for the damage caused by the breach of obligations to which the contractual fine relates, and the claim for the indemnification may be made independently from the contractual fine up to the amount limited by this Contract.
- 17.7 The sanction and the indemnification for the caused damage shall be payable within 30 calendar days from the date of delivery of the written call to payment together with the relevant invoice to the contracting party which is obliged to pay the relevant sanction or indemnification.
- 17.8 The contractual fine hereunder shall not be included in the indemnification arising from the breach of obligations stipulated herein, and these claims may be made independently in full and the contracting parties have agreed that the amount of the indemnification and contractual fines paid by one contracting party shall not exceed 110% of the price for the Work net of VAT as stated in par. 16.4 and par. 17.9 hereof. If any contractual fine is decreased by a court, the right of the Client for indemnification in the amount by which the damage exceeds the amount determined by the court as reasonable shall be maintained in the scope defined herein.
- 17.9 The contracting parties have agreed to restrict the right for indemnification that may arise to one contracting party during the performance hereunder, to the total amount equalling 100% of the price for the Work net of VAT in accordance with par. 12.1 hereof. However, this shall not affect Section 2898 of the Civil Code.
- 17.10 For the avoidance of doubt, the EuroHPC JU will not be responsible for any loss or damage caused to the Supplier during or as a consequence of performance of the Contract, unless the loss or damage was caused by wilful misconduct or gross negligence of the EuroHPC JU.

18. VALIDITY AND EFFECTIVENESS OF THE CONTRACT

- 18.1 The Contract shall become valid on the date when it is signed by both contracting parties. It shall take effect on the day when it is published in the register of contracts under relevant provisions of Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Disclosure of these Contracts and the Register of Contracts (Act on the Register of Contracts), as amended (hereinafter the "Act on the Register of Contracts"). For this case, the contracting parties state that this contract contains business secret under Section 504 of the Civil Code, and the business secret between the contracting parties is the provision that was redacted by the contracting parties in accordance with par. 15.12 hereof. Given this provision hereof, the contracting parties have agreed that the Client shall provide for the publication of the Contract under the Act on the Register of Contracts and shall notify the Supplier about the publication of the Contract in the register of contracts.
- 18.2 Each contracting party shall be entitled to withdraw from the Contract only for the reasons stipulated herein.

- 18.3 The Client shall be entitled to withdraw from the Contract in the event of:
- 18.3.1 the delay of the Supplier in the handover of the Work for the period exceeding 30 days as compared to the deadline for the performance stipulated herein, if the Supplier does not provide for rectification in the additional reasonable period that the Client provides in a written call to meet the obligation, this period shall not be shorter than 15 days from the delivery of such call;
 - 18.3.2 there is breach of the Contract for which it shall be entitled to request a contractual fine exceeding CZK 500,000 hereunder; the provision of this paragraph however shall not affect contractual fines in accordance with par. 16.2.2 to 16.2.7 hereof and shall not apply when the fines are imposed;
 - 18.3.3 cumulative limits stipulated in par. 11.4.14 and/or par. 11.4.15 and/or par. 11.4.16 hereof are exceeded three times;
 - 18.3.4 the total amount of the contractual fines to the payment of which the Client would be entitled hereunder amounts to CZK 1.500,000 hereunder; and
 - 18.3.5 the obligation to have a concluded insurance policy and present it to the Client at its call under the conditions stipulated in par. 7.3 hereof is breached, if the Supplier does not provide for rectification in the additional period provided by the Client which must not be shorter than 5 working days.
- 18.4 The Supplier shall be entitled to withdraw from the Contract if the Client is delayed in the payment of any due amount hereunder for more than 60 days, if the Client does not provide for rectification in an additional reasonable period of time that the Supplier provides to it for meeting of obligations in a written call, and this time period shall not be shorter than 15 days from the delivery of such call.
- 18.5 Each of the contracting parties is entitled to withdraw from the Contract in writing, if:
- 18.5.1 the property of the other contracting party is declared bankrupt, the contracting party itself files a debtor's petition for initiation of insolvency proceedings or the insolvency petition is rejected as the property is not sufficient to pay for the costs of the insolvency proceedings under Act No. 182/2006 Coll., on Bankruptcy and Settlement (Insolvency Law), as amended; or
 - 18.5.2 The other party is placed in liquidation.
- 18.6 The withdrawal from the Contract shall take effect on the day of delivery of a written notification on withdrawal to the other party.
- 18.7 The Contracting parties have agreed that, in the event of a withdrawal from the Contract, they shall return all provided performance, unless the Contract stipulates otherwise, or the parties agree otherwise upon the withdrawal or in a period of 3 weeks after the withdrawal from the Contract. For the avoidance of doubts, any costs relating to a disassembly of part of the Work that is to be returned to the Supplier using the procedure stipulated in this paragraph shall be borne solely by the Supplier.
- 18.8 The termination of this Contract shall not affect provisions hereof relating to licences, warranties, claims arising from liability for defects, claims arising from liability for damage and claims from contractual fines, if they arose before the termination hereof, provisions on protection of information, and other provisions and claims the nature of which indicates that they are to continue after the termination hereof.

