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64291 Darmstadt
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Agile Framework Agreement on 33/RV_Digitizer_maintenance & extension for GSI GmbH & FAIR GmbH

between

GSI Helmholtzzentrum für
Schwerionenforschung GmbH
Planckstr. 1
64291 Darmstadt

FAIR GmbH
Planckstr. 1
64291 Darmstadt

represented by the managing directors

- hereinafter referred to as the "Client" -

and

_____

_____

_____

- hereinafter referred to as the "Contractor" -

This Framework agreement about the "33/RV_Digitizer_maintenance & extension for GSI GmbH & FAIR GmbH over **four years**, by means of requests for delivery in individual purchase orders, is concluded between the above parties.

§ 1 Subject matter of the contract

(1) The following services shall be assigned to the Contractor for complete execution, including the ancillary services required for this purpose:

Maintenance and extension of the existing distributed real-time digitizer framework for FAIR.

"The software development process for FAIR follows a lean pull-driven workflow management methodology for defining, implementing and iteratively improving software functionalities. It relies on Kanban boards to

a) help visualise the individual work items as well as work-in-progress (WIP)

b) coordinate the workflow from features (i.e. functional user requirements), that are broken down into smaller (user) stories and epics (i.e. collections of stories, defining overarching goals and constraints), and are further tracked through the development, testing and deployment steps.".

Manufacture and supply in accordance with:

- *Specification: Agile Process Description incl.*
- *Common Specification: F-CS-C-0002e – 2017-09-21*

  "On the Digitization of (generic) Analog Signals in the FAIR Accelerator Complex"
- *F-CS-SIS-en-B-0006 – 2020-11-23*
  "Modular Open Common Middle-Ware Library for Equipment-and Beam-Based Control Systems of the FAIR Accelerators"
- *GitHub Software-Repositories:*
  1. *OpenDigitizer: https://github.com/fair-acc/opendigitizer*
  2. *GNU Radio 4.0: https://github.com/fair-acc/gnuradio4*
  3. *gr-digitizer: https://github.com/fair-acc/gr-digitizers*
  4. *ChartFX: https://github.com/fair-acc/chart-fx*
  5. *OpenCMW:*
     - *C++-version: C++-version: https://github.com/fair-acc/opencmw-cpp*
     - *Java-version: https://github.com/fair-acc/opencmw-java*

(2) The services transferred shall be performed exclusively on the basis of the agreements made in this framework agreement especially those given in this document and the documents listed in § 4 (except for the non-binding examples of scope for CALLs).

§ 2 Type and scope of services

The estimated total value of all CALLs is EUR [2.500.000,00] excluding VAT. Once the maximum value is reached, no further CALL may be issued.

The Contractor shall perform the services defined in the bill of quantities (cost breakdown) for FAIR on CALL in accordance with individual CALLs/orders. The Contractor is aware that the orders will not be placed uniformly, but that it is to be expected that orders will be placed to varying extents during the term of the contracts follows.

§ 3 Individual CALLs / Orders

(1) The commissioning of the services from this framework agreement shall take place in the form of written individual CALLs / orders, which can be transmitted to the Contractor electronically by e-mail.

(2) The respective order shall be preceded by a CALL offer of the Contractor which does not contradict the provisions of this contract. The CALL offers shall be prepared by the Contractor on the basis of inquiries from FAIRs specialist departments.

(3) Delivery shall be made to the place of delivery designated by FAIR in accordance with DAP (Incoterms 2020), unless otherwise stipulated in this contract. The costs for transport insurance shall be borne by the Contractor.

(4) This framework agreement may be concluded with more than one Contractor. In that case, each individual CALL shall be assigned to the Contractor whose technical sub-area as defined in the tender documents suitably covers the subject matter of the CALL. The Contractors shall not compete with each other for such CALLs. Where a task comprises work items from more than one sub-area, FAIR shall issue separate individual CALLs to each Contractor concerned, each covering that Contractor's own share. The Contractors assume no obligations towards each other; the integration of the respective work results is the responsibility of the Client.

(5) Each individual CALL shall state the agreed product backlog, the estimated story points and the resulting lump sum, and shall be executed in accordance with the Agile Process Description. Individual CALLs are functional descriptions within this framework agreement and do not constitute separate contracts.

(6) An individual CALL that has not been completed within twelve months of its issue shall be deemed concluded, unless the steering board agrees an extension in text form (§ 126b BGB) before expiry of that

period. Settlement of a CALL concluded in this way shall follow the 'Early Finish & Risk Share' rule of the Agile Process Description.

§ 4 Basis of contract

(1) The contract shall be based on the documents listed below:

a) The provisions of this Agreement, 33/RV_Maintenance and extension of the existing of the distributed real-time digitizer framework for GSI and FAIR.

b) Minutes of negotiations if such meetings have taken place

c) Agile process description

d) The offer of the contractor

e) The documents provided by means of TED for Award No.: 33/RV_Implementation digitizer framework_FAIR_2022,

f) - *Common Specification: F-CS-C-0002e – 2017-09-21*

"On the Digitization of (generic) Analog Signals in the FAIR Accelerator Complex"

- *F-CS-SIS-en-B-0006 – 2020-11-23 "Modular Open Common Middle-Ware Library for Equipment-and Beam-Based Control Systems of the FAIR Accelerators"*
- *GitHub Software-Repositories:*
  6. *OpenDigitizer: https://github.com/fair-acc/opendigitizer*
  7. *GNU Radio 4.0: https://github.com/fair-acc/gnuradio4*
  8. *ChartFX: https://github.com/fair-acc/chart-fx*
  9. *OpenCMW:*
     - *C++-version: C++-version: https://github.com/fair-acc/opencmw-cpp*
     - *Java-version: https://github.com/fair-acc/opencmw-java*

g) The VOL/B in the version current as at the conclusion of the Agreement

(2) In the event of contradictions between the contractual bases listed above, the order of precedence shall be determined according to the order of the above list. In the event of contradictions between contractual bases of equal rank or within a contractual basis, the more specifically described version shall prevail in case of doubt. A contradiction in the aforementioned sense does not exist if a subordinate contractual basis supplements or substantiates a preceding one.

(3) The Contractor shall be obligated to conscientiously review the service description, the submitted documents, sketches as well as the other contractual documents and to notify the Customer in writing of

any contradictions, ambiguities and/or inaccuracies of individual contractual components relating to the type and scope of the services to be provided.

(4) The Contractor's general terms and conditions shall not become part of the contract.

§ 5 Remuneration

(1) The euro (€) shall apply uniformly as the currency for all amounts stated in this contract.

(2) The services shall be remunerated at the prices according to the offer and the completed bill of quantities.

(3) Invoicing takes place per individual CALL.

(4) Payment of the remuneration is due 30 days after invoicing and acceptance.

(5) CALLs will be subject to an agreement on a lump sum, based on the detailed description of the scope and the bid of the contractor. This lump sum will be calculated by the Contractor. The lump sum given in the CALL prevails all other prices in this contract.

(6) In case the remaining services of an individual CALLs is not needed, FAIR may cancel the CALL contract. The Contractor will be compensated for those services already provided.

§ 6 Performance of the service

The Contractor is aware that the subject matter of the contract may receive changes during the term of the contract. However, it is expressly stated that the subject matter of the contract is also in accordance with the specifications. The Contractor is aware that for this reason it may be advisable to ensure in good time that it can fulfill its contractual obligations even after such adjustments and that it does not, for example, lack or run out of required materials.

§ 6a Performance by the Contractor

The primary development work under this contract shall be performed by the Contractor itself and shall not be transferred to other undertakings. Other services may be subcontracted with the prior consent of the Client. The Contractor shall ensure that the rights under § 7a are acquired without restriction from all persons involved in the performance of the contract.

§ 7 Liability and insurance

Liability is limited to intent and gross negligence for fault-based liability.
Liability for loss of profit is excluded.
Contractual warranty for defects is not affected by the exclusions of liability. Any exclusion of liability shall only apply insofar as no insurance cover exists.

§ 7a Rights of use

(1) The Contractor grants the Client the non-exclusive, irrevocable, transferable and sub-licensable right, unrestricted in time, territory and content, to use, modify, reproduce, publish and distribute all work results created under this contract, in particular source code, documentation, build, test and configuration artefacts, for all known types of use. The Client is entitled to publish and distribute the work results under licence terms of its own choosing and to change those licence terms at any time, including licence terms differing from those applicable to the repository concerned at the time of delivery. This applies to all work results delivered under this contract, including those already delivered before such a change of licence terms. The rights are granted upon creation of the work result and are not affected by termination of this contract.

