FAIR In-Kind Contract

Contract No: IKC xxx

on

the in-kind Contribution (IKC)

FAIR PSP **xxx**

for the Construction of the FAIR facility

according
to the Technical Document 4 attached to the FAIR Convention

between

the **FAIR GmbH**,
Limited Liability FAIR Company subject to the German law,
hereinafter referred to as “the Company”,
located at Planckstraße 1, 64291 Darmstadt,
represented by the Managing Directors

and

xxx

hereinafter referred to as “the Shareholder” and/or ”the Provider” and/or “Contractor”

and

xxx

hereinafter referred to as ”the Provider” and/or “Contractor”

hereinafter collectively referred to as “the Parties”,

which have agreed on the following:

Preamble

The FAIR facility shall be built within an international collaboration of several States (the Contracting Parties). Legal basis for this undertaking are in particular:

- the Convention concerning the Construction and Operation of a FACILITY FOR ANTIPROTON AND ION RESEARCH ("the FAIR Convention") dated 4. October 2010, which provides for the possibility to contribute to the facility in kind,
- Technical Document 4 attached to the FAIR Convention,
- The FAIR Council decision (as specified in the Annex 1 to this Contract)

In a broad sense the relations between the Parties are as follows:

- the Provider shall deliver (which include design, fabrication, transportation, installation, documentation, training and testing for performance) the in-kind contribution (the IKC, as described in the Annex 2 to this Contract) required for the construction of the FAIR facility.
- the Shareholder shall provide sufficient funds to cover all costs associated with the delivery of the IKC up until approval of accreditation of the IKC.
- the Company shall execute adequate control and management procedures leading to successful acceptance (see Art. 5) and commissioning of the IKC.

Article 1

Scope of the Contract

1.1 This Contract regulates:

a) the rights, obligations, responsibilities, and liabilities of the Parties in respect of the IKC
b) specification of the IKC, related to the Technical Design Report (TDR)
c) collaboration between the Parties and implementation of the Contract up until approval of accreditation of the IKC credited to the Shareholder and provided by the Provider to the construction of the FAIR facility.

1.2 Other IKCs will be governed by separate Contracts.

Article 2

Basic documents

2.1 The documents that form the basis of this Contract are as follows:

I. This Contract

II. Its annexes:

Annex 1 - The FAIR Council decision concerning the allocation of the IKC,

Annex 2 - Description of the IKC, including time schedule and milestones, deliverables, criteria and procedure for performance testing and acceptance, participation of commissioning,

Annex 3 - Technical specifications

Annex 4 The agreed costs of the IKC, the spending and payments profile, assessment of financial risk (optional)

Annex 5 - Description of the financial control (optional)

Annex 6 - List of accompanying equipment to be produced and later transferred to the Company. (optional)

Annex 7 - Special and Additional Terms of Contract

III. The FAIR Convention attached as Appendix 1

IV. Annex to the FAIR Convention attached as Appendix 2

V. Technical Document 4 attached to the FAIR Convention attached as Appendix 3

VI. Verdingungsordnung für Leistungen Teil B (VOL/B) attached as Appendix 4

2.2 In the event of a conflict between any conditions specified in the Annexes 1 to 7 to this Contract and the provisions of the present Contract, the latter shall prevail. In the event of a conflict between the provisions of this contract and the provisions of the FAIR Convention (III.), its Annex (IV.) and the Technical Document 4 attached to it (V.), the FAIR Convention, its and its Attachments shall prevail. In all other cases the more specific regulation shall prevail.

2.3 Each Party declares that it has understood and recognised the documents cited in this Contract and its annexes, that these documents are in its possession, that it has received all the necessary information for the implementation of this Contract, and that it is fully aware of the requirements imposed by the same.

Article 3

Term and Performance of the Contract

3.1 The collaboration between the Parties on the IKC covered by this Contract and described in its Annex 2 begins according to Art. 20.1.

3.2 The Contract is fulfilled once the acceptance procedure specified in Article 5 is successfully completed.

3.3 The value of the IKC will be credited to the Shareholder concerned once the cornerstones determined in this Contract have been reached satisfactorily, or once the deliverables are accepted and their ownership is transferred to the Company.