19. SETTLEMENT OF DISPUTES

- 19.1 The rights and obligations of the contracting parties not explicitly stipulated herein shall be governed by the Civil Code and relating applicable legal regulations.
- 19.2 The contracting parties undertake to make maximum efforts to eliminate mutual disputes arising hereunder or in relation hereto, including the disputes regarding the interpretation hereof and seek the resolution of disputes first amicably through negotiation of authorised persons or authorised representatives.
- 19.3 If the disputed issue is not resolved in accordance with par. 19.2 hereof within 60 days from the delivery of a call to amicable settlement of a dispute sent by any contracting party to the other contracting party, the dispute shall be resolved with definitive effect by a competent general court of the Czech Republic.

20. FINAL PROVISIONS

- 20.1 This Contract is a complete agreement of the contracting parties on the subject matter hereof. This Contract may be changed only by a written agreement of the contracting parties in the form of numbered amendments hereto, signed by persons authorised to act on behalf of the contracting parties. Any changes hereto shall be made in compliance with the Act.
- 20.2 The contracting parties have explicitly agreed that they exclude the use of Section 557 of the Civil Code.
- 20.3 If any of the provisions hereof proved to be invalid or unenforceable or became invalid or unenforceable after the conclusion hereof, this fact shall not result in invalidity or unenforceability of other provisions hereof, unless the mandatory provisions of legal regulations indicate otherwise. The contracting parties undertake to replace such invalid or unenforceable provision by a valid and enforceable provisions with the content as close as possible to the purpose of the invalid or unenforceable provision.
- 20.4 The contracting parties have agreed that they do not wish that any rights and obligations are derived from the existing or future practice established between the contracting parties or practices maintained in general or in the sector relating to the subject matter hereof in addition to explicit provisions hereof, unless the Contract explicitly stipulates otherwise. In addition to the above, the contracting parties confirm that they are not aware of any relevant commercial practices or existing established practice.
- 20.5 An offset against the receivables of the Supplier shall not be allowed. The contracting parties exclude, in relation to the receivables of the Client hereunder or in relation hereto, an application of Section 1987 (2) of the Civil Code and they agree that even an uncertain and/or indefinite receivable is eligible for an offset, however only to the moment of a possible filing of an action for performance hereunder. For the purposes of an offset of a receivable, the contracting parties undertake to first settle their disputes by a settlement, before they proceed to a separate unilateral offset of a receivable.
- 20.6 The Supplier shall not be entitled to offset any receivable arising herefrom against any receivable of a Client.
- 20.7 All rights and obligations arising herefrom shall be transferred, if the nature of these rights and obligations does not exclude it, to legal successors of the contracting parties.
- 20.8 The Supplier shall not be entitled to assign monetary claims in respect of the Client to a third party without the prior written consent of the Client.

20.9 The following annexes form an integral part hereof:

- Annex 1: Basic Technical Specification
- Annex 2: Time Schedule
- Annex 3: Cooperation of the Client
- Annex 4: Specification of the price and payment schedule
- Annex 5: Licence conditions for the selected SW
- Annex 6: Conditions of warranty provision
- Annex 7: Authorised persons
- Annex 8: Project management and similar change management rules
- Annex 9: Requirements for acceptance tests

20.10 This contract shall be prepared in 5 counterparts of which the Supplier shall receive 2 copies and the Client shall receive 3 copies.

The contracting parties declare that they have read the Contract, agree with its content and in witness thereof they add their signatures.

Client

Supplier

In Ostrava, on _____

In _____ on _____

.....
Vysoká škola báňská – Technická univerzita Ostrava

prof. RNDr. Václav Snášel, CSc., Rector

In _____ on _____

.....
(TO BE ADDED BY THE SUPPLIER)

(TO BE ADDED BY THE SUPPLIER)

**European High-Performance Computing Joint
Undertaking**

(TO BE ADDED BEFORE CONTRACT SIGNATURE),

Executive Director

Annex 1

Basic Technical Specification

This annex contains the “Design of Technical Solution” – according to requirements of the contracting authority listed in the tender dossier, primarily Annex 1.

In addition, it contains a completely filled in Annex 2 to the tender dossier entitled “Technical Parameters of the Tender” which consequently becomes an integral part of Annex 1 hereto.

It additionally contains the “Technical Specification of the Client” appended as Annex 1 to the tender dossier of the Public Contract.

The Supplier shall attach the Design of Technical Solution and Technical Parameters of the Tender to the Contract as separate files due to capacity reasons. The Design of the Technical Solution, Technical Parameters of the Tender and Technical Specification of the Client shall be subsequently added by the contracting authority to the fair copy of the Contract before its signing.

Annex 2

Time Schedule

| No. | Milestone | Deadline |
|-----|---|---------------------|
| 1. | The Contract takes effect | D |
| 2. | Delivery of the Draft Detailed Project Plan | D+2 weeks |
| 3. | Discussion and acceptance of the Detailed Project Plan | D+1 month |
| 4. | Delivery of the Draft Detailed Technical Specification | D+1 and half months |
| 5. | Discussion and acceptance of the Detailed Technical Specification | D+2 and half months |
| 6. | Delivery of the Draft Specification of Acceptance Tests | D+3 months |
| 7. | Discussion and acceptance of the Specification of Acceptance Tests | D+4 months |
| 8. | Physical supply of the part of the System | D+4 and half months |
| 9. | Completion of the part of the System Implementation | D+4 and half months |
| 10. | Delivery of the part of the System's documentation | D+4 and half months |
| 11. | Successful performing of Acceptance Tests of the part of the System | D+5 months |
| 12. | Completion of training to the part of the System | D+5 months |
| 13. | Physical supply of the remaining part of the System | D+7 and half months |
| 14. | Completion of the Work Implementation | D+7 and half months |
| 15. | Delivery of the remaining part of the System's documentation | D+7 and half months |
| 16. | Successful performing of Acceptance Tests of the Work | D+8 months |
| 17. | Completion of training to the Work | D+8 months |
| 18. | Comprehensive Supply of the System | D+8 months |

The discussion and acceptance of the Detailed Project Plan (milestone no. 3) involves the presentation of the Detailed Project Plan document by the Supplier to the Client, assessment of this document by the Client, notification of the Client of its consent with the document or raised objections and made comments by the Client, or a potential presentation of an adjusted document to the Client for acceptance and signing of the handover protocol, all in compliance with the rules resulting from par. 6.3 hereof. The Detailed Project Plan document appropriately describes and determines a procedure, chronological continuity, necessary sources (both human and material) and mutual dependencies of all activities and deliverables planned for a timely achievement of milestone no. 18 Comprehensive Supply of the System. The required level of detail in the discussion process is determined by the Client.

