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European Structural and Investment Funds
Operational Programme Research,
Development and Education



Buying contract

NÁRODNÍ ÚSTAV DUŠEVNÍHO ZDRAVÍ/ NATIONAL INSTITUTE OF MENTAL HEALTH,

state-funded institution

Identification number: 00023752

Registered office: Topolová 748, 250 67 Klecany, Czech Republic

Represented by Mr. prof. MUDr. Cyril Höschl, DrSc. FRCPsych, director

(hereinafter referred to as **“Buyer”**)

and

Competitor:

Identification number:

Tax identification number:

Registered office:

Represented by:

(hereinafter referred to as **“Seller”**)

Concluded, on this day, in accordance with the provision of Article 2079 and the subsequent Act No. 89/2012 Coll., Civil Code, as amended, this buying contract.



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I.

Subject matter of the contract

- 1.1. Subject of the sale in accordance with this contract is software specified in more detail in the Annex 1 to this contract (hereinafter referred to as **“Subject of the sale”**).
- 1.2. Under this contract, the Seller agrees to transfer the Subject of the sale, specified in the Clause I, subsection 1.1 of this contract, or more precisely in the Annex 1 to this contract, to the Buyer and the Buyer accepts the ownership of the Subject of the sale at the Purchase price agreed below.
- 1.3. The Seller commits himself to deliver the Subject of the sale as new, unused, without factual or legal defects. The Seller also declares that by delivering it, he is not in breach of any rights third persons may have to the patent or other forms of intellectual property as he is the exclusive owner of Subject of the sale, has the right to handle it without restraint, and therefore also the right to transfer its ownership to the Buyer legitimately by this contract. Moreover, the Seller declares the Subject of the sale complies with the standards in accordance with the European Union regulations and meets the requirements laid down by the legal regulations of the Czech Republic, the harmonized Czech technical standards and other Czech technical standards related to the subject matter of delivery.

II.

Purchase price and terms of payment

- 2.1. Contracting parties agreed on the Purchase price of the Subject of the sale amounting to:

EUR exclusive of VAT,
EUR VAT,
EUR inclusive of VAT

(hereinafter referred to as **“Purchase price”**)

- 2.2 In accordance with the Clause II, subsection 2.1 of this contract, the Purchase price includes all costs related to meeting the obligation of the Seller pursuant to this contract, and concerned here are especially:
 - a) delivery of the Subject of the sale to the place of delivery, that is to the NUDZ building in Klecany, Czech Republic;
 - b) instruction of group members of the Buyer's staff, including demonstration of the Subject of the sale functioning in practice and technical instruction; this instruction can be done in the building NUDZ in Klecany, or remotely via skype/video-konference;



- c) handing over documentation necessary for receipt and use of the Subject of the sale (for example the user documentation, manuals, documentation needed for exercising warranty rights, declaration about compliance of the device with approved standards);
- d) full maintenance during the 3 (in words: three) year warranty period;
- e) providing phone technical support in the Czech on weekdays on phone number [REDACTED] or via e-mail: [REDACTED] with a response max. 24 (in words: twenty-four) hours of reporting requirement to consult;
- f) three (3) one-year licences specified in clause V. of this contract.

2.3 The Seller is obliged issue proper tax documents (invoices) in accordance with subsection 2.4 and 2.5 of this Clause. The invoice shall be payable within 30 (in words: thirty) days from the day on which the invoice is delivered to the Buyer. The Seller is entitled to issue the invoices in the following terms:

- a) an invoice in the amount of 34 % of the Purchase price after confirmation of the delivery of the Subject of the sale by the Record pursuant to the subsection 2.4 of this Clause;
- b) an invoice in the amount of 33 % of the Purchase price after confirmation of the functionality of the Subject of the sale and prolonging the licence for second year in accordance with subsection 5.3 of Clause V by the Record 2 pursuant to the subsection 2.4 of this Clause;
- c) an invoice in the amount of 33 % of the Purchase price after confirmation of the functionality of the Subject of the sale and prolonging the licence for third year in accordance with subsection 5.3 of Clause V by the Record 3 pursuant to the subsection 2.4 of this Clause.

2.4 The due delivery of the Subject of the sale will be confirmed by the Record of the due delivery of the Subject of the sale (hereinafter referred to as **“Record”**). As well as being a condition of the due delivery, a written consenting statement issued by the contracting parties in order to confirm the Seller had also complied with all terms pursuant to the Clause II, subsection 2.2, a) to c) of this contract, is an integral part of the Record of due delivery. The seller is entitled to issue the invoice in accordance with subsection 2.3 a) of this Clause after the Record will be sign from both contracting parties.

The due functionality of the Subject of the sale after the first year from the delivery of the Subject of the sale in accordance with Clause III, subsection 3.2. of this contract, will be confirmed by the Record 2 (hereinafter referred to as **“Record 2”**). The seller is entitled to issue the invoice in accordance with subsection 2.3 b) of this Clause after the Record 2 will be sign from both contracting parties. The Buyer is entitled to refuse to sign this



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Record 2 if the Subject of the sale on the day of its signature shows defects or if the licence for second year in accordance with subsection 5.3 of Clause V of this contract was not prolonged.

The due functionality of the Subject of the sale after the second year from the delivery of the Subject of the sale in accordance with Clause III, subsection 3.2. of this contract, will be confirmed by the Record 3 (hereinafter referred to as **“Record 3”**). The seller is entitled to issue the invoice in accordance with subsection 2.3 c) of this Clause after the Record 3 will be sign from both contracting parties. The Buyer is entitled to refuse to sign this Record 3 if the Subject of the sale on the day of its signature shows defects or if the licence for third year in accordance with subsection 5.3 of Clause V of this contract was not prolonged.

2.5 The invoices – tax documents – must include above all:

- a) business name and registered office of the Buyer
- b) VAT identification number of the Buyer
- c) business name and registered office of the Seller
- d) VAT identification number of the Seller
- e) registration number of the tax document
- f) scope of fulfilment of the contract and subject matter of the contract
- g) date of issue of the tax document
- h) date of taxable supply or date of the receipt of payment, that is, the earlier day in the event that it differs from the date of issue of the tax document
- i) price for performance of the subject matter of the contract
- j) declaration that the performance of the subject matter of the contract was realized for the purposes of the “National Institute of Mental Health (NUDZ)” project, project registration no. CZ.02.1.01/0.0/0.0/16_025/0007444, within the Research, Development and Education Operational Programme (hereinafter referred to as “OP VVV”),

as well as all legal essentials established by the provision of the Article 28 of the Act No. 235/2004 Coll., on the value added tax, as subsequently amended.

Unless expressly stated otherwise, all prices specified in this Agreement are quoted without applicable value added tax (VAT) that shall be charged by the Seller in compliance with applicable regulations valid as of the date of the taxable transaction.

The obligation of VAT calculation and return for the delivered goods in Czech Republic pertains to Buyer.

III.

Delivery of the subject matter of the contract

3.1. Place of delivery is the NUDZ building in Klecany.



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- 3.2.** The contracting parties agreed that the delivery of subject of the sale will take place, at the latest, within the period of 4 (in words: four) weeks from the day this contract come into force, and the Seller commits himself to start the process of delivery immediately after conclusion of the contract and to proceed without undue delay. Delivery of the Subject of the sale includes all actions specified in the Clause II, subsection 2.2, a) to c) of this contract. The delivery shall be recorded in writing and the Record signed by representatives of both contracting parties. The Buyer is entitled to refuse to sign this Record if the subject of the sale shows defects or, as the case may be, all actions established by the Clause II, subsection 2.2, a) to c) of this contract were not properly carried out, or the flawless functioning of the subject of the sale failed to be achieved regardless of the fact that all these actions were properly carried out.
- 3.3.** Delivery of the subject of the sale in accordance with the Civil Code is to be understood as its due delivery pursuant to the Clause III, subsection 3.2 of this contract, confirmed by the written Record signed by authorised representatives of both contracting parties.
- 3.4.** The ownership of the subject of the sale is passed to the Buyer as soon as the payment specified in the Clause II, subsection 2.3 of this contract is paid, and the risk of damage to the subject of the sale is passed to the Buyer by signature of the Record in accordance with the Clause II, subsection 2.4 and Clause III, subsection 3.2 of this contract.

IV.

Product liability and contractual conditions of guarantee

- 4.1.** The Seller gives the Buyer an explicit assurance that the Subject of the sale has no defects and is suitable for the specified use, that is for research purposes. At the same time, the Seller declares the qualities of the Subject of the sale meets the requirements of the Buyer and that he has an understanding of these requirements.
- 4.2.** The Seller is liable to the Buyer for any losses and damages the subject of the sale incurs as a result of the breach of obligations arising from the generally binding legal regulations, this contract, technical standards (including advisory) and by commonly observed business practices on the part of the Seller.
- 4.3.** Pursuant to this contract, the Seller agrees with contractual warranty for the subject of the sale for the period of 3 (in words: three) years from the day of the due delivery of the Subject of the sale, that is from the day the written Record was signed by the representatives of both contracting parties.
- 4.4** The Seller warrants to the Buyer the Subject of the sale delivered to the Buyer will, for at least 3 (in words: three) years, be capable to be utilised for its usual purpose. The warranty period begins on the day of signature of the Record of handing over of the Subject of the sale for the use of the Buyer.



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- 4.5. In the event that defect occurs in the Subject of the sale during the warranty period, the Buyer shall inform the Seller about this. The Seller commits himself to rectify the defect in question within the period of 5 (in words: five) days from the day it was reported. The occurrence of irreparable defect will always be treated as a fundamental breach of contract and in such case the Buyer is entitled to have the Subject of the sale replaced with a new Subject of the sale; if this is not possible, the Buyer is entitled to a reduction of the Purchase price or has the right to withdraw from the contract. In accordance with this contract, a defect is considered irreparable if this defect was not rectified within the period of 20 (in words: twenty) days from the day the defect had been reported.
- 4.6. The warranty period is not running during the time the Buyer is unable to use the Subject of the sale fully as a result of the defect.
- 4.7. Claims based on defects of the Subject of the sale do not affect the claim for damages or the entitlement to a contractual fine.
- 4.8. The Seller may ensure the delivery of Subject of the sale under this contract through a third party (subcontractor) only upon the prior written consent of the Purchaser. In the event that the subject matter of the performance or any part of it is performed through a third party, the Seller is responsible in this case for performance by a third party as if it were performed by itself.

V.

Licence

- 5.1 The Seller provides to the Buyer licences to the Subject of the Sale, which constitute a part of Subject of the Sale, as a nonexclusive licences **without territorial limitation**.
- 5.2 The Seller provides to the Buyer a licenses to exercise the right to use Subject of the Sale protected by the intellectual property rights in all possible manners permitted by it's nature.
- 5.3 The Seller provides to the Buyer three (3) licences to the Subject of the Sale, every of them for the period of one (1) year. The contracting parties hereby agree that above mentioned three licences to the Subject of the Sale will be used by the Buyer chronologically and consecutively so the total duration of the license to the Subject of the Sale under this contract will be three years from the delivery of the Subject of the sale in accordance with Clause III, subsection 3.2. of this contract.
- 5.4 The fee for granting the licenses is included in the Purchase price.



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5.5 The Buyer is not obliged to use these licences.

VI. Sanctions

- 6.1.** Contracting parties bear responsibility for losses incurred within legal regulations in force and this contract. Contracting parties commit themselves to make the utmost effort to prevent losses and to minimise incurred losses.
- 6.2.** In case of delayed delivery of the Subject of the sale in accordance with the terms established by the the Clause III, subsection 3.2. of this contract, the Seller is obliged to pay the Buyer a contractual fine amounting to CZK 2 000 for each new day of the delay.
- 6.3.** In case the Seller fails to meet the time limit for rectification of defects, about which the Buyer complained in a proper manner in the warranty period, the Seller will pay the Buyer a contractual fine amounting to CZK 2 000 for each calendar day of the delay.
- 6.4.** Pursuant to this contract, contractual fines are payable within the period of 3 days from the day of delivery of notice from the rightful party to the liable party called upon to pay.
- 6.5.** In accordance with this contract, the Buyer has the right to set the contractual fine off the payment due to the Seller.
- 6.6.** The obligation to pay the contractual fine does not affect the claim for damages, which is paid in full, irrespective of the sum the contractual fine is amounting to. Payment of the contractual fine does also not affect the liability of the Seller to comply with the obligations arising from this contract.

VII. Withdrawal from the contract

- 7.1.** Withdrawal is possible in cases established by this contract or by the law. For the purposes of this contract, the contracting parties exclude the application of provisions of the Section 2111 and the Section 2112 of the Civil Code.
- 7.2.** The Buyer is entitled to withdraw from the contract if:
 - a) the Seller delays the delivery of the Subject of the sale by more than 10 (in words: ten) days;
 - b) the delivered Subject of the sale does not have the properties specified by this contract;
 - c) the Buyer finds out the Seller is failing to fulfil or, with regard to all circumstances, will objectively be unable to fulfil his obligations in accordance with this contract properly and in time;



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- d) the expenses he would incur as a result of this contract will be considered by the Operační program Výzkum, vývoj a vzdělávání (Research, Development and Education Operational Programme) Governing authority incorrect or unacceptable, for example owing to the breach of the OP VVV Rules for selection of contractors or finding that participating in the processing of the Buyer's offer submitted for the tender was an employee of the Buyer or a member of the realisation team of the Národní ústav duševního zdraví (National institution of mental health; hereinafter referred to as NUDZ) project, or a person who, on the basis of a contractual relation, participated in the preparation or assignment of the tender leading to conclusion of the contract; or if the Buyer's offer was processed jointly by the Buyer and a person who is an employee of the Buyer or a member of the realisation team of the NUDZ project, or a person who, on the basis of a contractual relation participated in the preparation or assignment of the tender, the purpose of which was a conclusion of the contract; or if a subcontractor within the contract is an employee of the Buyer, member of the realisation team of the NUDZ project or a person who, on the basis of a contractual relation, participated in the preparation or assignment of the tender after the conclusion of the contract;
- e) the provision of financial means by OP VVV for the NUDZ project will be suspended or terminated.

7.3. The Seller is entitled to withdraw from this contract only in case the Buyer delays the payment of the Purchase price past its due date, when the Buyer is late with the payment notwithstanding the written notice by the Seller, which will explicitly inform the Buyer the Purchase price was not paid and about the possible consequences of this, but only provided at least 90 (in words: ninety) days elapsed from the due date of the tax document and, at the same time, at least 10 (in words: ten) working days from the day of delivery of a written notice about the possibility of withdrawal from this contract.

7.4. Withdrawal from the contract must be made in writing and delivered to the other contracting party, the withdrawal becoming effective on the day of delivery of the written notice. Issues arising from the withdrawal from the contract are governed by relevant provisions of the Civil Code.

VIII.

Communication between the contracting parties

8.1. By written form of communication is understood the delivery by personal service, delivery by hand, recorded delivery letter, fax message and message sent by means of electronic mail and signed with verified electronic signature. By addresses for delivery of documents in writing are understood the addresses of the contracting parties indicated in



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the heading of this contract. In case of a change of address for delivery of documents in writing, it is necessary to inform the other contracting party in writing about this without undue delay.

- 8.2.** In addition, the contracting parties hereby agree that in cases when the communication between the contracting parties will take place in the form of e-mails, the individual e-mail messages will be sent to the e-mail addresses of contracting parties indicated in the Clause VIII, subsection 8.4. of this contract.
- 8.3.** The contracting parties hereby also agree that an e-mail message will be regarded as delivered provided the other contracting party will acknowledge its receipt or, as the case may be, will answer this message in the same manner within three (3) days after its sending. Failing that, the e-mail message will be regarded as not delivered and the other contracting party, that is the sender, will be bound to send the other contracting party, at its expense, a corresponding communication in the form of the recorded delivery letter, without undue delay, by means of the licenced postal service provider.
- 8.4.** For the purposes of electronic communication, the contracting parties designate the following e-mail addresses:

Buyer:



Seller (Competitor):



IX. Other provisions

- 9.1.** In accordance with the Section 2 (e) of Act No. 320/2001 Coll. on financial inspection in public administration, as amended, the Seller is under obligation to cooperate in carrying out financial inspection and lay potential subcontractors under an equivalent obligation accordingly. The Seller is also obliged to ensure that the Governing Authority for the Research, Development and Education Operational Programme has, as part of its controlling task, the right of access lasting for at least 3 (three) years commencing on December 31 following the presentation of the financial statement in which the expenditures associated with this project will be reported, pursuant to Art. 140 of the regulation of the European Parliament and of the Council (EU) no. 1303/2013 (unless the Czech system of law stipulates a longer term), to those parts of offers, contracts and relating documents, which are subject to protection under special regulations (e.g. trade secret, classified information), provided that legal requirements imposed by the regulations are met (e.g. by Act no. 255/2012 Coll., providing for control (rules of control), as amended. Likewise, the Seller is under obligation to ensure the OP VVV Governing authority is also entitled to check potential subcontractors (substitutes) of the Seller in a similar manner.



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- 9.2.** The Seller is under obligation to comply with the requirements for mandatory publicity within Structural Funds programmers as laid down by the Publicity Rules within the OP VVV (see chapter nr. 17 Publicity Rules), specifically in all relevant documents pertaining to specific selection procedure or process and in all contracts and other documents associated with specific contract.

X. Final provisions

- 10.1.** This contract shall enter in to force and shall take effect on the day of signature by the last participant in this contract. Any changes and amendments to this contract, as well as, as the case may be, the termination of this contract must be made in writing.
- 10.2.** Issues, which are not amended by this contract are governed by the Czech law, in particular by the Act No. 89/2012 Coll, Civil Code, as amended, and the Research and Development for Innovations Operational Programme Rules.
- 10.3.** All annexes to this contract constitute its integral part.
- 10.4.** In case of a dispute, both contracting parties above all undertake to attempt to settle the dispute amicably, in case of a legal dispute, the case will be heard by competent court in accordance with the Act No. 99/1963 Coll, Civil Procedure Rules.
- 10.5.** This contract is executed in four copies and each contracting party shall receive two counterparts.

Annexes:

Annex 1 to the Contract - The object of purchase specification

In Klecany

In

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Národní ústav duševního zdraví
příspěvková organizace
zast. prof. MUDr. Cyrilem Höschlem, DrSc. FRCPsych, ředitelem