(2) Insofar as work results contain pre-existing rights of the Contractor or rights of third parties, the Contractor shall grant, or procure the grant of, rights of use to the same extent as under paragraph 1. The right of the Contractor to use its own contributions under the licence terms under which they were contributed remains unaffected.

(3) Unless otherwise agreed in the individual CALL, work results shall be delivered to the software repositories named in § 1 (1). Each contribution shall carry a sign-off in accordance with the Developer Certificate of Origin (DCO 1.1) and shall be attributable to the contributing developer and to the Contractor.

(4) The introduction of new third-party dependencies into the work results requires the prior consent of the product owner designated by the Client.

(5) The Contractor warrants that it holds all rights required to grant the rights under paragraphs 1 and 2, including with respect to work results produced by employees, subcontractors or tools, and that the work results are free from conflicting rights of third parties.

(6) The Contractor shall indemnify the Client against justified claims of third parties based on the assertion that the work results as delivered infringe rights of third parties, including the reasonable costs of legal defence. This obligation applies irrespective of fault and is not affected by § 7. It is limited in amount to the remuneration of the individual CALL under which the work result concerned was created.

(7) The obligation under paragraph 6 does not apply insofar as the claim results from (a) modification of the work results by the Client or by third parties, (b) combination or use of the work results together with software not supplied by the Contractor, (c) the licence terms chosen by the Client under paragraph 1 or the manner of publication or distribution by the Client, or (d) compliance by the Contractor with specifications or instructions of the Client. The Client alone is responsible for the publication, distribution and use of the work results and for its relationship with its own users and licensees; the Contractor assumes no obligations towards such users or licensees.

(8) The Client shall notify the Contractor of any claim under paragraph 6 without undue delay and shall not acknowledge such a claim without the consent of the Contractor. The Contractor may, at its own choice and expense, procure the necessary rights or modify or replace the work results such that no infringement subsists, provided that the contractual functionality is retained.

(9) The remuneration under § 5 covers all rights granted and services owed under this § 7a.

§ 7b Use of AI-based tools

(1) The Contractor may use AI-based tools for the creation of work results. The Contractor remains fully responsible for all work results as if they had been created without the use of such tools. The warranties and obligations under § 7a apply to AI-assisted work results without restriction.

(2) The Contractor shall disclose, per individual CALL, the categories of AI-based tools used for the creation of the work results.

(3) Non-public information of the Client shall not be transmitted to AI services operated by third parties without the prior consent of the Client. Consent may be given generally for individually named services.

(4) Insofar as the work results themselves constitute or contain an AI system within the meaning of Regulation (EU) 2024/1689, the Contractor shall provide the technical documentation and information required for the Client to fulfil its obligations under that Regulation.

§ 7c Publication and confidentiality

(1) The work results and the information published in the software repositories named in § 1 (1) are expressly not confidential. The Contractor shall not assert any confidentiality or proprietary interest in the work results.

(2) Documents and information expressly designated as confidential by the Client, in particular commercial terms and minutes of negotiations, shall be treated as confidential by the Contractor and used only for the performance of this contract.

§ 8 Execution deadlines

In the case of an individual CALL, the Contractor shall ensure that an execution period of two weeks from receipt of the individual CALL for stock items is observed. The execution period within the different sprints will not exceed 3 months.
Insofar as an individual CALL is allocated to a single Contractor in accordance with § 3 (4), no mini-competition shall take place. The following paragraphs apply only to individual CALLs that cannot be allocated in this way.
For each call from the framework agreement, the client will call for a new competition among the contractual partners (so-called mini-competition).

Here, the most economical offer according to the evaluation matrix is awarded the contract. If the delivery date is specified, this is considered fixed when the contract is awarded in the mini-competition and must be observed.

§ 9 Acceptance

(1) All services of the Contractor shall be formally accepted. The acceptance declaration must be in writing (acceptance protocol).

(2) Section 13 VOL/B shall apply to acceptance unless otherwise agreed in this contract. Advance payments or payments on account shall neither constitute acceptance nor acknowledgement that the performance is free of defects.

(3) The Customer may also have defects remedied prior to acceptance at the Contractor's expense if the Contractor fails to comply with the request to remedy the defect within a reasonable period set by the Customer.

(4) Insofar as the acceptance does not take place within two weeks after the declaration of readiness for acceptance by the Contractor and FAIR is responsible for the delay, the Contractor shall not be liable for the accidental loss of the item (transfer of risk to FAIR). However, the delay shall not be deemed to constitute acceptance.

(5) The risk shall pass to the Customer upon final acceptance of the performance pursuant to § 644 BGB. Any partial acceptance shall not constitute acceptance within the meaning of § 644 BGB.

§ 10 Payment in the event of a CALL of the service by the Principal

(1) All invoices are to be submitted to the customer in single copy. The Contractor undertakes to address the invoices, in accordance with the order, to GSI GmbH or FAIR GmbH, Accounting Department, the invoice verification shall be carried out by GSI GmbH or FAIR GmbH.
The Contractor shall always state the Order No. of the Customer on its invoices. Invoices without indication of the order no. will not be processed by the Customer.

(2) The auditable final invoice together with all attachments shall be submitted no later than two months after completion of the orders as well as acceptance and the elimination of all significant defects or defects impairing use discovered during acceptance.

§ 11 Contract duration and termination

(1) The contract begins when signed by both parties and ends after 4 years.

This Framework Agreement enters into force on [date] and expires, without notice, at the end of [date]. No new individual CALL may be issued after that date.

(2) The right to terminate for cause remains unaffected by this agreement.
An important reason is in particular:
a) the opening of insolvency proceedings or comparable proceedings against the assets of the relevant Contractual Partner or the filing of a petition by the relevant Contractual Partner for the opening of such proceedings against its own assets;
b) serious, culpable breaches of contractual obligations by a contractual partner, due to which it is unreasonable for the terminating contractual partner to continue the contract until the next possible termination date.

(3) In the cases of Paragraph 2 (b), termination shall only be permissible if a period of grace of two weeks to be set in writing to remedy the consequences of the infringement (warning) has expired fruitlessly. The period shall apply from the date of receipt of the letter by the warned party.

§ 12 Anti-corruption clause

GSI GmbH and FAIR GmbH may withdraw from the contract or terminate the contract with immediate effect,

(1) if the Contractor has participated in unlawful restrictions of competition within the meaning of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB) in the course of the establishment or performance of the obligatory relationship. This includes in particular Section 123 (1) and the agreements with third parties on the submission or non-submission of bids, on prices to be charged, on

the payment of compensation for default (profit sharing or other charges) as well as on the determination of the recommendation of prices

(2) if there are grounds for exclusion within the meaning of the provisions of procurement law on which the contract is based. Grounds for exclusion are in particular the

- Granting of advantages in the sense of §§ 333 as well as 334 StGB as well as
- intentionally making false statements regarding reliability, and
- Expertise and performance on the part of the contractor
- or a conflict of interest according to § 6 VgV, § 4 UVgO

Further statutory provisions, in particular the right to terminate the contract in accordance with Sections 314, 626 of the German Civil Code (BGB), shall remain unaffected.

§ 12 Place of performance, place of jurisdiction

(1) Place of performance is

- GSI – Helmholtzzentrum für Schwerionenforschung GmbH, 64291 Darmstadt, Germany

and / or

- FAIR - Facility for Antiproton and Ion Research in Europe GmbH, 64291 Darmstadt, Germany

(2) The parties agree that Darmstadt shall be the exclusive place of jurisdiction.

§ 13 Other provisions

(1) For the execution of this contract, the law of the Federal Republic of Germany shall apply without exception, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
(2) The contract language is English.

(3) Contact persons for this contract are:

For the Contractor:

_____

_____

For the Client:

_____

_____

§ 14 Severability clause

(1) Amendments to this contract or its components must be made in writing or email. This shall also apply to any amendment of this clause. Verbal subsidiary agreements shall have no effect.

(2) Should any provision of this contract be or become invalid, or should the contract contain a loophole, this shall not affect the validity of the remainder of the contract.

Darmstadt, _____ _____
Place, Date Place, Date

_____ _____

_____ _____

_____ _____
Client Contractor

GSI Helmholtzzentrum für
Schwerionenforschung GmbH
&
FAIR Facility for Antiproton and Ion
Research GmbH