The discussion and acceptance of the Detailed Technical Specification (milestone no. 5) involves a presentation of the Detailed Technical Specification document by the Supplier to the Client, assessment of this document by the Client, notification of the Client of its consent with the document or raised objections and made comments by the Client, or a potential presentation of an adjusted document to the Client for acceptance and signing of the handover protocol, all in compliance with the rules resulting from par. 6.3 hereof. The Detailed Technical Specification document describes the technical implementation of the System and all its parts in detail. The required level of detail in the discussion process is determined by the Client.

The discussion and acceptance of the Specification of Acceptance Tests (milestone no. 7) involves a presentation of the Specification of Acceptance Tests document by the Supplier to the Client, assessment of this document by the Client, notification of the Client of its consent with the document or raised objections and made comments by the Client, or a potential presentation of an adjusted document to the Client for acceptance and signing of the handover protocol, all in compliance with the rules resulting from par. 6.3 hereof. The Specification of Acceptance Tests document determines the expected outcomes of individual acceptance tests and describes the manner of performing acceptance tests of the System in detail. The required level of detail in the discussion process is determined by the Client. For the sake of certainty, the contracting parties state that this milestone means acceptance of the Specification of Acceptance Tests of the Work as such, i.e. both gradually delivered parts of the System within the meaning of milestones no. 8 and 13.

Physical supply of the part of the System (milestone no. 8) involves the supply of the part of the System containing Universal compute partitions, Data Analytics compute partitions, Cloud infrastructure compute partitions, Visualization nodes, User's data storage SCRATCH, User's data storage HOME, PROJECT network gateways, High speed compute network, Login nodes (including Data management nodes), Management nodes (including Infrastructure nodes), System's data storage INFRA, Network infrastructure LAN (including integration of WAN), Backup system, Infrastructure integration, Software, and presentation and verification of the factual condition of the supply above. The Physical supply of the part of the System milestone may be achieved only after the Discussion and acceptance of the Detailed Technical Specification milestone.

Completion of the part of the System Implementation (milestone no. 9) is a situation when the Supplier considers the part of the System in the meaning of milestone no. 8 as complete, with all required functionality and declared parameters and shall notify the Client of this fact. After the Completion of the part of the System Implementation milestone, the Supplier must not engage in any implementation works or adjustments to the delivered part of the System, except for works and adjustments approved by the Client, and works on subsequent milestones, if necessary, but always on the basis of the notification to the Client.

It is possible to commence the acceptance tests of the part of the System in the meaning of milestone no. 11 only after the achievement of milestone no. 9 Completion of the part of the System Implementation. The failed acceptance tests mean that the System implementation has not been completed and the System implementation continues. From the moment of fulfilment of milestone no. 11 Successful performing of Acceptance Tests of the part of the System starts the warranty period within the meaning of par. 11.2 hereof.

Physical supply of the remaining part of the System (milestone no. 13) involves the supply and presentation and verification of the factual condition of all the part of the System.

Completion of the Work Implementation (milestone no. 14) is a situation when the Supplier considers the Large Cluster as a whole as complete, with all required functionality and declared parameters and shall notify the Client of this fact. After the Completion of the Work Implementation milestone, the Supplier must not engage in any implementation works or adjustments to the delivered part of the System, except for works and adjustments approved by the Client.

It is possible to commence the acceptance tests of the Work in the meaning of milestone no. 16 only after the achievement of milestone no. 14 Completion of the Work Implementation. The failed acceptance tests mean that the System implementation has not been completed and the System implementation continues.

Comprehensive Supply of the System (milestone no. 18) involves the implementation of the Work as defined in par. 3.1 hereof. To achieve milestone no. 18, it is necessary to achieve all other milestones as listed in this Annex 2 hereto which shall be checked and confirmed by the Client.

Annex 3

Cooperation of the Client

The cooperation of the Client in the provision of performance hereunder shall consist primarily in the following activities:

- Provide for cooperation and participation of responsible employees of the Client and persons knowing the environment of the Supplier in the scope necessary for the completion of the Work. The cooperation shall primarily consist in provision of consultations aiming to add information to the presented documentation in the preparation of the Detailed Project Plan, Detailed Technical Documentation and Specification of Acceptance Tests;
- Provide access to buildings of the Client for members of the Supplier's implementation team;
- When needed, provide for the participation of responsible employees of the Client in the performance of acceptance tests;
- Provide information on planned changes in the Client's environment in the acceptance tests;
- Provide information on planned change in the Client's environment, if they are going to have any impact on the performance by the Supplier and provide complete, truthful and timely information;
- Training – for the purposes of training, it shall be possible to use the premises of VSB-TUO; VSB-TUO shall provide for the room and presentation technology (projector, whiteboard), VSB-TUO shall provide for the participation of attendants of the training on date in accordance with the Time Schedule approved by both parties.
- Reactive service – VSB-TUO shall provide for the conditions of Reactive service at the place of installation. VSB-TUO shall provide an escalation mechanism, after agreement with the Supplier, for the classification of defects for situation when the employees of the Client and the Supplier dealing with the defects do not agree on the defect classification. If there are disputes regarding the determination of the escalation procedure, they shall be resolved by the Client.
- Acceptance tests – cooperation in the preparation and performance of the Acceptance tests.
- Payment, billing – the Client shall provide necessary cooperation for securing of formal correctness and acceptability of documents.
- Insurance – cooperation in the provision of required information of the Client for conclusion of the insurance of the Supplier.
- Premises – VSB-TUO shall provide premises for storage of materials in the necessary scope during the period of the Work implementation.
- Data room – VSB-TUO shall provide for the cooperation of another supplier of VSB-TUO (primarily so called Building II) in the scope necessary for the integration of the Work in the Data Room.

Annex 4

Specification of the Price and Payment Schedule

Specification of the price

It is included in a separate annex that added before signing of the Contract.

Payment schedule

The Client shall pay the price in accordance with par. 12.1 hereof in two parts. Upon completion of milestone no. 11 pursuant to Annex no. 2 to the Contract, the EuroHPC JU shall pay the Supplier part of the price of the Work in the amount of EUR 5,130,000 based on the invoice issued by the Supplier. Upon completion of milestone no. 18 pursuant to Annex no. 2 to the Contract, the VSB-TUO shall pay the Supplier the remaining part of the price of the Work, however for no more than CZK 251,800,000 net of VAT based on the invoice issued by the Supplier.

Annex 5

Licence Conditions for the Selected Standard SW

1. Definition of the use of software products as part of the supply

- 1.1 All software shall be used on hardware of IT4Innovations National Supercomputer Centre (hereinafter "IT4Innovations") which is part of Vysoká škola báňská – Technical University Ostrava, hardware is or shall be in the sole ownership of the Client, software therefore shall not be provided for operations on external hardware. All software shall be used for academic purposes, science and research, and partially for commercial research on a contractual basis, however to the maximum extent of 20% allowed by the Communication from the Commission (EU) "Framework for State aid for research and development and Innovation" (2014/C 198/01). These are not versions intended solely for education of students.
- 1.2 Licencing of all software supplied under the „EURO_IT4I Supercomputer“ public contract should allow for the use of these technical means and services provided by it in addition to the primary acquirer of the licence which is Vysoká škola báňská – Technical University Ostrava, which assumes the use by the employees and bodies of Vysoká škola báňská – Technical University Ostrava; and the following groups of third parties:
- 1) **All registered users of IT4Innovations** – Registered users are the users who have an open account in IT4Innovations. The following users (especially, but not only) acquire the account
 1. Those who succeeded in the grant competition for the allocation of computing sources; or
 2. Their application was approved; or
 3. They attend training or other educational events of IT4Innovations;
 4. And met the conditions of IT4Innovations for access and use of hardware means of IT4Innovations,
 - 2) **Users provided with access to computing sources of the Large Cluster by EuroHPC JU,**
 - 3) **Contractual and other partners of the Client.**
- 1.3 Licencing of the software supplied as part of the public contract must allow for the provision of services of the System to 3 thousand end users and administration of the System by 50 administration users (operators, administrators).
- 1.4 The Supplier is aware of the information by the Client that the acquirer of the licence is the Client and the licence granted to the acquirer shall include an authorisation to adjust and develop the Large Cluster for the acquirer of the licence (the Client) or a third party authorised by the Client.
- 1.5 Other conditions for the provision of licence to the software supplied by the Supplier are defined in article 10 hereto. If there are any disputes between Annex 5 hereto and article 10 hereof, the contracting parties have agreed that the licence conditions of the software supplied by the Supplier shall prevail over article 10 hereto, however, they shall always adhere to conditions in point 1 of Annex 5 hereto.

2. Licence conditions to the selected standard and open source SW

(THE SUPPLIER SHALL ADD A LIST OF SUPPLIED SW, AND INDIVIDUAL LICENCE CONDITIONS OF SW)

Annex 6

Conditions of Warranty Provision

3. Warranty

- 3.1 Warranty shall be provided to the Work in the scope stipulated in par. 11.2 hereto. The below provisions stipulate the conditions of warranty provision.
- 3.2 The warranty shall be provided by the Supplier at the place of the System installation, as regular and reactive warranty servicing. The warranty may be additionally provided for activities that do not require the presence at the place of the System installation, remotely using the remote access means. The activities that require the presence at the place of the System installation, shall be provided by the Supplier. The warranty cannot be provided e.g. by mere sending of a spare part and instructions for its replacement.
- 3.3 The Supplier shall provide for the sole contact point for reporting of defects and requirements for servicing of all supplied systems. The possibility to report defects shall be provided for 24 hours a day (around-the-clock) and possibility to enter a request for regular maintenance services on working days from 8:00 am to 4:00 pm.
- 3.4 Any warranty repairs shall be made in a manner reducing the impact on the operations and availability of the System.
- 3.5 If the due provision of the warranty requires shutdowns of the System or its significant part, these shall be made no more than twice in one quarter of the calendar year, unless the binding legislation stipulates otherwise. Such shutdowns, made following a time schedule, in a time window and scope approved by VSB-TUO, shall not be treated as a defect or continuance of defect.

4. After-sales services – regular

- 4.1 Regular after-sales services of the Large Cluster facility primarily involves
 - warranty maintenance services and services stipulated by the binding legislation;
 - warranty maintenance services and services determined by the manufacturer of the facility; and
 - provision and performing of updates to software(hereinafter the “**Regular Maintenance Services**”).
- 4.2 The Regular Maintenance Services and maintenance required by warranty conditions of facilities and systems. The Regular Maintenance Services shall be provided by Regular servicing. The Regular Maintenance Services must be provided at the place of installation.
- 4.3 Regular Maintenance Services shall be provided in accordance with the time schedule, in a time window and the scope approved by VSB-TUO, on working days between 8:00 am and 4:00 pm. VSB-TUO shall be informed on the result of the Regular servicing in writing.
- 4.4 The time schedule of Regular servicing shall be an integral part of the user operational documentation.
- 4.5 The Regular Maintenance Services shall additionally involve provision of new versions of the supplied software, availability of software updates and patches. Over the warranty period, the Client shall be provided with free of charge access to new versions, security patches and updates to programmes of systems by the Supplier.

4.6 The Regular Maintenance Services shall additionally include regular updates to programs of the system and its setting by the Supplier. Programs of the system include all supplied software (firmware, hardware drivers, operating systems, software stacks, application software, technology management software, etc.). The Supplier shall be bound to primarily perform updates that are intended to increase security, reliability, elimination of functional or performance shortcomings. Updates of the programs shall be performed with the periodicity of no more than 9 months, unless VSB-TUO stipulates a longer period or explicitly rejects performance of certain or all updates. Updates intended for the elimination of serious problems shall be performed depending on their seriousness without unnecessary delays. Updates to programs shall be coordinated with VSB-TUO and shall be subject to its approval.

4.7 **All costs of the Regular Maintenance Services (material, work, transport, waste disposal, etc.) shall be included in the price for the Work in accordance with par. 12.1 hereto.**

5. After-sales services – reactive

5.1 Reactive after-sales shall provide for the removal of defects of category A, B and C defined in par. 11.4 hereto (hereinafter the “**Reactive Services**”).

5.2 The Reactive Services shall be provided pursuant to:

- A defect identified by remote monitoring, if it is provided – VSB -TUO shall be immediately informed of defects identified in this manner by a pre-determined method. The servicing team of the Supplier shall inform VSB-TUO on further planned course of servicing.
- Defects identified directly by the Client – defects identified in this manner shall be reported by the Client to the Supplier any time using a pre-determined method. The report shall contain basic technical and contact information, in general: type and identification device, description of the defects, telephone and e-mail of the contact person of the Client.

5.3 The determination of the method of transfer of information in the Reactive Services shall be an integral part of the user operational documentation.

5.4 **For the avoidance of doubts, the price for the Reactive Services shall be included in the price for the Work in accordance with par. 12.1 hereto.**

Annex 7

Authorised Persons

On behalf of VSB-TUO:

In contractual and commercial matters:

| | |
|------------------|--|
| Name and surname | Branislav Jansík |
| Address | 17. listopadu 2172/15, 708 00 Ostrava-Poruba |
| Email | branislav.jansik@vsb.cz |
| Telephone | +420 596 999 156 |

In technical and implementation matters:

| | |
|------------------|--|
| Name and surname | Filip Staněk |
| Address | 17. listopadu 2172/15, 708 00 Ostrava-Poruba |
| Email | filip.stanek@vsb.cz |
| Telephone | +420 597 329 025 |

On behalf of EuroHPC JU:

In contractual and commercial matters:

| | |
|------------------|--|
| Name and surname | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Address | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Email | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Telephone | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |

In technical and implementation matters:

| | |
|------------------|--|
| Name and surname | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Address | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Email | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |
| Telephone | (TO BE ADDED BEFORE SIGNING OF THE CONTRACT) |

On behalf of the Supplier:

In contractual matters:

| | |
|------------------|-------------------------------|
| Name and surname | (TO BE ADDED BY THE SUPPLIER) |
| Address | (TO BE ADDED BY THE SUPPLIER) |
| Email | (TO BE ADDED BY THE SUPPLIER) |
| Telephone | (TO BE ADDED BY THE SUPPLIER) |

In commercial, technical and implementation matters:

| | |
|------------------|-------------------------------|
| Name and surname | (TO BE ADDED BY THE SUPPLIER) |
| Address | (TO BE ADDED BY THE SUPPLIER) |
| Email | (TO BE ADDED BY THE SUPPLIER) |
| Telephone | (TO BE ADDED BY THE SUPPLIER) |

Annex 8

Project Management and Detailed Rules of Change Management

Project Management

1. The Supplier is charged to prepare, manage and supervise the supply of the Work.
2. A division of the projects to stages and individual phases shall be consulted and approved by the Client and shall adhere to the Time Schedule.
3. The Supplier shall designate a person responsible for the overall coordination of the project and each phase and technological section of the project.
4. The Client undertakes to cooperate with the Supplier, provide it with necessary information and support for successful completion of all project phases in the scope hereunder. The Client shall designate responsible persons for that. These persons shall be available to the Supplier only in the scope of their labour relationship (job content, availability, working hours).
5. The Supplier shall keep documentation of all activities and facts and the documentation shall be available throughout the project and shall be handed over to the Client.

Detailed rules of change management

1. Any request for change shall be presented to the other contracting party in writing, in a provable manner.
2. The request for change shall become the change at the moment when approved.
3. Every change shall be approved in writing by both contracting parties before it is made, by the "*Record of approval of a request for change*" document.
4. The change shall not disrupt objectives of the project.
5. Both contracting parties shall be obliged to make every effort in negotiation on the request for change in order to find a mutual agreement.
6. A negotiation on a request for change may also result in its rejection, in such case, it shall be stated in the "*Record of approval of a request for change*" document in a clear and comprehensible manner why the contracting party asked for approval rejects the request for change.
7. The "*Record of approval of a request for change*" document shall primarily include:
 - a) Identification of the contracting party asking for the change.
 - b) A description of the request for change, as precise as possible, including drawings, schemes and other particulars, if any, that describe the requested change in detail.
 - c) Statement of the impact of the change on the monitored project parameter.
 - d) The correction mechanisms allowing to the contracting party which incorporates the request for change, to withdraw from the request for change if there are circumstance

preventing the integration of the request for change that were not known at the time of approval of the request for change.

8. The monitored project parameter affected by the request for change shall change at the moment of the approval of the request for change in a manner described in the *“Record of approval of a request for change”* document.
9. The resulting change shall be reflected in all documentation, including the already handed over documentation in the form of an update to the entire document (e.g. the Detailed Technical Specification, Operational Documentation, Documentation of Training etc.).
10. If the situation requires, an amendment hereto shall be concluded pursuant to the approved request for change. The Client shall decide on the necessity to conclude an amendment hereto with definitive effect.
11. The resulting change shall respect the principles of sound financial management, transparency, proportionality, equal treatment and non-discrimination.

Annex 9

Acceptance tests requirements

All acceptance tests shall be conducted with the participation of both parties.

Proposals for acceptance tests shall respect the requirements and information of the tender dossier.

Acceptance tests shall include:

- 1) Demonstration and confirmation of actual condition of the delivered devices, licenses, etc.
- 2) Verification of integration into Data centre
 - a) Verification of the solution's placement in respect to serviceability of the installed devices and data centre equipment
 - b) Verification of the maximum power consumption
 - c) Verification of even load on the power supply phases
 - d) Verification of the cooling solution
 - e) Verification of the environment parameters (temperature, humidity)
 - f) Verification of the system availability by power supply circuit shutdown
 - g) Verification of the system availability by cooling circuit shutdown
- 3) Verification of required and/or declared technical parameters of the system, in particular:
 - a) Computing performance of the compute partitions
 - b) Capacity and performance of SCRATCH storage
 - c) Capacity and performance of HOME storage
 - d) Capacity and performance of INFRA storage
 - e) Capacity and performance of PROJECT storage expansion
 - f) Backup capacity
- 4) Verification of the Compute network throughput and efficiency
- 5) Verification of the LAN network throughput
- 6) Verification of the system/services availability
 - a) Verification of the data storages availability
 - b) Verification of the infrastructure services availability
 - c) Verification of the LAN network availability
- 7) Verification of the remote visualization functionality
- 8) Verification of the data storages features and accessibility
- 9) Verification of the backup solution
 - a) Verification of the backup policy implementation
 - b) Data backup
 - c) Data recovery
 - i) Physical server recovery
 - ii) HOME storage file recovery
 - iii) INFRA storage file recovery
- 10) Verification of the software installation and integration, in particular
 - a) Verification of the remote centralized server/node management
 - b) Verification of the remote device management, in particular disc arrays and network devices

- c) Verification of the remote server installation
 - d) Verification of the network boot
 - e) Verification of the image management
 - f) Verification of the scheduler
 - g) Verification of the name/uid, group/gid resolving and the authentication
 - h) Verification of the availability monitoring
 - i) Verification of the performance monitoring
 - j) Verification of the logging
 - k) Verification of the security
- 11) Verification of the PROJECT storage integration
 - 12) Verification of reliable, stable operation of the system (stability test) by full load using scheduler-executed performance tests for the period of three days

Availability verification of the IT systems solutions shall be conducted by forced shutdown of a random server/node of the solution, power supply circuit shutdown, power cable disconnection, LAN cable disconnection, removal of disc from the data storage, etc.

Each test shall be described in detail in terms of methodology, inputs, test procedure, impact on test area and desired results. Each test must be repeatable/reproducible.