

Aarhus · [redacted]

Ref 041245-0227

Doc. No. 13575965.3

Contract

concerning the delivery of the raster scanning magnets for the ESS project

between

Aarhus University
Department of Physics and Astronomy
Institute for Storage Ring Facilities - Aarhus (ISA)
Ny Munkegade 120
Building 1525, room 424
8000 Aarhus C
Denmark
(the "Customer")

and

[redacted]
(the "Supplier")

(hereinafter referred to individually as "Party" and jointly as "Parties").

Copenhagen

Langelinie Allé 35
2100 Copenhagen
Denmark

Aarhus

Værkmestergade 2
8000 Aarhus C
Denmark

Shanghai, rep. office

83 Loushanguan Road
Suite 2635, 26/F
Shanghai, China

T +45 72 27 00 00
F +45 72 27 00 27
E info@bechbruun.com

Law firm
CVR No. 25089944
www.bechbruun.com

TABLE OF CONTENTS

| | | |
|-----|---|----|
| 1. | Definitions | 4 |
| 2. | General conditions | 6 |
| 3. | Supplier's delivery obligations | 6 |
| 4. | Relationship between the Parties..... | 7 |
| 5. | Documentation..... | 7 |
| 6. | Phases and tests..... | 7 |
| 7. | Terms of delivery | 9 |
| 8. | Delivery | 10 |
| 9. | Delayed delivery of the Pre-series Product..... | 11 |
| 10. | Delayed delivery of the Production-series Product | 12 |
| 11. | Product Price..... | 12 |
| 12. | Terms of payment | 12 |
| 13. | Payment plan | 13 |
| 14. | Spare parts..... | 14 |
| 15. | Insurance | 15 |
| 16. | Warranties | 15 |
| 17. | Liability..... | 16 |
| 18. | Indemnification..... | 17 |
| 19. | Force Majeure | 18 |
| 20. | Term | 19 |
| 21. | Termination..... | 20 |
| 22. | Public procurement | 22 |
| 23. | Safety and administrative requirements..... | 22 |
| 24. | Waste handling | 22 |
| 25. | Sub-suppliers | 23 |
| 26. | Customer's representative | 23 |
| 27. | Assignment of rights and obligations | 23 |
| 28. | Disputes..... | 24 |
| 29. | Amendments | 25 |
| 30. | Notices and contact persons | 25 |
| 31. | Language and governing law | 26 |
| 32. | Confidentiality..... | 26 |
| 33. | Miscellaneous | 27 |
| 34. | Signatures..... | 28 |

LIST OF APPENDICES

| | |
|-------------|--|
| Appendix 1: | Technical Specifications |
| Appendix 2: | Supplier's offer including bid schedule |
| Appendix 3: | Instructions to tenderers and other tender documents |
| Appendix 4: | Contract Notice |

This Contract has been entered into between the Customer and the Supplier on the basis of the public procurement procedure as described in the Contract Notice (Appendix 4) published in the Official Journal of the European Union and the tender documents (Appendix 1 and Appendix 3) and the Supplier's offer (Appendix 2).

WHEREAS

- (A) A green field accelerator-based research facility is currently under construction in the vicinity of Lund, Sweden, and to be operational by the end of the current decade.
- (B) The European Spallation Source has been designed and will be constructed in collaboration with a number of existing European research facilities.
- (C) The Customer has led a work package on the beam delivery system that brings the intense proton beam from the accelerator to the spallation neutron target.
- (D) The Customer has carried out a tender procedure (Appendix 3) and subsequently awarded this Contract to the Supplier based on the offer attached as Appendix 2.

NOW THEREFORE the Parties hereto agree as follows:

1. Definitions

For the purpose of this Contract the following terms and expressions shall have the meaning set out below.

- 1.1 *Appendices:* Appendix 1 to Appendix 4 set out above.
- 1.2 *Business Day:* Monday to Friday, except for national holidays, 24 December, 31 December and 5 June.
- 1.3 *Contract:* This contract entered into between the Parties including all Appendices.
- 1.4 *Customer:* Aarhus University as defined on the first page of this Contract.
- 1.5 *Day:* Any calendar day including weekends and public holidays.

- 1.6 *Delivery Date*: The date as set out in Appendix 1 where Site Approval must have been given in order for the Product to have been delivered in a timely manner.
- 1.7 *Factory Acceptance Test I*: The test described in Clause 6.8 and Appendix 1.
- 1.8 *Factory Acceptance Test II*: The test described in Clause 6.15 and Appendix 1.
- 1.9 *Force Majeure*: Extraordinary circumstances arising through no fault of either Party and which is beyond the control of and should neither have been foreseen nor could have been avoided or overcome by such Party. Force Majeure exists in the event of for example war, unusual natural events, sabotage, terrorism or similar events.
- 1.10 *Parties*: The Customer and the Supplier.
- 1.11 *Party*: The Customer or the Supplier.
- 1.12 *Phase I*: The phase described in Clause 6.2 and Appendix 1.
- 1.13 *Phase I Acceptance Test*: The test described in Clause 6.7 and Appendix 1.
- 1.14 *Phase II*: The phase described in Clause 6.3 and Appendix 1.
- 1.15 *Phase III*: The phase described in Clause 6.4 and Appendix 1.
- 1.16 *Phase IV*: The phase described in Clause 6.5 and Appendix 1.
- 1.17 *Phase V*: The phase described in Clause 6.6 and Appendix 1.
- 1.18 *Pre-series Performance Acceptance Test*: The test described in Clause 6.13 and Appendix 1.
- 1.19 *Pre-series Product*: The raster scanning magnets for the ESS project as described in Appendix 1 to be delivered to Site I at the end of Phase II.
- 1.20 *Product*: The raster scanning magnets for the ESS project as described in Appendix 1 to be delivered under this Contract consisting on both the Pre-series Product and the Production-series Product.
- 1.21 *Product Price*: The total sum payable by the Customer for the Product under the Contract.