Article 4

Contractual obligations

4.1 The Provider shall deliver:

xxx

The valid content of the work package including all technical aspects is fully described in the List of Mandatory Specifications (Annex 3)
The quantities and CB-Values for each work package are given in Table 1:

Work Packages	PSP Codes	Description	Quantity (pieces)	CB-Values [€]	Total CB-Values [€] for WP
xxx	xxx	xxx	xxx	xxx	xxx

Table 1: Item list of IKC

All subunits of the work packages in Table 1 are part of the delivery and as it is described in Annex 2.

The Provider is fully responsible for the design review (internal or external), prototype tests (incl. report), fabrication, transportation, installation and performance testing of the IKC (including documentation), as well as the agreed training of the Company staff, in accordance with the schedule set out in Annex 2 and the specifications set out in Annex 3.

4.2 The Shareholder ensures that the Provider will have access to the funding.

4.3 As the Company is subject to German and European law, all stages of design review, fabrication, transportation, installation, performance tests and operation have to be in full compliance with this law.

4.4 Deliveries have to comply with current German and European

- safety instructions,
- health and safety regulations,
- accident prevention regulations,
- environment protection regulations,
- as well as all relevant norms.

Annex 3 (General Specifications) contains a list of basic respective conformity rules and directives, which among others have to be followed by the Provider. The Provider shall familiarize himself and comply with these rules.

4.5 The personnel needed for the installation of the IKC on site shall be provided by the Provider as a part of its contractual obligation.

4.6 The Company shall supervise the technical progress concerning the delivery of the IKC. This includes the right to reject in advance deliverables / components and assemblies, forming a part or the entire IKC, that do not comply with the specifications given in Annex 3. To this end the Provider shall prepare at least a quarterly progress reports and shall grant the Company personnel unrestricted access to *relevant information* and data.

The Company reserves the right to carry out inspections during the fabrication of the IKC at the premises of the Provider. The Company shall be allowed to execute these inspections or have them executed by authorised representatives at any time by giving the Provider maximum three months notice. Details concerning these inspections are regulated in Annex 7.

4.7 A list of the additional equipment to be procured and later transferred to the Company free of charge is attached as Annex 6.

4.8 The terms of delivery shall be carried out according to the INCOTERMS 2000 (DDP: delivered duty paid, FAIR Company Darmstadt) as a contribution in kind of the Shareholder concerned. In variation of the INCOTERMS the passage of risk shall take place when the equipment is installed, tested for performance and commissioned.

4.9 The Provider shall be responsible for the successful delivery and performance of the IKC. In case of problems arising during the execution of the IKC Article 15 shall apply.

Article 5

Acceptance

5.1 The acceptance of the IKC requires factory acceptance tests (FAT), site acceptance test (SAT) and final acceptance by the Company.

The result of the acceptance procedure of the IKC shall be recorded in a written document, signed by the representatives of each Party.

5.2 All further particulars concerning the acceptance are regulated in Annex 2. As far as these regulations provide for the Company to be involved in the procedure, such involvement does not affect the technical responsibility of the Provider.

Article 6

Credited value

For the IKC 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 IKC covered by this Contract amounts to

xxx € (in 2005 prices)

(xxx Euro)

Article 7

Coordination and Spokespersons

7.1 General questions of coordination shall be discussed and agreed upon at regular project meetings. To facilitate direct day-to-day contacts the Shareholder, the Provider and the Company shall each nominate a Spokesperson and a Deputy. Either of them has to reply to any request from another Party within 72 hours.

7.2 The Spokespersons are named in Annex 2, the Parties reserve the right to change the contact persons after written notice to the other party.

7.3 The Provider shall inform the other Parties without delay of any incidents bearing the risk that the specifications concerning the IKC cannot be maintained and/or that the schedule of the delivery achieved.

Article 8

Definitions concerning Intellectual Property

The following definitions shall apply in relation to Articles 8 to 10**:**

- ***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.
- ***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.
- ***Background*** means knowledge generated prior to the signature of this Contract by one Party and provided to the other Party(ies) for use in the framework of the FAIR Project.
- ***Foreground*** means knowledge generated separately by one Party or together by the Parties after the signature of this Contract during the execution of the FAIR Project.
- ***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 9

Intellectual Property

9.1 The Shareholder and the Provider shall grant the Company, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of their background, protected or not, of which they can legally

dispose, and which is needed for the purposes of their cooperation with the Company and required by this Contract.

9.2 The Shareholder and the Provider shall also grant the Company, free of charge and without any restriction, a non-exclusive and non-transferable license for the use of their foreground and further improvements, protected or not, of which they can legally dispose, and which they have generated in the framework of the cooperation based on this Contract.

9.3 All Intellectual Property produced by staff employed by the Company is owned by the Company, except where covered by separate contractual agreements.

9.4 On request, the Company shall grant the Shareholder and -as far as the IKC is concerned- the Provider, free of charge a non exclusive and non-transferable licence for the use of the Company's Intellectual Property for their research activities.

9.5 The rights and obligations arising from Article 16 of the Annex to the FAIR Convention (IV.) remain unaffected.

Article 10

Inventions

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

10.2 The Company shall be the sole owner of all rights in those inventions made by employees seconded by the Shareholder and/or the Provider as part of the IKC together with employees of the Company or together with employees seconded by other Shareholders and/or other providers as part of their in-kind contribution.

10.3 The Company shall be the sole owner of all rights in those inventions made by employees seconded by a Shareholder together with Company staff or with employees seconded by the Shareholder and/or the Provider within the framework of the IKC, unless determined otherwise by contractual agreement.

10.4 In the case of inventions made by employees seconded by the Shareholder and/or the Provider as part of the IKC jointly with staff of a Shareholder not seconded to the Company, Art. 17 (3) of the Annex of the FAIR Convention shall apply.

10.5 The rights and obligations arising from Article 17 of the Annex to the FAIR Convention (IV.) remain unaffected.

Article 11

Confidentiality

11.1 The 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 Party shall not use any such information and objects for any purpose other than in accordance with the terms of the Annex to the FAIR Convention and this Contract and for non-commercial purposes.

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

11.2 The confidentiality clause mentioned above excludes:

a) Objects or types of information that have been developed or are being developed by the receiving Party independently of the information; or

b) 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 Party; or

c) Objects or types of information that were already in the possession of the receiving Party at the time of the announcement; or

d) Objects or types of information which were lawfully disclosed to a Party by a third Party who is in lawful possession thereof without any commitment to confidentiality.

11.3 The above-mentioned confidentiality clause ends after five years following the day when the dissolution of the Company has been recorded in the commercial register. The 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 12

Liability

The Parties 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. Damage caused by wilful misconduct or gross negligence is excluded.

The Shareholder and the Provider shall be jointly and severally liable for damages.

Article 13

Publications

According to Article 3 (2) of the Annex to the FAIR Convention the results of the research work undertaken at and/or by the Company are, as a matter of principle, published or made generally accessible by other means.

Article 14

Continuing Application of Provisions

The provisions relating to intellectual property rights, confidentiality and liability shall apply during the term of this Contract and the following five years thereafter.

Article 15

Disputes

Any problems arising during the execution of IKC shall be amicably settled between the Parties. First, the respective project management units of the Parties will have to be involved. In the event that a solution cannot be reached, the conflict shall be discussed between the Managing Directors of the Company and of the institution delivering in kind.

If no agreement can be reached, the question shall be finally settled by the FAIR Council.

If a serious problem arises which cannot be resolved by the Parties in charge of the in-kind contribution, the FAIR management will have the right to propose to the FAIR Council adequate measures, including the change of responsibilities for the in-kind contribution.

Article 16

Language

All documents relating to this Contract shall be composed in English.

Article 17

Amendments, Changes

Amendments or changes to this Contract shall be valid only if made in writing and signed by authorised signatories of each of the Parties.

Article 18

Severability

18.1 Should any provision of the Contract be or become void or invalid in whole or in part, the validity of the other provisions thereof shall not be affected.

18.2 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.

18.3 The same shall apply in the event that this Contract fail to cover an issue that was meant to be part hereof.

Article 19

Applicable Law

19.1 The Contract shall be construed with, and governed by 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).

19.2 Place of jurisdiction and place of performance shall be Darmstadt.

Article 20

Final Provisions

20.1 The present Contract takes effect as soon as it is signed by the named Parties.

20.2 A Termination of this Contract needs the approval of the FAIR Council and of the in-kind Review Board.

The present Contract is established in Darmstadt in English, in two originals.

Authorized to sign on behalf of the Company:

Name: Prof. Dr. Paolo Giubellino

Position: Scientific Managing Director

Date:

Signature:

Name: Jörg Blaurock

Position: Technical Managing Director

Date:

Signature:

Authorized to sign on behalf of the Shareholder/Provider:

Name: Mrs. Ursula Weyrich

Position: Administrative Managing Director

Date:

Signature:

Name:
Position: Procura
Date:
Signature: