

# In-Kind Contract

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Between

**Facility for Antiproton and Ion Research in Europe GmbH**

And

**National Research Authority (ANC)**

And

**Horia Hulubei National Institute of  
Physics and Nuclear Engineering (IFIN-HH)**

On

**The In-Kind Contribution**

About the design, prototyping, production, delivery, assembly and commissioning of the  
chambers of the CBM TOF inner zone

as part of the Work Package PSP 1.1.1.5.3

for the CBM experiment

As defined in detail below

**The Facility for Antiproton and Ion Research in Europe GmbH**

Hereafter referred to as "FAIR GmbH"

A limited liability company subject to German law

Having its registered office at:

Planckstraße 1, 64291 Darmstadt, Germany

Represented by:

Dr. Thomas Nilsson, Chairman/Scientific Managing Director,

Katharina Stummeyer, Administrative Managing Director

and

**National Research Authority (ANC)**

Hereafter referred to as "Shareholder"

with

**Institute of Atomic Physics (IFA) acting on behalf of ANC**

Having its registered office at:

407 Atomistilor St. Magurele 077125, Ilfov, Romania

Represented by:

Dr. Florin-Dorian BUZATU,

and

**Horia Hulubei National Institute of  
Physics and Nuclear Engineering (IFIN-HH)**

Hereafter referred to as "Provider"

Having its registered office at:

Str. Reactorului no. 30, 077125,

Magurele-Ilfov, Romania

represented by the Managing Directors

Hereafter collectively referred to as the "Contracting Parties" or "Parties"

**Have agreed upon the following provisions:**

## Preamble

The Facility for Antiproton and Ion Research, FAIR, is being built by the international collaboration of countries that have signed the FAIR Convention.

The Contracting Parties acknowledge that National Authority for Research is Shareholder of the FAIR GmbH, and as such entitled to contribute to the construction of FAIR by delivering equipment as part of their Shareholder contribution In-kind.

The Contracting Parties acknowledge that for the implementation of the Shareholder contribution under this In-Kind Contract, the Shareholder has chosen the Provider to design, fabricate, transport, assemble, document and test the contribution.

The Shareholder shall provide sufficient funds to cover all costs associated with the delivery of the In-kind Contribution until its approval of accreditation.

The FAIR GmbH shall execute adequate control and management procedures leading to successful acceptance (see Annex 2 Art. 3) of this In-Kind Contract.

## Article 1

### Definitions

In this In-Kind Contract, the following definitions shall apply:

- **Contribution:** Product or activity provided by a FAIR GmbH shareholder himself or by a provider to build (part of) the Facility for Antiproton and Ion Research
- **CBM Collaboration:** International collaboration of research institutes that have agreed to construct, commission and operate the CBM detector system.
- **CBM experiment:** Large acceptance fixed target detector system. The detector is an integral part of the Facility of Antiproton and Ion Research, and is dedicated to investigate the properties of dense Nuclear Matter and the transition to the deconfined phase of the QCD phase diagram at highest Nuclear Matter densities in nucleus-nucleus collisions between 4-35 GeV/N.
- **CBM Time of Flight Detector, CBM TOF:** Detector system for measuring the time of flight of charged particles in the CBM experiment.
- **Components for Delivery:** RPC Chambers for the inner zone of the CBM TOF (5 to 11 degrees polar angles), as part of the Work Package PSP 1.1.1.5.3 for the CBM experiment.
- **Plan Review:** Review of the schedule and quality assurance plan prepared by the Provider as defined in Annex 2, paragraph 4.2.

## Article 2

### Scope of this In-Kind Contract

2.1. FAIR Council decision concerning the allocation of the In-Kind Contribution

*The FAIR Council decision(s) is/are given in **Annex 1**, on which basis this In-Kind Contract is being closed.*

2.2. The Shareholder commissions the Provider with the following Contribution:

**2.2.1. Development, construction, commissioning and installation of the RPC Chambers for the inner zone of the CBM TOF, as part of the Work Package PSP 1.1.1.5.3 for the CBM experiment.**

**2.2.2. The Component for Delivery comprises all components defined in Annexes 2 and 3 of this In-Kind Contract.**

2.3. The agreed costs for the realisation of this In-Kind Contract between Shareholder and Provider are not subject of this contract. The payment issues as the agreed costs the payment profile, the assessment of the financial risks and the description of the financial role shall be agreed directly between Shareholder and Provider and is not legally binding for the FAIR GmbH and this contract. If it is the wish of one of the Parties these aspects may be added to this contract for information only.