- 1.22 *Production-series Product*: The raster scanning magnets for the ESS project as described in Appendix 1 to be delivered to Site II at the end of Phase IV.
- 1.23 *Site*: Site I and/or Site II.
- 1.24 *Site I*: The address set out in Clause 7.1.
- 1.25 *Site II*: The address set out in Clause 7.2.
- 1.26 *Site Acceptance Test I*: The test described in Clause 6.12 and Appendix 1.
- 1.27 *Site Acceptance Test II*: The test described in Clause 6.15 and Appendix 1.
- 1.28 *Site Approval*: The Customer's written approval of the Site Acceptance Test II.
- 1.29 *Supplier*: [...] as defined on the first page of this Contract.
- 1.30 *Warranty Period*: The period set out in Clause 16.1.

2. General conditions

- 2.1 Any amendment to or modification of the Contract will not be binding on the Customer in the absence of a written agreement signed by both Parties.
- 2.2 This Contract prevails to the Supplier's general terms and conditions of sale and delivery, if any, and to any other provisions not expressly set out herein.
- 2.3 The Supplier shall maintain and apply a quality assurance program compliant with ISO-9001 for the design, manufacture and testing of the Product including all systems and equipment.

3. Supplier's delivery obligations

- 3.1 The Supplier must deliver the Product as specified in Appendix 1 and Appendix 2 and assumes all other obligations under the Contract.
- 3.2 The Product must possess the properties and fulfil the requirements that appear from this Contract, and in particular Appendix 1.

4. Relationship between the Parties

- 4.1 The relationship between the Customer and the Supplier shall be a relationship between independent parties. None of the Parties have the authority or right to enter into commitments on behalf of the other Party or in any other way bind the other Party unless an explicit authority to do so has been prepared in writing duly signed by members of the management of the authorising Party.
- 4.2 Nothing in this Contract shall lead to the establishment of or be regarded as constituting a joint venture, partnership, consortium or similar between the Parties.

5. Documentation

- 5.1 Installation, operating and maintenance manuals must be provided at delivery according to usual detailing in the business in electronic and paper versions. This includes all relevant documentation (manuals) for the different subsystems.
- 5.2 The Supplier undertakes to deliver brochures, data sheets, spare parts lists, and manuals in English if the Customer so requests. Documentation in other languages, if any, is subject to separate agreement.
- 5.3 If certification is required pursuant to mandatory legislation or pursuant to the Customer's product specifications or otherwise, any such certificate must be included in a separate envelope upon delivery.

6. Phases and tests

- 6.1 The delivery of the Product will consist of five phases as set out in Appendix 1.
- 6.2 Phase I (design phase) will consist of the following milestones:
- a) Magnetic field calculations by the Supplier
 - b) Power supply and cable design and simulations by the Supplier
 - c) Detailed design report by the Supplier
 - d) Factory Acceptance Test I & II proposal by the Supplier
 - e) Acceptance of the detailed design of the Product by the Customer

- f) Acceptance of the Supplier's proposal for the tasks to be completed during Factory Acceptance Test I by the Customer
- g) Phase I Acceptance Test

6.3 Phase II (pre-series manufacture) will consist of the following milestones:

- a) Production and assembly of parts by the Supplier
- b) Implementation of local control system by the Supplier
- c) Factory Acceptance Test I by the Supplier and approval by the Customer
- d) Delivery to Site I by the Supplier
- e) Installation and assembly of the Pre-series Product by the Supplier

6.4 Phase III (Pre-series long-term testing at Site I) will consist of the following milestones:

- a) Site Acceptance Test I by the Customer
- b) Magnetic and stability testing by the Customer
- c) Factory Acceptance Test II by the Supplier and approval by the Customer
- ~~d) Manufacture of Production-series Product by the Supplier [her?]~~
- e) Pre-series Performance Acceptance Test

6.5 Phase IV (Production-series manufacture) will consist of the following milestones:

- a) Production and assembly of parts for the Production-series Product by the Supplier
- b) Factory Acceptance Test II by the Supplier and approval by the Customer
- c) Delivery to Site II by the Supplier

6.6 Phase V (Site Acceptance Test II) will consist of the following milestones:

- a) Site Acceptance Test II
- b) Site Approval

6.7 Upon termination of Phase I the Customer shall be given the possibility to test the Pre-Series Product at the Supplier's facilities in accordance with the procedure for the Phase I Acceptance Test as set out in Appendix 1.

6.8 Upon the Customer's approval of the Phase I Acceptance Test the Supplier must make any necessary modifications and must manufacture and assemble the Product as set out in Appendix 1. Subsequently Factory Acceptance Test I must be carried out by the Supplier in accordance with Appendix 1. The Customer shall be entitled to have two persons present when the Supplier conducts Factory

Acceptance Test I. The Customer shall receive notice of where and when Factory Acceptance Test I will take place at least ten (10) Business Days prior to Factory Acceptance Test I being carried out. The Customer bears his own costs in this respect.

- 6.9 Upon successful Factory Acceptance Test I the Supplier must physically deliver the Pre-series Product at Site I. Physical delivery must take place on the date set out in Appendix 1 or at an earlier date as agreed between the Parties.
- 6.10 The Supplier shall be fully responsible for installation of the Pre-Series Product at Site I.
- 6.11 No later than [...] after the Supplier gives notice to the Customer that the Pre-series Product has been fully installed at Site I, the Customer must commence the Site Acceptance Test I in accordance with Appendix 1.
- 6.12 The Site Acceptance Test I shall consist only of normal visual inspection and checks of mechanical damage suffered in transit etc.
- 6.13 Upon completion of a successful Site Acceptance Test I the Customer will initiate Phase III. Upon completion of Phase III the Customer must conduct the Pre-series Performance Acceptance Test., cf. 6.4. e)
- 6.14 Upon the Customer's approval of the Pre-series Performance Acceptance Test Phase IV shall commence.
- 6.15 The Customer shall receive notice of where and when Factory Acceptance Test II will take place at least ten (10) Business Days prior to Factory Acceptance Test II being carried out. The Customer shall be entitled to have two persons present when the Supplier conducts Factory Acceptance Test II. The Customer bears his own costs in this respect.
- 6.16 Upon successful Factory Acceptance Test II the Supplier must physically deliver the Production-series Product at Site II. Physical delivery must take place on the date set out in Appendix 1 or at an earlier date as agreed between the Parties.
- 6.17 Upon successful completion of Site Acceptance Test II the Customer must issue written Site Approval.

7. Terms of delivery

- 7.1 The Supplier must deliver the Pre-series Product subject to DDP (INCOTERMS 2010) to:

Aarhus University
Department of Physics and Astronomy
Institute for Storage Ring Facilities - Aarhus (ISA)
Ny Munkegade 120
Building 1525
8000 Aarhus C
Denmark

- 7.2 The Supplier must deliver the Production-series Product subject to DDP (INCOTERMS 2010) to:

European Spallation Source
Tunavägen 24
223 63 Lund
Sweden

- 7.3 Delivery notes must be placed on the outside of each package. Each individual major hardware component shall be identified and numbered. In addition, the most important data shall be written/stamped on the component according to normal practice.

- 7.4 The Supplier is responsible for the proper packaging of the Product for domestic and/or overseas transport taking due account of the nature, properties and composition of the Products being supplied. All packaging costs are included in the Product Price. The Supplier shall obtain approval for packing and shipping before the actual shipping to the Customer.

8. Delivery

- 8.1 The Supplier must deliver the Product in accordance with the time limits set out in Appendix 1.
- 8.2 Rights of ownership, rights of use and other rights as well as the risk for the Pre-series Product will pass to the Customer upon completion of the successful Site Acceptance Test I.

- 8.3 Rights of ownership, rights of use and other rights as well as the risk for the Production-series Product will pass to the Customer upon completion of the successful Site Acceptance Test II.
- 8.4 Subject to a written notice to the Supplier of at least five (5) Business Days, the Customer is entitled to postpone a date of physical delivery, as set out in Clause 6.9 and and/or Clause 6.16, without incurring additional costs. Payments will be postponed accordingly.
- 8.5 Any postponement of either physical delivery of more than 3 (three) months is, however, subject to agreement with the Supplier.

9. Delayed delivery of the Pre-series Product

- 9.1 For the purpose of this Clause 9 the Pre-series Product shall be considered delivered upon approval of Site Acceptance Test I.
- 9.2 If the Supplier fails to observe an agreed date of delivery or anticipates that an agreed date of delivery cannot be observed, the Supplier must immediately inform the Customer of the earliest possible, alternative date of delivery.
- 9.3 If the Supplier fails to deliver the Pre-series Product no later than 16 months after the signing of this Contract, the Customer is entitled to liquidated damages in the amount of 0.1 % of the Product Price per commenced week of delay, however, limited to a maximum of 2 % of the Product Price. Payment of the said liquidated damages does not prevent the Customer from claiming damages in accordance with the general rules of Danish law for any loss in excess thereof suffered as a consequence of any such delay of delivery.
- 9.4 Timely Site Approval or any other subsequent event shall not oblige the Customer to reimburse any amount paid under Clause 9.3 to the Supplier.
- 9.5 If delivery under this Clause is delayed for more than three (3) months, the Customer has the right to terminate the Contract in its entirety provided that the Customer submits an advance written notice of its intent to terminate the Contract at least ten (10) Business Days before such termination will take effect. During the said ten (10) Business Days' grace period, the Supplier will have the opportunity to effect delivery of the Product and thereby avoid the Customer's termination of the Contract.

10. Delayed delivery of the Production-series Product

- 10.1 For the purpose of this Clause 10 the Product shall be considered delivered upon Site Approval.
- 10.2 If the Supplier fails to observe an agreed date of delivery or anticipates that an agreed date of delivery cannot be observed, the Supplier must immediately inform the Customer of the earliest possible, alternative date of delivery.
- 10.3 If the Supplier fails to meet the Delivery Date, the Customer is entitled to liquidated damages in the amount of 0.5 % of the Product Price per commenced week of delay, however, limited to a maximum of 5 % of the Product Price. Payment of the said liquidated damages does not prevent the Customer from claiming damages in accordance with the general rules of Danish law for any loss in excess thereof suffered as a consequence of any such delay of delivery.
- 10.4 If delivery under this Clause is delayed for more than three (3) months, the Customer has the right to terminate the Contract provided that the Customer submits an advance written notice of its intent to terminate the Contract at least ten (10) Business Days before such termination will take effect. During the said ten (10) Business Days' grace period, the Supplier will have the opportunity to effect delivery of the Product and thereby avoid the Customer's termination of the Contract.

11. Product Price

- 11.1 The Product Price set out in Appendix 2.
- 11.2 The price set out in Clause 11.1 shall include transportation, permits, licenses, fees, taxes, duties, miscellaneous charges and any additional cost of any kind as set out in this Contract and its Appendices. VAT is however not included in the price.

12. Terms of payment

- 12.1 The Customer must make payments in accordance with the payment plan in Clause 13 and this Clause 12, provided that, at the time of invoicing, the Supplier

has performed all activities which the Supplier by the time in question is required to have performed under this Contract, the payment plan and Appendix 1.

- 12.2 A payment conditional upon the fulfilment of an obligation by the Supplier will not be due until any such obligation has been fulfilled according to the stipulation set out in the Contract.
- 12.3 Invoices must be issued by the Supplier in DKK. The EAN number must be stated on the invoice.
- 12.4 Invoices are to be paid within 30 Days after the Customer's receipt of the Supplier's invoice.
- 12.5 The Supplier's right to payment may not be subject to pledging or assignment without the Customer's written acceptance.
- 12.6 The Supplier shall invoice the Customer electronically in accordance with the instructions given by the Customer.

13. Payment plan

- 13.1 Payment of the Product Price shall take place in instalments according to the following payment plan:

| | |
|------|---|
| 20 % | Upon signature of the Contract. |
| 20 % | Upon the Customer's approval of the Factory Acceptance Test I. |
| 10 % | Upon the Customer's approval of the Site Acceptance Test I. |
| 40 % | Upon the Customer's approval of the Factory Acceptance Test II. |
| 10 % | Upon Site Approval. |

- 13.2 The Supplier may renounce his right to payment in instalments fully or partly.
- 13.3 In the event that the Supplier does not renounce his right to payment in instalments, as set out in Clause 13.2, the Supplier shall prior to any prepayment (ie. any payment prior to Site Approval) procure the execution of an irrevocable

on-demand bank guarantee in favour of the Customer equal to the amount to be paid. The guarantee shall be issued by a reputable bank in Europe to be approved by the Customer (such approval not to be unreasonably withheld). The wording of the guarantee must be approved by the Customer (such approval not to be unreasonably withheld). The Customer must receive the original bank guarantee prior to any such payment. The guarantee issued shall amount to no less than the payment requested. The guarantee shall be in force until Site Approval or until a date set by the Customer (as the Supplier chooses). The guarantor shall guarantee any and all claims that the Customer might have towards the Supplier under or in connection to the Contract.

- 13.4 In addition to the guarantee set out in Clause 13.3 the Supplier must prior to the Customer's payment of the last installment as specified in Clause 13.1 issue a bank guarantee of 10 (ten) percent of the Product Price, including VAT, as security for any claim which the Customer may have against the Supplier under the Contract until the expiry of the Warranty Period. The guarantee shall be an irrevocable on-demand bank guarantee in favour of the Customer. The guarantee shall be issued by a reputable bank in Europe to be approved by the Customer (such approval not to be unreasonably withheld). The wording of the guarantee must be approved by the Customer (such approval not to be unreasonably withheld). The Customer must receive the original bank guarantee prior to the payment. The guarantor shall guarantee any and all claims that the Customer might have towards the Supplier under or in connection to the Contract.
- 13.5 For the avoidance of doubt Clause 13.4 shall also apply in the event that the Supplier renounces his right to payment in instalments under Clause 13.2.

14. Spare parts

- 14.1 The Supplier undertakes and warrants that it will be able to repair, renovate and deliver standard spare parts for the Product for a period of 5 years after the Customer has officially been given notice of the Product being taken out of production provided that the spare parts in question are still available with the sub-supplier(s), if any.
- 14.2 As to the Supplier's own production, the Supplier undertakes and warrants that it will be able to deliver spare parts for a minimum of ten (10) years after the Product(s) have been taken out of production.

- 14.3 If the Supplier fails to deliver spare parts as provided for in Clauses 14.1 and 14.2 above, the Supplier must indemnify the Customer for any and all losses and damages suffered as a consequence of any such non-delivery of spare parts. Alternatively, the Supplier is entitled to procure replacement delivery provided that such replacements are of the same quality and function as the non-delivered spare parts.

15. Insurance

- 15.1 To ensure observance of product liability, the Supplier undertakes to take out the necessary and adequate insurance and provide the Customer with the necessary documentation thereof.

16. Warranties

- 16.1 The Warranty Period shall commence upon Site Approval and expires at the end of:

(i) 24 months after the Site Acceptance Test II.

- 16.2 The Supplier warrants to the Customer that during the Warranty Period the Product and any parts thereof delivered to the Customer pursuant to this Contract will:

- (i) be free from defects in material and workmanship; and
- (ii) meet the Customer's requirements, Contract and specifications as set out in Appendix 1; and
- (iii) be new at the time of installation

- 16.3 In the event that the Customer notifies the Supplier of any errors or defects, the Supplier shall as soon as possible remedy the defect either by way of repair or replacement of the Product or part thereof. Upon the Customer's request the Supplier shall prepare a plan for the rectification of the defect which shall be sent to the Customer for information.

- 16.4 Any errors or defects must be remedied without any undue delay provided that the timing and planning shall be coordinated with the Customer to ensure the least possible disruption to the operations of the Product. Defects will be remedied at the Site to the extent possible.

- 16.5 If, within the Warranty Period, errors and defects are remedied, design modifications are made or parts or components thereof are replaced or remedied, a new Warranty Period will start to run for such parts of the Product which has been replaced or remedied due to the error or defect. The new Warranty Period for any repaired or replaced part shall have the same duration as the original Warranty Period calculated from the time when the remedial work has been completed and approved by the Customer provided always that the Warranty Period shall not exceed a consecutive period of 36 months.
- 16.6 If, the Supplier fails to commence and diligently pursue the remedial work with all due diligence and in accordance with good industry practice and using its best efforts (taking into account the nature of the remedial work and available equipment) within 5 (five) Business Days after the Supplier's receipt of the relevant notice as set out in Clause 16.3, the Customer may issue an additional notice with a final date for the completion of the remedial work taking into account the nature of the remedial work. If the Supplier has not finalised the remedial work within the final reasonable date, the Customer is entitled (but not obliged) to have the specific defect remedied at the Supplier's expense. If, despite unsuccessful attempts, any defect has not been remedied, the Supplier is obliged, at the Customer's request, to deliver new parts, components or materials in replacement of such parts, components or materials.
- 16.7 The Parties are at all times - irrespective of liability - obliged to contribute to finding the best solution with a view to remedying and neutralising any errors and defects.

17. Liability

- 17.1 Each Party shall be liable to the other Party for any loss, damages suffered by such Party including reasonable attorney fees due to (but not limited to) any breach of contract, breach of warranty including defects, negligence, misrepresentation, fraud or any act or omission arising out of this Contract or due to the performance of such Party's obligations under the Contract.
- 17.2 Notwithstanding the foregoing, a Party may not claim damages (excluding any liquidated damages) for (a) an amount exceeding 100% of the Product Price (plus any variations thereof) and (b) any consequential and indirect losses or loss of profit (excluding any liquidated damages). This limitation and exclusion of liability in (a) and (b) shall not apply if attributable to (i) gross negligence or deliberate acts on the part of a Party, (ii) any of the indemnities set out in Clause 18.1 and Clause 18.3 or (iii) a Party's third-party liability.

18. Indemnification

18.1 The Supplier agrees to indemnify, defend and hold harmless (whether in contract or in tort) the Customer and its officers, directors, employees, administrators and successors harmless from and against all third party claims, damages, losses and expenses resulting from but not limited to any of the following:

- a) any bodily injury, death or damage to property caused arising by the Supplier or its sub-suppliers, including in connection with the performance of the Contract or other obligations in connection with the Contract;
- b) claims by any government authority for any taxes, charges, tariffs, fees etc. payable by Supplier;
- c) any pollution or contamination originating from sources in Supplier's and its sub-suppliers' possession and control, including, without limitation, from hazardous material, toxic waste, industrial hazards, sanitary waste, fuel, lubricant, motor oil, paint, solvent, trash and garbage, and, without limiting the foregoing, any release or disposal of hazardous material at the Site caused by the Supplier or any of its sub-suppliers;
- d) any violation by the Supplier or any of its sub-suppliers of the applicable laws in connection with this Contract or the Site;
- e) claims by any government authority or other third party arising out of a data breach, security breach, or breach of privacy or confidentiality obligations caused by the Supplier; or
- f) any infringement or alleged infringement of third-party intellectual property rights.

18.2 The Customer agrees to indemnify, defend and hold harmless (whether in contract or in tort) the Supplier its officers, directors, employees, administrators and successors harmless from and against all third party claims, damages, losses and expenses resulting from but not limited to any of the following:

- a) any bodily injury, death or damage to property caused by the Customer in connection with the performance of the Contract;

- b) claims by any government authority or other third party arising out of a data breach, security breach, or breach of privacy or confidentiality obligations caused by the Customer;
- c) claims by any government authority for any taxes, charges, tariffs, fees etc. payable by Customer; and
- d) any pollution or contamination originating from sources in the Customer's possession and control, including, without limitation, from hazardous material, toxic waste, industrial hazards, sanitary waste, fuel, lubricant, motor oil, paint, solvent, trash and garbage, and, without limiting the foregoing, any release or disposal of hazardous material at the Site caused by the Customer.

18.3 Each Party shall notify the other Party promptly if an accident or damage occurs at the Site in connection with the delivery of the Product.

18.4 If either Party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall promptly notify the other, and both Parties shall cooperate fully in investigating the incident. If a Party is entitled to be indemnified under this Clause 18, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party. No indemnifying Party will settle any such claims or actions in a manner which would require any action or forbearance from action by the other Party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

18.5 The Customer is entitled to set off any indemnity claim against payments to be made to the Supplier.

19. Force Majeure

19.1 The Supplier is exempt from liability and the delays set out in the Contract are suspended if the non-performance of the Contract by the Supplier is due to Force Majeure.

- 19.2 The Supplier is not entitled to payment for works and services not rendered due to Force Majeure.
- 19.3 If a milestone for the Supplier is postponed due to force majeure, the payments related thereto will be postponed accordingly.
- 19.4 The Customer is exempt from liability if the non-performance of the Contract by the Customer is due to Force Majeure.
- 19.5 Exemption from liability for delay on the grounds of Force Majeure may only be relied upon for the number of days for which the Force Majeure event or the consequences of such Force Majeure event exists.
- 19.6 The Party wishing to rely upon Force Majeure shall, immediately upon occurrence of a Force Majeure event, or when a Force Majeure event is assumed to occur, inform the other Party in writing of the cause of the Force Majeure situation and, if possible, the expected duration of such Force Majeure event.
- 19.7 Each Party will pay its own costs and/or bear its own loss as a consequence of a Force Majeure event.
- 19.8 If the performance of the entire Contract or the essential parts thereof has been rendered impossible due to Force Majeure for a consecutive period of more than six months or more than 180 Days during a period of one year, and if, upon prior negotiations between the Parties, the Parties have not succeeded in finding a solution satisfactory to both Parties, the Customer may terminate Contract pursuant to Clause 21. The Parties will have no other claims against each other.

20. Term

- 20.1 The Contract becomes effective upon signing and shall remain in force until expiry of the Warranty Period.
- 20.2 Provisions in this Contract which expressly or impliedly do so and/or which are required to give proper legal effect to the provisions of this Contract shall survive termination or expiry of this Contract.
- 20.3 For the avoidance of doubt Clause 18.1, Clause 19, Clause 22, Clause 28, Clause 31 and Clause 32 shall continue in force without limit of time.

21. Termination

21.1 The Customer may terminate the Contract for cause if the Supplier

- a) is in material breach of its obligations or any provisions under the Contract and provided that the Supplier fails within 30 (thirty) Days after the Supplier's receipt of written notice from the Customer specifying in reasonable detail the nature of the breach to diligently commence and diligently continue correction of such breach;
- b) fails to effect timely delivery subject to the conditions set out in Clause 9.5;
- c) fails to effect timely delivery subject to the conditions set out in Clause 10.4;
- d) fails to meet its obligations under the warranties set out in Clause 16;
- e) fails to pay its debts as they become due, makes a general assignment for the benefit of its creditors, is in receivership, dissolution, becomes bankrupt, or suffers any order, judgment or decree to be entered by any court of competent jurisdiction, adjudicating it bankrupt or approving a petition seeking its reorganization or the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
- f) the Customer may terminate the Contract for cause in the event of material changes in the Supplier's corporate structure, provided that such changes, in the Customer's reasonable opinion, may influence the Supplier's ability to fulfil the Contract and provided that any ordinary change in publicly listed shares of a parent company shall not be deemed a material change under this sub-clause f); or
- g) the Supplier is barred or restricted from selling the Product or performing the Contract as the result of any governmental action.

21.2 If the Contract is terminated for cause following the delivery of the Product or parts thereof the Product may be returned to the Supplier at the Customer's discretion.

21.3 The Customer may terminate this Contract in whole or part at any time for its own convenience; any such termination shall be effected by the Customer by giving at least 30 (thirty) Days prior written notice to the Supplier.

- 21.4 In case of termination by the Customer pursuant to Clause 21.3, the Customer shall pay to the Supplier;
- a) The Product Price proportionally attributable to the parts of the Product executed, procured and produced by the Supplier at the date of termination; and
 - b) The documented additional costs reasonably incurred by the Supplier due to the termination.
- 21.5 The Customer's shall not be obliged to make payments under Clause 21.4 to the extent that the Supplier could have avoided the costs, or abstained from carrying out works or services etc., in the period from the Customer's written notice under Clause 21.3 and until the termination takes effect.
- 21.6 The Supplier shall be entitled to terminate the Contract for cause if the Customer is in material breach of its obligations or any provisions under the Contract and provided that the Customer fails within 30 (thirty) Days after the Customer's receipt of written notice from the Supplier specifying in reasonable detail the nature of the breach to diligently commence and continue correction of such breach.
- 21.7 The Supplier shall not be entitled to terminate the Contract for convenience.
- 21.8 Any termination pursuant to this Clause 21 shall be deemed effective upon the termination date specified in the written notice of termination, provided that such date is not inconsistent with the minimum time periods specified in the Contract.

22. Public procurement

- 22.1 The Customer has tendered this Contract in accordance with applicable law, including the public procurement rules. In the event that (i) an administrative authority, including, but not limited to, the Complaints Board for Public Procurement (*Klagenævnet for Udbud*) or the Competition and Consumer Authority (*Konkurrence- og Forbrugerstyrelsen*), (ii) the European Commission or (iii) a Danish or European court of law, decides or rules that the public procurement rules or other legislation have been infringed in relation to the award of the Contract with the effect of the award decision being annulled or the Contract being rendered ineffective, the Customer will be entitled to terminate the Contract upon payment of the Supplier's direct and documented costs. The Supplier will have no claim for damages against the Customer.
- 22.2 In the event that the decision of the relevant authority is not rendered prior to the lapse of the Supplier's obligations under the Contract the Supplier shall be entitled to payment under the terms of the Contract.
- 22.3 Clause 22.1 and Clause 22.2 shall apply *mutatis mutandis* where a formal complaint or writ of summons is lodged with the Complaints Board for Public Procurement or a court of law provided that the Customer's external legal counsel in good faith assesses that it is more likely than not that the complainant in such proceedings will be successful in having the award decision annulled and/or the Contract rendered ineffective.

23. Safety and administrative requirements

- 23.1 In the event that either Party experiences any potential safety hazard or unsafe condition relating to or involving the Product, it shall immediately advise the other Party. The Parties shall cooperate in communicating with governmental agencies and will address and, if necessary, correct any such condition that is found to exist at the expense of the Party causing the hazard or unsafe condition.

24. Waste handling

- 24.1 During the performance of the Contract, the Supplier shall keep the Site free from all unnecessary obstruction caused by the Supplier. The Supplier shall clear away and remove from the Site any wreckage, rubbish and temporary works which are

no longer required and which is a result of the Supplier's performance of the Contract.

- 24.2 The Supplier shall ensure that waste generated by the Supplier during the performance of the Contract shall be separated and disposed of in accordance with applicable laws, and that waste oil shall be kept clean and uncontaminated by other waste.

25. Sub-suppliers

- 25.1 Subject to the Customer's prior written approval (not to be unreasonably withheld or delayed), the Supplier is entitled to collaborate with sub-suppliers for the performance of the Contract. The sub-suppliers referred to in Appendix 2 shall be deemed approved by the Customer.
- 25.2 Sub-suppliers may be replaced only with the prior consent of the Customer (not to be unreasonably withheld or delayed).
- 25.3 The Supplier is liable for the fulfilment of any and all obligations following from this Contract on its own and any sub-suppliers' behalf.

26. Customer's representative

- 26.1 The Customer may at any time and at its own expense involve a third party to support the Customer in connection with the Contract, the cooperation or its termination. Such third party will at the Customer's discretion have access to the same meetings, information and documents as those to which the Customer has access provided that such third party agrees in writing to be bound by the same confidentiality provisions as set forth in this Contract.

27. Assignment of rights and obligations

- 27.1 The Customer may assign its rights and obligations under this Contract to another public body, public authority or an institution owned by or in all essentials operated by way of public funds in any Member State of the European Union. The Contract may also be assigned to another public body, public authority or institution in the event that Aarhus University ceases to exist due to closure, change or corporate structure or similar events.

- 27.2 The Supplier may not without the consent of the Customer assign its rights and obligations under the Contract.

28. Disputes

- 28.1 Efforts shall be made by either Party to settle disputes as soon as possible and at the lowest level. However, in the event that a dispute cannot be settled amicably such dispute shall first be escalated to higher management of each Party.
- 28.2 In the event of any disagreement or dispute relating to or arising out of the Contract, which cannot be settled amicably through negotiations, each Party is entitled to request that a third party jointly designated by the Parties – with relevant experience and knowledge - shall provide its assessment and preliminary decision on the relevant matter. The Parties are obliged to comply with such decision of such third party provided that each of the Parties shall be entitled within 60 Days from the receipt of such decision to appeal the decision either by a submission to the expert and/or arbitration as set out in Clauses 28.4 or 28.5 below. In any event the Parties are obliged to comply with the decision until a new decision regarding the subject matter has been issued.
- 28.3 The Parties may commission an expert opinion, cf. Clause 28.4, or commence arbitration proceedings, cf. Clause 28.5, two months after the submission of the dispute to the third party at the earliest and no later than 60 Days after receipt of such decision according to Clause 28.2.
- 28.4 If, in the event of any disagreements between the Parties, an expert opinion is commissioned with a view to preserving evidence, such expert opinion must be commissioned according to the rules on the appointment of an expert of the Danish Institute of Arbitration.
- 28.5 Any dispute arising out of or in connection with this Contract must be settled in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Danish Arbitration). Subject to agreement between the Parties, the Parties may first agree to the mediation in accordance with the Rules of Procedure for mediation of the Danish Institute of Arbitration. All members of the arbitration tribunal must be appointed in accordance with the rules of the Danish Institute of Arbitration provided that each Party shall be entitled to appoint one member and the Danish Institute of Arbitration shall appoint the chairman of the arbitration tribunal.

- 28.6 With a view to ensuring swift consideration of the arbitration proceedings, the Parties agree that a meeting must be held as soon as possible after the submission of a complaint and a defence at which meeting the further course of events of the case will be agreed upon with binding effect for the Parties. At the said meeting, binding deadlines for the further steps of the pre-trial work will be fixed as well as the date of commencement of the oral proceedings.
- 28.7 The language for the settlement of all disputes will, unless otherwise agreed by the Parties, be English.
- 28.8 Notwithstanding Clause 28.5, the Supplier agrees that it may be joined to proceedings which are instituted against the Customer by a third party including another Supplier before a court or arbitration which relates to or are otherwise connected to the Supplier's delivery of the Product and/or the Contract. The Supplier shall in this respect and to the extent possible ensure that its sub-suppliers will agree to joinder and consolidation obligations. Furthermore, insofar as the Customer initiates legal proceedings against any party to a dispute before the Danish courts, or if the Customer files a complaint against a party to a dispute the Customer is entitled to involve the Supplier, provided that the case is related to the Contract.
- 28.9 The place of arbitration as well as the place of meetings to be held under this Clause 28 shall take place in Denmark at a location of the Customer's choosing.

29. Amendments

- 29.1 Any amendments to the Contract must be prepared in the form of written riders to the Contract which clearly state to which extent derogations or additions, respectively, must be made. The riders must be dated and be signed separately, but must be continuously numbered in continuation of the pagination of the Contract.

30. Notices and contact persons

- 30.1 Any communication provided or permitted under this Contract shall be in writing and shall be deemed duly given if delivered in person or received via certified mail or courier (with delivery tracking confirmation), addressed to the Party for which it is intended at the address specified below (which contact person or address may

be changed by either Party by giving 10 Days prior written notice to the other Party). Furthermore, any communication provided or permitted under this Contract shall be deemed duly given if given by e-mail and provided that the receiving Party responds to such e-mail or otherwise actively acknowledges receipt in writing. Any non-material information may be sent in e-mail to the contact person listed below.

- 30.2 The following contact persons are authorised to enter into binding agreements in connection with any amendments to the Contract:

For the Customer:

[...]

For the Supplier:

[...]

31. Language and governing law

- 31.1 The legal relationship between the Customer and the Supplier is subject to Danish law without reference to its conflict of law provisions. The application of the UN convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded.
- 31.2 The language of the Contract is English.
- 31.3 At the Customer's reasonable request, however, the Supplier is obliged to prepare documents and material in both the English and Danish languages for the purpose of consideration by the authorities if the relevant document has been requested by the authority in Danish.
- 31.4 In the event of any discrepancies between the Danish and English versions of documents and material, the Danish versions will be applicable.

32. Confidentiality

- 32.1 The Parties as well as their staff and sub-suppliers shall keep strictly confidential any and all information communicated to the Parties in connection with the

performance of the Contract and which is not in the public domain as well as subject to rules on the access to documents.

- 32.2 The duty of confidentiality under this Clause will also apply upon termination of this Contract, whatever the reason for such termination.
- 32.3 Only the Customer is entitled to make public statements, including to the news media, on the project or any matters related to the Contract. In the event that the Customer refers to any circumstances of the Supplier, such references must be made in a loyal manner and the Supplier must subsequently, but if possible previously, be notified thereof. If, in order to safeguard its own essential interests, the Supplier exceptionally needs to make a statement to the public or news media on matters pertaining to the Contract, the form and contents of such statement must be discussed beforehand with the Customer.
- 32.4 The Supplier warrants that the Supplier's sub-suppliers accept the aforesaid confidentiality Clause.
- 32.5 In connection with the conclusion of the Contract, the Parties will jointly prepare guidelines for any communications on the Contract.

33. Miscellaneous

- 33.1 In case of any inconsistencies between this document and its Appendices, the provisions of this document will prevail. The Appendices are listed in order of priority with Appendix 1 having the highest priority among the Appendices.
- 33.2 A waiver by either Party of any breach or default by the other Party will not be construed as a continuing waiver of the same or of any other breach or default under this Contract.
- 33.3 This Contract contains the entire agreement of the Parties with respect to the subject matter dealt with herein and supersedes any previous agreements or understandings (whether written or oral) between the Parties regarding the delivery of the Product.

34. Signatures

- 34.1 The Contract has been executed in two identical and signed copies of which one copy is held by the Customer and the other copy is held by the Supplier.
- 34.2 Each Party shall pay its own costs incurred in connection with the drawing up and conclusion of this Contract.

| | |
|----------------------------|----------------------------|
| Date: | Date: |
| On behalf of the Customer: | On behalf of the Supplier: |
| <hr/> | <hr/> |
| <hr/> | <hr/> |
| Date: | Date: |
| <hr/> | <hr/> |