2.4 **Annex 2** of the current Collaboration Contract specifies in detail the scope, time schedule, kind and extent of the Provider's deliverables.

2.5 This In-Kind Contract only refers to the Contribution listed in Article 2.2. above, which is described in detail in **Annex 2**. Other, additional contributions of the Shareholder shall be regulated separately by supplementary written agreements to the present In-Kind Contract, or additional contracts, or memoranda of understanding.

2.6 The Component for Delivery will be used for fundamental research purpose only.

## Article 3

### Basic documents

- 3.1 This In-Kind Contract includes **Annexes 1, 2 and 3**. In addition, the documents listed in **Annex 3** and cited in Roman numerals, including documents attached therein, are an integral part of the In-Kind Contract as well.
- 3.2 Each Party declares that it is cognisant of the contents of all documents specified above, that it has received all necessary information for the execution of the In-Kind Contract and that it is fully aware of the requirements imposed by the In-Kind Contract.

3.3 In case of discrepancies, the provisions made shall be taken in the following order of priority:

1. In-Kind Contract
2. Annex 1, 2 and 3 (in this given order)
3. Documents listed in Annexes in the order specified in the respective Annex

3.4 This In-Kind Contract is based on the following documents:

- I. The FAIR Convention
- II. Annex "Articles of Association" to the FAIR Convention, according to the respective valid version
- III. Technical Document 4 attached to the FAIR Convention
- IV. General Specifications for Experiments at FAIR
- V. Standard terms and conditions of purchase of the FAIR GmbH (STC)

3.5 This In-Kind Contract is signed by representatives of:

- FAIR GmbH
- Shareholder
- Provider
- CBM Collaboration, to certify that they agree with this In-Kind Contract

## Article 4

### Funding, Value and resources

4.1 The Shareholder ensures that the Provider will have access to appropriate funding for development, construction, commissioning and installation of the RPC Chambers for the inner zone of the CBM TOF, as part of the Work Package PSP 1.1.1.5.3 for the CBM experiment according to the technical specifications described in the Annex 2 and Annex 3.

4.2 The value of the Contribution will be credited to the Shareholder once the milestones determined in **Annex 2** of this In-Kind Contract have been reached satisfactorily and the deliverables determined in this Contract have been fulfilled, or once the deliverables are accepted and their ownership is transferred to the FAIR GmbH.

4.3 For the Contribution covered by this Contract the value to be taken into account as a part of the total contribution by the Shareholder to the construction costs shall be based on the year 2005 price as specified in the latest version of the cost book. Any cost variations of these items shall be treated subject to the conditions specified in the *Technical Document 4* attached to the FAIR Convention. Therefore, the value of the Contribution covered by this Contract amounts to

**748.000,00 EUR (in 2005 prices)**  
**(seven hundred forty eight thousand Euro)**

- 4.4. The Provider shall provide the resources, i.e. the qualified personnel, facilities and equipment, required to fulfil the Contribution according to the specifications detailed in **Annex 2**.
- 4.5 The FAIR GmbH may request the Provider to accept alterations of the scope of supply and work during the course of the In-Kind Contract fulfilment. If such alterations affect the manufacturing costs or the date of delivery of the contractual subject, the Provider shall inform the Shareholder and the FAIR GmbH accordingly. The alterations become an integral part of the In-Kind Contract as soon as all the Contracting Parties have reached mutual agreement about them in writing. If necessary, the delivery time shall be adjusted, also in writing, as agreed by the Parties. Adjustments of price are to be agreed between Shareholder and Provider.
- 4.6 The FAIR GmbH reserves the right to make alterations concerning specifications which become necessary for the fully functional installation and operation of the contributions. If the FAIR GmbH considers design alterations to be necessary during the processing time, these alterations shall be fully taken into consideration unless this cannot be reasonably expected from the Provider. The alterations shall be agreed by the Shareholder and confirmed in writing by the Provider without delay. If they are rejected, the Provider shall give notice of this fact in writing without delay and with a statement of the reasons.  

The Provider may at any time suggest modifications. The modus operandi is described in section 4.4.3 of the *General Specification for Experiments at FAIR* attached to this In-Kind Contract.

The final approval of alterations by the FAIR GmbH does not release the Provider from his common warranty or from his common responsibility for functionality and for conformity to the technical specifications.

The Provider shall inform and receive acceptance of the Shareholder about all alterations in advance in writing.
- 4.7 Based on table A1 in **Annex 2**, the Provider shall prepare a detailed schedule to be presented at the Plan Review, which will become an integral part of this In-Kind Contract. It shall respect the nomenclature and follow the work flow as specified in the document *General Specifications for Experiments at FAIR*. It shall include the review dates defined in Article 4.2 of **Annex 2**. In particular, the schedule shall include the anticipated dates for all activities and milestones listed in this document. This schedule needs to be mutually agreed upon at the Plan Review.
- 4.8 The dates indicated in Table A1 of Annex 2 of this In-Kind Contract are the agreed-upon dates at the time of signing this In-Kind Contract. They can be changed only by mutual agreement of the Parties in written form. The mutual agreement shall be documented in an amendment to this In-Kind Contract. Contract amendments concerning

the dates in Table A1 of **Annex 2** of this In-Kind Contract will come into effect by signature of all of the following representatives as specified in said Annex 2: the Provider Coordinator for the Provider, the Experiment Contributions Coordinator for the FAIR GmbH and the CBM Technical Coordinator for the respective Collaboration. This shall not apply for the final date for the delivery (milestone 5, M11); this date can only be changed by signatures of the representatives of the Contracting Parties.

- 4.9 The payments of the Shareholder to the Provider include all travel and accommodation expenses of the Provider's personnel necessary for fulfilling this In-Kind Contract. The FAIR GmbH does not owe payments of any kind to the Provider.
- 4.10 All parts of the Component for Delivery and tools necessary for assembly and storage shall finally be delivered by Provider to the location in Germany specified by the FAIR GmbH, according to the international commercial terms DAP (INCOTERMS 2010). For details see **Annex 2** article 3.
- 4.11 In the event of deliveries from outside European Union's custom area, the Provider has to contact the FAIR GmbH ten weeks before start of the delivery for customs proceedings and import proceedings.

As it is the task of the Provider to take care for the delivery of the components to the FAIR GmbH, the FAIR GmbH will help to organize the delivery within EU and Germany for Non-EU partners.

Therefore, the presentation of the preference certificate's (certificate of origin) for the custom free or custom reduced delivery is very important and to verify at least three months before start of delivery. This subject remains still intergovernmental clarification and might be declared in amendments to this In-Kind Contract. As critical limit for reduced customs or free of custom a preference certificate's with Provider's origin should be higher than sixty per cent (> 60%) of the total volume of the delivery by the country of the Provider. The certificate of origin will be issued by the Provider.

- 4.12 As there will be no payments by the FAIR GmbH to the Provider, all issues concerning value added tax (relevant for imports of goods or services), or similar taxes, have to be agreed upon between the Shareholder and the Provider.

## Article 5

### Assembly of the Component for Delivery

- 5.1 The Component for Delivery, as per this In-Kind Contract, are integral parts of the CBM detector. With respect to delivery and installation of the Component for Delivery, the Parties agree to the following:
- 5.2 The Provider will deliver all components of the Component for Delivery to the pre-assembly or assembly site in Germany as defined by the FAIR GmbH. This site will either be the site of the FAIR GmbH, Planckstr. 1, 64291 Darmstadt or another site. Any other site must be mutually agreed upon in writing between the Parties.

5.3 The costs of any and all shipment insurance policy/policies will be borne by the Provider. The level of coverage of the insurance policy shall be at least as high as the commercial value of the shipped goods in the area of the European Union.

The Provider has to attach two delivery notes to the delivered services and goods.

5.4 Assistance in assembly may include work on components delivered by third parties. As far as these third parties are not instructed by the Provider and Shareholder, the Provider and the Shareholder will take no liability regarding the functionality of those components, nor does any task defined in this In-Kind Contract rely on their existence, timeliness or properties. The Provider may instruct sub-contractors in accordance with the regulations in this In-Kind Contract.

5.5 The Provider guarantees free access for the FAIR GmbH's personnel to all its plants and to all plants of all subcontractors used for this In-Kind Contract.

The Provider will support the process of granting relevant visa in order to make them available in time.

The FAIR GmbH may request to carry out appropriate assembly or interim tests with its own or third party personnel at the Provider's site based on mutual agreement. The dispatching of personnel shall have no effect on the acceptance tests carried out by the FAIR GmbH's personnel.

The Provider will arrange suitable accommodation and/or places for overnight stays. The FAIR GmbH shall be responsible that the dispatched personnel have sufficient insurance in case of a work accident or accident en route during the tasks and travel in question. Instructions for the FAIR GmbH's personnel shall be addressed from the Project Manager of the Provider (as defined in **Annex 2** of this In-Kind Contract) or his Deputy, to the head of the dispatched personnel, who will then convey the instructions to his group.

The Provider shall be responsible for informing the FAIR GmbH's personnel dispatched to their site of any special conditions on the site and of any possible hazards before they begin to work. The Provider shall bear the responsibility for ensuring that there is no damage to the FAIR GmbH personnel's health and shall, as part of the job confirmation, prove that it has sufficient company liability insurance.

The Provider shall provide all equipment necessary for the safety of the dispatched personnel (protective helmets, protective clothing, protective goggles, etc.); the equipment shall be functional and provided in sufficient amounts.

5.6 The FAIR GmbH guarantees free access for the Provider's personnel to all its facilities and places used for this In-Kind Contract. The FAIR GmbH will take care for all necessary training and education of Provider's personnel to ensure the compliance of all safety regulations, needed for access to the campus and facilities of the FAIR GmbH.

The FAIR GmbH will support the process of granting relevant visa for Provider's or sub-contractors personnel in order to make them available in time for working visits. The Provider itself is responsible to give all necessary data of the planned dispatched personnel in time to the FAIR GmbH to allow organising the entry to Germany.

The FAIR GmbH will arrange suitable accommodation and/or places for overnight stays. The Provider shall be responsible that the dispatched personnel has sufficient insurance in case of a work accident or accident en route during the tasks and travel in question. Instructions for the Provider's personnel shall be addressed from the Technical Coordinator of the FAIR GmbH (as defined in **Annex 2** of this In-Kind Contract) or his Deputy, to the head of the dispatched personnel, who will then convey the instructions to his group. Costs for the dispatched personnel will be borne by the Provider.

The FAIR GmbH will provide necessary space for the Provider's personnel along with needed infrastructure to allow transport, installation, commissioning and acceptance procedure.

## Article 6

### Consequences of defaulted, delayed and deficient delivery

- 6.1 The Provider shall inform the other Contracting Parties in writing without delay of any incidents bearing the risk that the planned specifications concerning the Contribution cannot be maintained and/or that the schedule of the delivery cannot be achieved.
- 6.2 Should the Provider - after signature of the contract - be unable to meet the agreed delivery deadline due to changes to the technical specifications by the FAIR GmbH, the Provider is obliged to inform the FAIR GmbH and the Shareholder without delay and in writing.

The Provider is obliged to inform the FAIR GmbH and the Shareholder of any other delay arising from delays in delivery, technical and manufacturing reasons etc. in writing.

If the Provider does not comply with its obligations according to schedule, as set out in **Annex 2** and agreed upon at the Plan Review, the FAIR GmbH will decide in coordination with the Shareholder whether or not a delayed contribution can still be accepted, and to which extent the Provider shall recompense the FAIR GmbH and the Shareholder for any financial losses resulting from late delivery. The amount of compensation shall not exceed the cost of the delayed deliverable. Details are given in the standard terms and conditions of purchase of the FAIR GmbH. The Standard Terms and Conditions of the Provider and his subcontractor(s) are not applying.

- 6.3 If the Provider delivers equipment in a quality that is not acceptable, it has the obligation to remedy the deficiency at its own cost within a time span set by FAIR GmbH. If the Provider is not capable of eliminating the shortcomings, FAIR GmbH will inform the Shareholder who will decide whether the payment of the corresponding equipment shall be made or not.

In case no mutual agreement can be reached, the FAIR Council shall decide in coordination with the Shareholder to which extent the deficiency can be attributed to the

Provider and whether the delivered equipment of a quality that is less than satisfactory is still of use for the FAIR project.

6.4 If, according to above paragraphs, FAIR GmbH does not accept a delayed delivery or if the Provider is not capable of eliminating the shortcomings within a time span requested by the FAIR GmbH in a written monition, the FAIR GmbH is - in coordination with the Shareholder - entitled to refuse that contribution. The Shareholder may - in coordination with the FAIR GmbH - assign the task to another company or institute. If, as a consequence, all previous accomplishments by the Provider cannot be used, the FAIR GmbH and the Shareholder are individually entitled to reverse this In-Kind Contract. In this case, the Provider shall compensate the Shareholder and the FAIR GmbH for damages caused by the non-fulfilment of this In-Kind Contract. The FAIR GmbH will return the equipment already received at the cost of the Provider.

In case of reversion of this In-Kind Contract, no accounting to the Shareholder according article 4.2 will be made for the refused parts of the achievement.

Arising from this contract, the Shareholder does not owe payments of any kind to the FAIR GmbH.

6.5 The rules mentioned above are likewise applicable, if Provider assigns tasks to sub-contractors under this In-Kind Contract (see Annex 2).

## Article 7

### Quality assessment and passage of title

7.1 After Provider has delivered all equipment as specified in **Annex 2**, the FAIR GmbH will evaluate the compliance of the delivered components with respect to the criteria set out in **Annex 2**, and issue the final technical acceptance certificate.

7.2 Upon final acceptance of Provider's delivery in accordance with the milestones set out in Table A1 in **Annex 2**, the ownership of the delivered equipment shall be transferred to the FAIR GmbH.

7.3 The Provider agrees to store without charge on his own premises components that cannot yet be delivered to the FAIR GmbH due to delays of any kind, for a period of four months after the Factory Acceptance Test has been successfully carried out and after notification of readiness to deliver or after the contractual agreed delivery time, whichever occurs later.

The Provider agrees to store the finished components beyond the four months period upon request of the FAIR GmbH. The Provider will charge the FAIR GmbH for the additional storage period at the local market price.

7.4 The risk of damage during storage of the delivered equipment at the FAIR GmbH site and all costs associated with the storage shall be carried by FAIR GmbH. The risk of damage or loss during mounting/dismounting and testing of the Component for Delivery, if performed by Provider's experts, shall be carried by the Provider, otherwise by the FAIR GmbH.

7.5 The Provider is liable according to the legal warranty rules for defects in quality and defects of title. He warrants quality and designated purpose of the delivered goods as to material, construction, performance and the documentation of production (e.g. drawings, plan documents etc.).

§ 377 of the German Commercial Code (HGB) does not apply to this In-Kind Contract.

**7.6 Ban on assignment, pledging and mortgaging**

The Provider is not allowed to assign receivables under this contract to third parties or bank institutes or to pledge or mortgage movable assets, receivables and rights related to this Collaboration Contract without the prior written consent of the Company. If subcontractors are instructed by the Provider, the Provider is obliged to impose same contractual restrictions on them and their subcontractors. Legal acts violating this ban are invalid as far as legally permissible

## **Article 8**

### **Force Majeure**

8.1 The Parties are released from their responsibility for complete or partial non-performance of their obligations under this In-Kind Contract, if this non-performance results from circumstances of force-majeure such as flood, fire due to natural cause, earthquakes, sabotage, military operations or other circumstances beyond the Parties' control, provided the circumstances mentioned above have directly affected the fulfilment of the Parties' obligations.

8.2 If such circumstances arise, the Party for whom it becomes impossible to meet its obligations under this In-Kind Contract shall immediately, at any rate not later than 7 (seven) calendar days after receipt of knowledge, inform the other Parties in writing of the occurrence and character of the above-mentioned circumstances. If the last day of the time span of seven days is a weekend or a public holiday, the deadline ends at the end of the working day that follows the weekend or public holiday. The notification shall be confirmed by official documents certifying the occurrence of such circumstances. The Party affected shall give a statement on the potential consequences for its obligations under this In-Kind Contract.

8.3 If the notification of the force-majeure circumstances should not be made in due time (cf. Article 8.2), the failing Party shall be deprived of its right to claim force majeure, unless the effect of the force-majeure circumstances hindered it to dispatch the notification.

8.4 If the above-mentioned circumstances and their consequences last longer than two months, the Parties shall try and find acceptable alternative ways to fulfil the In-Kind Contract.

## Article 9

### Definitions concerning Intellectual Property

The following definitions shall apply in relation to Articles 10 and 11 and according to Chapter IV to the Annex "Articles of Association" of the FAIR Convention:

- 9.1 **"Intellectual Property"**: In accordance with the objects of the FAIR Convention the term "Intellectual Property" will be understood according to Article 2 of the "Convention Establishing the World Intellectual Property Organization" signed on 14 July 1967, notwithstanding whether the respective home countries of Shareholder or Provider have signed this document.
- 9.2 **"Knowledge"** means information, technical documentation, know-how, software and materials, regardless of the form or medium in which they are disclosed or stored and whether they are protected or not.
- 9.3 **"Background"** means knowledge generated prior to the signature of this In-Kind Contract by one Party and provided to the other Party(ies) for use in the framework of the FAIR Project.
- 9.4 **"Foreground"** means knowledge generated separately by one Contracting Party or together by the Contracting Parties after the signature of this In-Kind Contract during the execution of the FAIR Project.
- 9.5 **"Invention"** means the knowledge, for which utility models or patents can be obtained i.e. are industrially applicable, display an element of novelty and exhibit an inventive step.

## Article 10

### Intellectual Property

- 10.1 Licence I: The Provider shall grant the FAIR GmbH and the Shareholder, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of its Background, protected or not, of which it can legally dispose, and which is needed for the purposes of the cooperation between Provider and the FAIR GmbH and required by this In-Kind Contract.
- 10.2 Licence II: The Provider shall also grant the FAIR GmbH and the Shareholder, free of charge and without any restriction, a non-exclusive and non-transferable license for the use of its Foreground and further improvements, protected or not, of which it can legally dispose, and which it has generated in the framework of the cooperation based on this In-Kind Contract.
- 10.3 Intellectual Property: All Intellectual Property produced by staff employed by the FAIR GmbH is owned by the FAIR GmbH, except where covered by separate contractual agreements.
- 10.4 Use of FAIR GmbH's Intellectual Property: On request, the FAIR GmbH shall grant the Provider and the Shareholder, free of charge a non-exclusive and non-transferable

licence for the use of the FAIR GmbH's Intellectual Property for its research activities to fulfil this In-Kind Contract.

10.5 Corresponding rights and obligations: The rights and obligations arising from Article 17 of the Annex "Articles of Association" of the FAIR Convention remain unaffected.

## Article 11

### Inventions

11.1 FAIR GmbH invention: In the case of Inventions made by the FAIR GmbH's staff, the FAIR GmbH shall apply the rules of the German "Law on inventions by employees" ("Gesetz über Arbeitnehmererfindungen - ArbnErfG"). If the FAIR GmbH decides not to apply for a patent in one or more countries, the employee who made the Invention may, with the consent of the FAIR GmbH, apply for such protection in his or her own name, at his or her own cost and for his or her own benefit.

11.2 The FAIR GmbH shall be the sole owner of all rights in those Inventions made by employees seconded by the Provider as part of the In-Kind Contract work together with employees of the FAIR GmbH or together with employees seconded by other providers or subproviders as part of their work for the In-Kind Contract.

11.3 In the case of Inventions made by employees seconded by the Provider as part of the In-Kind Contract jointly with staff of a Shareholder not seconded to the FAIR GmbH, Article 18 (paragraph 3) of the Annex "Articles of Association" of the FAIR Convention shall apply.

11.4 The rights and obligations arising from Article 18 of the Annex "Articles of Association" of the FAIR Convention remain unaffected.

## Article 12

### Third-Party-Rights

The Provider shall ensure that in the execution of this In-Kind Contract and in the provision and subsequent use of the goods and surfaces supply intellectual property rights of third parties are not infringed.

## Article 13

### Publications

The Provider may refer in publicity materials of their commercial relationship with the FAIR GmbH only with its express, written consent.

According to Article 3 (paragraph 4) of the Annex "Articles of Association" to the FAIR Convention the results of the research work undertaken at and/or by the FAIR GmbH, as a matter of principle, shall be published or made generally accessible by other means.

## Article 14

### Confidentiality

14.1 Confidentiality clause: The Contracting Parties are committed to confidentiality vis-à-vis third parties for all information and objects that have not been published and are conveyed in confidence by them. The receiving Contracting Party shall not use any such information and objects for any purpose other than in accordance with the terms of the Annex "Articles of Association" to the FAIR Convention and this In-Kind Contract and for non-commercial purposes.

The disclosure of confidential information or objects requires the written consent of the conveying Contracting Party.

14.2 Exclusions: The confidentiality clause mentioned above excludes

- Objects or types of information that have been developed or are being developed by the receiving Contracting Party independently of the information; or
- Objects or types of information that are part of the generally accessible state of technology or that reach this status without any fault on the part of the receiving Contracting Party; or
- Objects or types of information that were already in the possession of the receiving Contracting Party at the time of the announcement; or
- Objects or types of information which were lawfully disclosed to a Contracting Party by a third Party who is in lawful possession thereof without any commitment to confidentiality.

14.3 End of confidentiality: The above-mentioned confidentiality clause ends after five years following the day when the dissolution of the FAIR GmbH has been recorded in the commercial register. The Contracting Parties shall impose the same confidentiality obligations on all of their affiliates and subcontractors, their employees and any other personnel working for a Party, who may have access to confidential information.

## Article 15

### Insurance

The FAIR GmbH and the Provider shall ensure that they procure sufficient insurance, which covers damage to persons or goods caused by personnel seconded by one of the Parties unless the liability is already covered by other insurances or by the "self-insurance-principle" of German public bodies. Damage caused by wilful misconduct or gross negligence is excluded from the coverage by insurance.

## Article 16

### Liability

Any liabilities incurred by the Provider under this In-Kind Contract are in lieu of any other rights or remedies available to the FAIR GmbH by law.

The Provider does not assume any liability for damages caused by materials or parts supplied by the FAIR GmbH.

Any liability of the Provider - regardless of the legal ground - for indirect or consequential damages, such as loss of production, interruption of operations, lost profits, or damages to third parties, is expressly excluded.

## Article 17

### Continuing application of provisions

The provisions relating to liability shall apply during the term of this Contract and the following five years thereafter. The provisions relating to intellectual property rights and inventions shall apply without time limitation.

## Article 18

### Disputes

- 18.1 The Parties will do their utmost to settle amicably any disputes, which may arise during their cooperation.
- 18.2 Disputes that cannot be resolved between the Parties shall be submitted to the FAIR GmbH Council. The Council shall have the final and binding vote.
- 18.3 Disputes between the Parties or claims of one Party against the other that cannot be settled by the FAIR GmbH Council, shall be brought before the Court of Darmstadt (Germany).
- 18.4 In the event a court of competent jurisdiction rules that provisions of this In-Kind Contract are invalid, such ruling shall have no effect on the remaining provisions of the In-Kind Contract; they shall stay in force, unless the Contracting Parties decide otherwise.

## Article 19

### Final provisions

19.1 This In-Kind Contract becomes effective as soon as it has been signed by all three Parties.

This In-Kind Contract shall remain in force until all terms and conditions of it are fulfilled by the Contracting Parties. This In-Kind Contract is fulfilled by the Provider once all work packages are delivered and a final acceptance protocol is signed. Warranty conditions remain unaffected from this.

19.2 Should any provision of this In-Kind Contract be or become void or invalid in whole or in part, the validity of the other provisions thereof shall not be affected.

The invalid provision shall be replaced by a valid provision that to the extent possible fully implements the spirit and purpose of the invalid provision.

The same shall apply in the event that this In-Kind Contract fails to cover an issue that was meant to be part hereof.

19.3 Without prejudice to other termination or cancellation rights, the FAIR GmbH shall be entitled to terminate or cancel this Contract where the Provider has engaged in conduct of the kind specified in sections 333 and 334 of the German Penal Code<sup>1</sup> (giving of bribes). The following shall also constitute reasons for termination or cancellation:

- Acts outside the scope of proper commercial conduct.
- Failure to comply with requirements to pay taxes and dues or social security contributions.
- The deliberate making of incorrect statements with regard to reliability, expertise and capacity.

In addition, the Provider will be liable for compensation to the FAIR GmbH and the Shareholder in damages for all loss and damage caused by its culpable conduct.

Furthermore, the FAIR GmbH shall be entitled to cancel or terminate this In-Kind Contract if insolvency or judicial administration proceedings have been opened in relation to the Provider or it has ceased not merely temporarily to make payments.

The right of one Party to terminate this In-Kind Contract in case of extraordinary notice remains unaffected.

19.4 Any amendments to this In-Kind Contract shall be subject of a supplementary written agreement and signed by the authorised signatories of each of the Contracting Parties.

19.5 All documents relating to this In-Kind Contract shall be written in English.

19.6 The Parties agree to accept documents signed by facsimile signatures or stamps provided that the originals of these documents are subsequently submitted.

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<sup>1</sup> German Penal Code - Strafgesetzbuch (StGB), 1871, as of last amendments of 04th July 2013

- 19.7 **Annexes 1, 2, 3** to this In-Kind Contract and inclusions therein as well as the General Specifications for Experiments at FAIR are integral parts of this In-Kind Contract.
- 19.8 The terms of business and the complete legal relations between the Parties with regard to this In-Kind Contract shall be with respect to the provisions of the Contract regulating the relations between Shareholder and Provider governed by and construed according to the German law with the exception of the conflict of law's provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Legal requirements and the internal regulations (e.g. laws, directives, engineering standards, safety standards) given in the General Specification for Experiments at FAIR and in the technical specifications of the mandatory specification list will apply.
- 19.9 This In-Kind Contract is established in Darmstadt in English language in four originals.

**Authorised to sign on behalf of the FAIR GmbH**

Name: Prof. Dr. Thomas Nilsson  
Position: Chairman of the Management Board/Scientific Managing Director  
Date:  
Signature:

Name: Dr. Katharina Stummeyer  
Position: Administrative Managing Director  
Date:  
Signature:

**Authorised to sign on behalf of the Shareholder (National Research Authority)  
Institute of Atomic Physics (IFAP)**

Name: Dr. Florin-Dorian BUZATU  
Position: Director  
Date:  
Signature:

**Authorised to sign on behalf of Horia Hulubei National Institute of Physics  
and Nuclear Engineering (IFIN-HH)**

Name:  
Position: Director  
Date:  
Signature:

Name:  
Position: Director  
Date:  
Signature:

**Authorised to sign on behalf of the CBM Collaboration,**  
To certify that the CBM Collaboration agrees with this In-Kind Contract  
Name: Prof. Dr. Tetyana Galatyuk  
Position: CBM Spokesperson  
Date:  
Signature: