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| **JAGIELLONIAN UNIVERSITY**  **THE PUBLIC PROCUREMENT OFFICE**  **ul. Straszewskiego 25/2, 31-113 Kraków**  **tel. +4812-432-44-50, fax +4812-663-39-14;**  **e-mail:** [**bzp@uj.edu.pl**](mailto:bzp@uj.edu.pl) **;** [**www.uj.edu.pl**](http://www.uj.edu.pl)  [**www.przetargi.uj.edu.pl**](http://www.przetargi.uj.edu.pl) |  |

Krakow, 16th March 2020

**THE TERMS OF REFERENCE**

**hereinafter “the ToR”**

1. **Name (business name) and address of the Awarding Authority.**
   1. Jagiellonian University, ul. Gołębia 24, 31-007 Kraków.
   2. The entity conducting the case:
   3. Public Procurement Office at the Jagiellonian University, ul. Straszewskiego 25/2, 31-113 Kraków;
      1. tel. +4812-432-44-50; fax +4812-663-39-14;
      2. e-mail: [bzp@uj.edu.pl](mailto:bzp@uj.edu.pl);
      3. website [www.uj.edu.pl](http://www.uj.edu.pl);
      4. place of publication of announcements and information: [www.przetargi.uj.edu.pl/ogloszenia-o-postepowaniach](http://www.przetargi.uj.edu.pl/ogloszenia-o-postepowaniach);
      5. Public Procurement Office at the Jagiellonian University, ul. Straszewskiego 25/2, 31-113 Kraków, operates from Monday to Friday from 7:30 to 15:30, excluding public holidays.
2. **The mode of awarding the contract.**
   * + 1. The proceedings are conducted by way of open tender, in accordance with the provisions of the Act of 29 January 2004 – Public Procurement Law, hereinafter referred to as the "PPL" Act (i.e. the Official Journal of Laws of 2019, item 1843), and the estimated value of the contract is above the so-called "EU thresholds" specified in the law regulations published on the basis of article 11 sec. 8 PPL. In the course of the proceedings, the Awarding Authority will apply the so-called "Reverse procedure" referred to in Article 24aa of the PPL.
       2. In the present proceedings, due to the value of the order, communication between the Awarding Authority and the Contractors takes place in electronic form, via the miniPortal <https://miniportal.uzp.gov.pl/>, ePUAP <https://epuap.gov.pl/wps/> portal and electronic mail, on the terms and in the manner set out in point 8) of theseToR.
       3. The proceedings are conducted by a tender board appointed to conduct these public procurement award proceedings.
       4. The provisions of the above mentioned Public Procurement Law and executive acts issued on on the basis thereof shall apply to the actions taken by Awarding Authority and Contractors in the procurement proceedings, and in matters not governed by the provisions of the Act of 23 April 1964 – the Polish Civil Code (Journal of Laws 2019 item 1145 with changes).
3. **Description of the subject of the contract.**
4. The subject of the order is designing, manufacturing, testing, delivery, installation and commissioning of an insertion device – a superconducting multipole wiggler operating at the magnetic field of 4 T (SCW) in SOLARIS storage ring for the needs of the SOLCRYS beamline with the requiered documentation at National Synchrotron Radiation Centre SOLARIS (hereinafter called: SOLARIS).
   1. A detailed description of the subject of the contract, specifying the parameters and technical-functional requirements, or their maximum/minimum ranges or other necessary features as well as other information relevant to the contract, constitutes Appendix A to the ToR, which forms an integral part hereof.
   2. The subject matter of the contract includes factory-new devices and accessories.
5. The Contractor must offer the subject of the order in accordance with the requirements of the Awarding Authority specified in the ToR.
6. Detailed provisions with regard to terms and conditions of the quality warranty and statutory warranty are included in the agreement template set out below.
7. Designation of the subject of the order according to the code of the Common Procurement Vocabulary: 38540000-2 – machines and apparatus for testing and measuring.
8. **The term of implementation of the contract.**
   1. The subject matter of the contract shall be performed within the following time limits:
   2. Designing and delivery of the subject of the agreement: **up to 17 months from the agreement signing date.**
   3. Istallation, commissioning and traingn of th SOLARIS employees: **up to 3 months from the date of acceptance of the delivery.**

1. **Description of the terms & conditions of entity’s participation in the proceedings.**
   * + 1. Qualifications or licenses to conduct a specific professional activity, if required under separate provisions – the Awarding Authority does not set up any conditions in this respect,
       2. Economic or financial situation – the Awarding Authority does not set up any conditions in this respect.
       3. Technical or professional capacity – only those Contractors may apply for awarding the contract, who will demonstrate that they have:

3.1. persons capable of realization of the order, such as:

* at least two specialists, who have participated in designing, execution and testing of a superconducting multipole wiggler operating at the magnetic field of at least 4 T (SCW)
* at least two specialists, who have performed the installation of a superconducting multipole wiggler operating at the magnetic field of at least 4 T(SCW) in particle accelerator wherein the installations were carried out in electrical grids meeting the EN 50160 energy quality standard or equivalent, which is in force in Europe.

The indicated above persons constitute the contractor's key personnel performing the subject of the contract, according to the provisions of the the agreement template which is an integral part of this ToR.

* the necessary knowledge and experience, i.e. in the last 3 years prior to the lapse of the time limit for submission of bids, and if the period of conducting their business activity is shorter – during this period, they have duly completed the one (1) delivery (one contract) for designing, manufacturing, testing and delivery of a superconducting multipole wiggler operating at the magnetic field of at least 4 T (SCW). The value of the contract is not less than 800,000 EUR net.
  + - 1. In order to confirm the fulfillment of the conditions for participation in the proceedings, the Contractor may rely on technical or professional abilities of other entities, regardless of the legal nature of the legal relationship between such entities and the Contractor.
      2. To convert the value indicated in the documents submitted to confirm that the conditions for participation in the procedure are met to PLN, the Awarding Authority will adopt the average exchange rate published by the National Bank of Poland from the date of publication of the contract notice.

1. **The grounds for exclusion of contractors**
   * + 1. The Awarding Authority shall exclude from the contract awarding proceedings:
   1. a contractor who did not demonstrate compliance with the conditions for participation in the proceedings or did not demonstrate the absence of grounds for exclusion;
   2. a contractor who is a natural person, who has been effectively convicted of a criminal offence:
2. referred to in Art. 165a, Art. 181-188, Art. 189a, Art. 218-221, Art. 228-230a, Art. 250a, Art. 258, or Art. 270-309 of the Act of 06 June 1997 – the Polish Criminal Code (The Official Journal of Laws of 2018 item 1600), or Art. 46 or Art. 48 of the Act of 25 June 2010 on sport (The Official Journal of Laws of 2018, item 1263 and 1669),
3. being a terrorist offence referred to in Art. 115 § 20 of the Act of 06 June1997 - the Polish Criminal Code,
4. tax offence,
5. referred to in Art. 9 or Art. 10 of the Act of 15 June 2012 on the effects of entrusting work to foreigners residing in the territory of the Republic of Poland in violation of regulations (The Official Journal of Laws, item 769);
   1. a contractor, if a member in office of its managing or supervisory body, partner in a general partnership or limited liability partnership, or general partner in a limited partnership or a limited joint-stock partnership, or a proxy has been effectively convicted of the criminal offence referred to in item 1.2;
   2. a contractor against whom an effective court judgment or effective administrative decision has been issued on being in arrears with payment of taxes, fees, or social security or health contributions, unless the contractor has paid the taxes, fees, or social security or health contributions, including interest thereon or fines, or has concluded a binding agreement on repayment of such debts;
   3. a contractor who, as a result of wilful act or gross negligence, has misled the Awarding Authority in providing information that it is not subject to exclusion, fulfills the conditions for participation in the proceedings or objective and non-discriminatory criteria, hereinafter referred to as the "selection criteria", or who has withheld this information or is not able to provide the required documents;
   4. a contractor who as a result of recklessness or negligence, has provided to the Awarding Authority misleading information that could have a significant impact on the decisions made by the Awarding Authority in the contrsct awarding proceedings;
   5. a contractor who wrongfully influenced or attempted to influence the actions of the Awarding Authority or to obtain confidential information which could give it an advantage in the contract awarding proceedings;
   6. a contractor who has participated in the preparation of the contract awarding procedure or whose employee, as well as a person performing work on the basis of a mandate contract, contract for work, agency contract, or other contract for the provision of services, has participated in the preparation of such proceedings, unless the distortion of competition caused thereby may be eliminated in a different way than by excluding the contractor from participation in the proceedings;
   7. a contractor who concluded an agreement with other contractors aimed at distorting competition between contractors in the contract awarding proceedings, which the awarding authority is able to demonstrate by means of appropriate evidence;
   8. a contractor being a collective entity, against which the court has issued a ban on applying for public contracts on the basis of the Act of 28 October 2002 on the liability of collective entities for prohibited acts under penalty (the Official Journal of Laws of 2018, item 703 and no 1277);
   9. a contractor against whom, as a preventive measure, there has been ordered a ban to apply for public contracts;
   10. contractors which, while belonging to the same capital group, within the meaning of the Act of 16 February 2007 on competition and consumer protection (the Official Journal of Laws of 2018, item 798, 650, 1637, and 1669), have submitted individual bids, partial bids, or applications for being admitted to taking part in the proceedings, unless such contractor prove that the links existing between them do not lead to distortion of competition in the contract awarding proceedings.
   11. the contractor, in respect of which the liquidation has been initiated, in the court-approved arrangement in the restructuring proceedings it is expected to satisfy the creditors by liquidation of its assets, or the court has ordered the liquidation of its assets pursuant to Art. 332(1) of the Act of 15 May 2015 - Restructuring Law (i.e. the Official Journal of Laws of 2017, item 1508 and of 2018 item. 149, 398, 1544 and 1629), or whose bankruptcy has been announced, with the exception of the contractor which, following the announcement of its bankruptcy, concluded an arrangement approved by an effective court order, if the arrangement does not provide for satisfying creditors by liquidation of the bankrupt’s assets, unless the court has ordered the liquidation of its assets in accordance with Art. 366(1) of the Act of 28 February 2003 - Bankruptcy Law (consolidated text: the Official Journal of Laws of 2017, item 2344 and 2491 and of 2018 item 398, 685, 1544 and 1629) as further amended),
   12. a contractor who in a self-caused manner violated its professional duties, which undermines its integrity, in particular when the contractor has failed to perform or did not properly execute the contract as a result of wilful or gross negligence, which the awarding authority is able to demonstrate by means of appropriate evidence,
   13. a contractor who, for reasons attributable thereto, did not perform or to a significant extent improperly performed the previous agreement in relation to the public procurement or concession contract concluded with the awarding authority, as referred to in Art. 3(1) items 1-4 of the PPL, which led to the termination of the agreement or an award of damages.
6. **A list of statements and documents to be submitted by the Contractor in order to confirm compliance with the terms and conditions for participation in the proceedings and to confirm that there are no grounds for exclusion.**

Should, in the course of the proceedings, the contractor fail to submit a statement, statements, or documents necessary to conduct the proceedings, or the statements or documents submitted are incomplete, contain errors, or raise doubts indicated by the Awarding Authority, the Awarding Authority shall call for submission, completion, and rectification thereof by the date indicated thereby, unless, despite such documents having been submitted, the contractor's offer is rejected or it is necessary to annul the proceedings.

* 1. **Statements submitted obligatorily along with the bid:**
  2. In order to confirm the fulfillment of the conditions for participation in the procedure and there being no grounds for excluding the Contractor from the public procurement proceedings in the circumstances referred to in sections (5) and (6) of the ToR, the Contractor must enclose with the bid a declaration - a single document (ESPD), the template of which is attached as Appendix no 1 to the bid form. To supplement the statement in the form of ESPD, it should be downloaded from the website [www.przetargi.uj.edu.pl](http://www.przetargi.uj.edu.pl) , saved on the hard disk, and then imported and completed via the ESPD service available at: <http://espd.uzp.gov.pl>. The completed ESPD should be signed with a qualified electronic signature. The ESPD does not archive files. The Awarding Authority informs that on the website of the Public Procurement Office: <https://www.uzp.gov.pl/__data/assets/pdf_file/0015/32415/Jednolity-Europejski-Dokument-Zamowienia-instrukcja.pdf> the instruction for completing the European Single Procurement Document is available (in Polish).
  3. The European Single Procurement Document (ESPD) is submitted in electronic form (a separate file) with a qualified electronic signature, and then along with the files constituting the bid, it should be compressed into one archive file in the ***\*.zip*** format.
  4. The Contractor relying on the resources of other entities, in order to demonstrate the lack of grounds for exclusion in relations to such entities and fulfillment - as far as it refers to the resources thereof – of terms & conditions for participation in the proceedings, shall submit the statement referred to in item 1.1 with regard to these entities. In this case, the European Single Procurement Document (ESPD) is submitted in electronic form (a separate file) with a qualified electronic signature by the entity to which the resource is referred, and then, along with the files constituting the bid, it must be compressed into one archive file in the ***\*.zip*** format.
  5. In the case of joint bidding by contractors (e.g. in the form of a consortium), a declaration to confirm the absence of grounds for exclusion referred to in section 1.1 is submitted by each of the contractors jointly applying for the contract. In this case, the European Single Procurement Document (ESPD) shall be submitted in electronic form (a separate file for each contractor appearing jointly) with a qualified electronic signature issued for each contractor, and then together with the files constituting the bid shall be compressed into one archive file in ***\*.zip*** format.
  6. **Additional statements submitted obligatorily along with the bid required when relying on the resources of third parties.**

The Contractor, which relies on the abilities or situation of other entities, must prove to the Awarding Authority that, when implementing the contract, it will have at its disposal the necessary resources of such other entities, in particular by presenting along with the bid the commitment of these entities to provide the Contractor with the necessary resources for the purposes of implementing the contract according to the template constituting Appendix no 4 to the bid form. The content of the commitment should clearly and unambiguously indicate the scope of the commitment of such other entity, specify what the commitment relates to, and in what manner and period it will be executed.

* 1. **Statements made obligatorily by all contractors within 3 days from the date of publishing on the website of the awarding authority a list of submitted bids**

A declaration of belonging or not belonging to the same capital group according to the template constituting Appendix no 2 to the Terms of Reference. The declaration should be submitted on the basis of the list of bids submitted in the given proceedings published on the Awarding Authority’s website.

* 1. **Documents and statements valid as at the date of submission, which the Contractor will be obliged to submit at the request of the Awarding Authority within the prescribed period, not shorter than 10 days - for the contractor whose offer was rated the highest.**

According to the provisions of Art. 24aa of the Public Procurement Law, the Awarding Authority will first evaluate the bids, and only in respect of the contractor whose bid has been evaluated as the most advantageous, it will examine the lack of grounds for exclusion and fulfillment of the conditions for participation in the proceedings.

Prior to awarding the contract, the Awarding Authority will call the contractor whose bid has received the highest result, to submit the following declarations or documents within the prescribed period, not shorter than 10 days:

* 1. **a list itemizing deliveries confirming the fulfillment of the condition of participation in the proceedings and evidence that the indicated deliveries** **have been duly performed.** The evidence shall be relevant references or other documents issued by the entity for which the delivery was made, and if, for a justified reason of an objective nature the contractor is unable to obtain these documents – the contractor's declaration.
  2. **a list itemizing persons mentioned in point 5) of the ToR.**
  3. an information from the National Criminal Register within the scope stipulated in article 24 paragraph 1 point 13, 14 and 21, issued not earlier than 6 months prior to time limit for submission of bids,
  4. a copy from the relevant register or central records and information on business activity, if separate regulations require an entry in the register or records,
  5. the Contractor's statement confirming that there is no effective judgment of court or final administrative decision on being in arrears with payment of taxes, fees or social security or health insurance premiums or – in the event of such judgment or decision – documents confirming the payment of such receivables, or the conclusion of a binding agreement regarding the repayment of these debts,
  6. the Contractor's statement confirming that there has not been awarded a preventive measure against them to participate in public procurement procedures / applying for public contracts,
  7. If the Contractor has its registered office or place of residence outside the territory of the Republic of Poland, instead of the documents referred to in item 7) 4.4.3, the Contractor shall submit information from the relevant register or, in the absence of such register, another equivalent document issued by the competent judicial authority or administrative body of the country in which the contractor has its registered office, or the person to whom the information or document relates has their place of residence (issued not earlier than 6 months prior to time limit for submission of bids);
  8. If the Contractor has its registered office or place of residence outside the territory of the Republic of Poland, instead of the documents referred to in item 7) 4.4.4 of the ToR, the Contractor shall submit a document or documents issued in the country in which it has its registered office or place of residence, confirming respectively that:

1. the Contractor is not in liquidation or any bankruptcy was declared against the Contractor (issued not earlier than 6 months prior to time limit for submission of bids).
   1. If in the country of the person's place of residence or in the country where the Contractor has its registered office or place of residence, the documents described in items 7) 5 and 7) 6 of the ToR are not issued, such documents are replaced by a document containing the Contractor's statement, indicating the person or persons authorized to represent it, or a statement of the person whom the document was to concern, drawn up before a notary public or before a judicial, administrative, or professional self-regulatory or economic body competent for the registered office or place of residence of the person or place of residence of the person. Provisions with regard to time limits for issuing such documents indicated in items 7) 5 and 7) 6 of the Terms of Reference shall apply as appropriate.
   2. In the case of any doubts as to the content of the document submitted by the contractor, the awarding authority may apply to the competent bodies in the country in which the contractor has the registered office or the person to whom the document applies has the place of residence, for providing the necessary information with regard to such document.
2. **Information on the method of communication between the Awarding Authority and the Contractors**
   * + 1. General information on the manner of communication between the Contracting Authority and the Contractors:
   1. the contract awarding proceedings, communication between the Awarding Authority and the Contractors is carried out with the use of:

* miniPortal <https://miniportal.uzp.gov.pl/> ,
* ePUAP (Electronic Platform of Public Administration Services) <https://epuap.gov.pl/wps/portal> ,
* and electronic mail,

with the reservation that the bid must be submitted using the miniPortal.

* 1. The Contractor intending to participate in the public procurement proceedings must have an ePUAP account. The Awarding Authority informs that the ePUAP portal is available only in the Polish language version.

The Contractor holding an account on ePUAP has access to the following forms: submission, modification, withdrawal of the bid or application and to the communication form.

* 1. Technical and organizational requirements for sending and receiving electronic documents, electronic copies of documents and statements and information provided using them are described in the Regulations for the use of miniPortal and the ePUAP Regulations.
  2. The maximum size of files sent via forms dediated for: submission, modification, withdrawal of a bid or application, and for communication is 150 MB.
  3. The date of transmission of the bid, applications, notifications, electronic documents, declarations, or electronic copies of documents or statements and other information shall be the date of transmission thereof to ePUAP.
  4. The method of drawing up electronic documents, statements, or electronic copies of documents or statements shall be in accordance with the requirements stipulated in the Prime Minister's Regulation of 27 June 2017 on the use of electronic communication means in contract awarding proceedings and the access and storage of electronic documents (*i.e. the Official Journal of Laws of 2017, item 1320, as further amended*) and the Regulation of the Minister of Development of 26 July 2016 on the types of documents which the Awarding Authority may request from the contractor in the contract awarding proceedings (*the Official Journal of Laws of 2016, item 1126, as further amended*), that is:
     1. Documents or statements, including the bid and documents confirming the payment of a bid security in a form other than cash, are submitted in the original copy or in electronic form, using a qualified electronic signature.
     2. If the original copy of the document or statement referred to in Art. 25(1) of the Public Procurement Law, or other documents or statements submitted in the contract awarding proceedings, have not been drawn up in the form of an electronic document, the Contractor may draw up and transmit an electronic copy of the document or statement, affixing a qualified electronic signature thereto, which is tantamount to certifying their compliance with the original copy.
     3. Where the Contractor transmits an electronic copy of the document or statement, affixing a qualified electronic signature thereto by the Contractor or respectively by the entity on whose capacity or situation the Contractor relies in accordance with the rules stipulated in Art. 22a of the Public Procurement Law, or by a subcontractor, is tantamount to certifying compliance of the electronic copy of the document or statement with the original copy.
     4. Where the contractor transmits an electronic document in a format which compresses the data, affixing to a file containing compressed data (\*.zip) a qualified electronic signature is tantamount to the Contractor's confirmation of compliance with the original copy of all electronic copies of documents contained in such file, except for copies certified by another Contractor applying jointly therewith for awarding the contract, by an entity on whose capacity or situation the Contractor relies, or by the subcontractor.
  5. The Awarding Authority informs that the proceedings identifier and the public key for this procurement proceedings are available on the *List of all proceedings* on the miniPortal and take the following form:

1. **proceedings identifier - f8e348ce-a2ea-48ca-8f8e-473b468d8f33**
2. **public key – Appendix no 4 to the ToR**
   * + 1. The method of communication between the Awarding Authority and the Contractors with regard to the effective submission of an bid in the present proceedings:
   1. The Contractor submits the bid via the Form for submitting, changing, withdrawing the bid or application available on ePUAP and also made available on the miniPortal. The public key necessary to encrypt the bid by the Contractor is available to the Contractors on the miniPortal. The Awarding Authority reserves that the time of submitting the bid shall be the time on the server servicing the miniPortal, which saves the data sent thereto with accuracy of the hundredth of a second. **The Awarding Authority reserves that submitting the bid in a different electronic form shall result in the rejection of the bid under Art. 89(1)(1) of the Public Procurement Law.**
   2. The bid should be drawn up in the Polish or English language, in the electronic form in the ***\*.doc, \*docx, \*pdf*** data format and signed with a qualified electronic signature. The manner of submitting the bid, including encryption (decryption) of the bid, is described in the Regulations for the use of miniPortal, using a dedicated application available at:

<https://miniportal.uzp.gov.pl/AplikacjaSzyfrowanie.aspx>.

The bid shall be submitted in the original copy.

* 1. All information constituting company secret within the meaning of the Act of 16 April 1993 on Combating Unfair Competition (i.e. the Official Journal of Laws of 2018 item 419, as further amended), which the Contractor reserves as a trade secret, should be submitted in a separate file by selecting the "***Appendix constituting a company secret***" and then with the files constituting the explicit part of the compressed into one archive file in ***\*.zip*** format.
  2. The bid should be accompanied by the European Single Procurement Document (ESPD) in electronic form (separate file) with a qualified electronic signature, and then together with the files constituting the bid, compreseds to a single file the archive in ***\*.zip*** format. In order to prepare the ESPD, the contractor may use a free tool supporting awarding authorities and contractors in the application of the standard ESPD form in the electronic version available at: http://espd.uzp.gov.pl
  3. The Contractor may, before the lapse of time limit for submission of bids, change or withdraw the offer via the Form to submit, change, withdraw the bid or application available on ePUAP and also made available on the miniPortal. The method of changing and withdrawing the bid has been described in the User Manual available on the miniPortal
  4. The Contractor after the lapse of time limit for submission of bids indicated item (12)(1) of these ToR may not effectively change or withdraw the submitted bid.
     + 1. The method of communication between the Awarding Authority and the Contractors regarding the effective submission of notices, electronic documents, statements or electronic copies of documents or statements and other information in this proceedings (not applicable to submitting bids and applications indicated in item (8)(2) of the Terms of Reference):
  5. In the contract award proceedings, communication between the Awarding Authority and the Contractors, in particular submitting statements, applications (other than those indicated in item 8) 2 of the ToR), notifications and transmission of information takes place electronically:
     1. through ***a dedicated form available on ePUAP and made available through miniPortal (Form for communication).*** In all correspondence related to this proceedings, the Awarding Authority and Contractors use the number of the announcement (BZP, TED or ID of the proceedings).
     2. by e-mail at the address given in item 8) 4. hereof.
        1. The person authorized to communicate with the Contractors is in the formal and substantive scope – Alicja Rajczyk, phone: +4812-663-10-68; fax +4812-663-39-14; e-mail: alicja.rajczyk@uj.edu.pl.

1. **Requirements as to the bid security.**
2. The Contractor, at the latest on the day of submitting bids and before the laps of time limit for submitting bids, should lodge a bid security in the amount of **PLN 20,000.00** (say: **twenty thousand Polish zlotys**, 00/100),
3. The bid security may be lodged in one or more of the following forms:
   1. cash;
   2. bank guarantees or guarantees of a savings and credit cooperative association, however, a guarantee of the latter shall always be a cash guarantee;
   3. bank guarantees;
   4. insurance guarantees;
   5. guarantees granted by entities referred to in Art. 6b(5) item 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development (consolidated text: the Official Journal of Laws of 2016, item 359, as further amended).
4. The bid security in cash shall be lodged by means of a bank transfer to the Awarding Authority's account IBAN: PL no 98 1240 2294 1111 0010 3561 9764, SWIFT: PKO PP LPW. The date of crediting the funds in the Awarding Authority’s account (day, hour) shall be deemed to be the date of payment of the bid security in cash.
5. In the case of lodging a bid security in a form other than cash, the original proof of payment of the bid security must be submitted together with the bid in electronic form (separate file) with a qualified electronic signature by the authorized person, and then together with the files constituting the bid should be compressed into one archive file in ***\*.zip*** format.
6. The Awarding Authority shall return the bid security to all Contractors immediately upon the selection of the most advantageous bid or annulment of the proceedings, with the exception of the Contractor whose bid has been selected as the most advantageous, to whom the Awarding Authority returns the bid security immediately upon the conclusion of the public procurement contract and lodging the security for due performance of the contract, if a request therefor has been made.
7. The Awarding Authority shall immediately return the bid security at the request of the Contractor who withdrew the bid prior to the lapse of the time limit for submission of bids.
8. The Awarding Authority shall request the bid security to be re-lodged by the Contractor to whom the bid security has been returned, if as a result of the final settlement of the appeal, its bid has been selected as the most advantageous, and the Contractor shall lodge the bid security within the time limit stipulated by the Awarding Authority.
9. If the bid security has been lodged in cash, it is returned along with interest resulting from the bank account agreement in which such bid security was kept, reduced by the costs of maintaining a bank account and bank commission for transferring money to the bank account specified by the Contractor.
10. The Awarding Authority shall retain the bid security along with interest thereon, if the Contractor in response to the request referred to in Art. 26(3) and (3a) of the PPL, for reasons attributable thereto, has not submitted declarations or documents confirming the circumstances referred to in Art. 25(1) of the PPL, the statement referred to in Art. 25a(1) of the PPL, proxies, or has not agreed to rectify the error referred to in Art. 87(2)(3) of the PPL, which has resulted in inability to select the bid submitted by the contractor as the most advantageous one.
11. The Awarding Authority shall retain the bid security along with interest thereon if the contractor whose bid has been selected:
    1. refused to sign a public procurement contract on terms specified in the bid;
    2. conclusion of the public procurement contract was impossible due to reasons attributable to the Contractor.
12. In the case of lodging a bid security in a form other than cash, the content of the original proof of payment of the bid security must clearly indicate the Awarding Authority's right to retain the bid security in the cases specified in items (9) and (10) above, or a corresponding reference to Art.46(4a) and (5) of the Public Procurement Law.
13. **The bid validity period.**
14. The bid validity period shall be 60 days.
15. The Contractor may extend the bid validity period by itself or at the request of the Awarding Authority, however, the Awarding Authority may only request the Contractors for a consent to extension of the period by a specified time, not exceeding 60 days, at least 3 days prior to the lapse of the bid validity period.
16. The extension of the bid validity period is permissible only with simultaneous extension of the validity period of the bid security or, if such is not possible, with the submission of a new bid security for the extended bid validity period. If the extension of the bid validity period is made after the selection of the most advantageous bid, the obligation to lodge a new bid security or extension thereof applies only to the Contractor whose bid has been selected as the most advantageous.
17. The running of the bid validity period begins with the expiry of the time limit for the submission and opening of bids.
18. **Description of the manner of preparing bids.**
19. Each Contractor may submit only one bid, covering the entire subject-matter of the contract.
20. It is allowed to submit one bid by two or more entities, taking into account the provisions of Art. 23 of the Public Procurement Law.
21. The bid should be made in the Polish language or English language, complying with the electronic form requirements in ***\*.doc \*docx, \*pdf*** format on the terms and in the mode indicated in item (8)(2) of these ToR and signed with a qualified electronic signature, **otherwise the bid shall be rejected pursuant to Art. 89(1)(1) of the Public Procurement Law**. The provisions of sentence (1) regarding the retention of the electronic form and affixing documents with a qualified electronic signature relate to all declarations and documents submitted together with the bid.
22. The Contractor shall attach to the bid a calculation of a flat price calculated on the basis of an individual calculation indicating unit prices of at least the contract elements specified by the Awarding Authority in Appendix no 2 to the bid form along with a description of the subject of the contract. This information will be used to verify the conformity of the parameters of the offered subject of the contract with the requirements specified in the ToR, as well as for the needs of the evaluation of bids in accordance with the adopted assessment criteria.
23. The Awarding Authority requests that the Contractor indicate in the bid this part of the contract, in accordance with the provisions of the ToR, the performance of which is intended to be subcontracted, as well as the names of subcontractors (according to the template attached as Appendix no 5 to the bid form).
24. The bid, along with integral parts thereof, should be drawn up by the contractor in accordance with the provisions of these ToR and in accordance with the content of the bid form and appendices thereto constituting Appendix 1 to these ToR, in particular the bid should include:

* a completed and signed bid form along with appendices (completed and supplemented or drawn up in accordance with the content thereof).
* original copy of the power of attorney (powers of attorney) or notarized copy, provided that the bid is signed by the proxy [required in particular when the bid is submitted jointly by entities (consortium) and the bid is not signed by all members of the consortium]. In this case, the original copy of the power of attorney or a notarized copy must be submitted together with the bid in electronic form (separate file) with a qualified electronic signature by the person granting the power of attorney or notary, and then together with the files constituting the bid, it should be compressed into one archive file in the ***\*.zip*** format.
* proof of payment of the bid security.

1. Prior to the lapse of the time limit for submission of bids, the Contractor may change or withdraw the bid in accordance with the principles and in the manner specified in item 8) 2 of these ToR.
2. After the lapse of the time limit for submission of bids, the Contractor shall not effectively change or withdraw the submitted bid.
3. All costs associated with the preparation and submission of the bid shall be borne by the contractor.
4. **The time limit for submitting and opening the bids.**
   1. **The bids shall be submitted by 16th April 2020 until 1:00** p.m. on the terms and in the manner set out in item 8) 2 of these ToR.
   2. The bids shall be opened **on 16th April 2020** **at 1:15 p.m.** in the Public Procurement Office at the Jagiellonian University in Kraków (31-113) at ul. Straszewskiego 25/2, in the manner indicated in item 12) 3 of the ToR,
   3. The bids shall be opened by using the application to encrypt the bids available at: https://miniportal.uzp.gov.pl/AplikacjaSzyfrowanie.aspx and shall be made by decrypting the bids using a private key.
   4. The opening of bids is open and Contractors may participate in the bid opening session.
   5. Immediately prior to the opening of the bids, the Awarding Authority shall provide the amount it intends to spend on financing the entire contract.
   6. During the opening of bids, the Awarding Authority shall provide the name (company) and addresses of the Contractors, as well as information on the price, date of contract performance, warranty period, and payment terms contained in individual bids for the entire contract.
   7. Immediately after the opening of the bids, the Awarding Authority shall publish on its website information on the opening of the bids.
   8. Bids received after the lapse of time limit for submission of bids shall be returned to the Contractors without opening thereof after the the lapse of time limit for lodging an appeal, of which the Awarding Authority shall immediately notify the Contractors.
5. **Description of the price calculation method.**
6. The price of the bid should be given in Polish zloty or USD and calculated on the basis of an individual calculation with the unit prices of at least specific elements indicated in Appendix no 2 to the bid form, taking into account all costs necessary for performance thereof, including taxes and rebates, discounts, etc., which the Contractor intends to grant.
7. Delivery terms DDP Kraków ul. Czerwone Maki 98 in accordance with Incoterms 2010.
8. The total lump sum price calculated on the basis of the Contractor's individual calculation, taking into account the content of the ToR, shall correspond to the price specified by the Contractor in the bid form.
9. In the case of submitting bids in currencies other than PLN, for the purposes of comparing offers in the Price criterion, the Awarding Authority shall convert to the value of the offer the foreign exchange rate (Table C) published by the National Bank of Poland on the day of submitting bids.
10. Changes to the price of the subject of the agreement shall only be possible in situations stipulated in the agreement template constituting Appendix no 3 to the ToR.
11. The prices shall be quoted and calculated rounded to two decimal places (the rounding principle - less than 5, the end should be left out, above and equal to 5 should be rounded up).
12. The Awarding Authority provides for the possibility of granting an advance payment towards the implementation of the subject of the agreement in the amount of up to **20%** of the value of the contract, secured by an appropriate bank or insurance guarantee. Detailed terms & conditions for granting the advance payment are included in the agreement template constituting Appendix no 3 to the ToR.
13. If there has been submitted a bid, the selection of which would lead to arising for the awarding authority of a tax obligation in accordance with the provisions on value added tax, the Awarding Authority, in order the evaluate such bid, adds to the quoted price a tax on goods and services, which it would be required to settle in accordance with these regulations.
14. When submitting the bid, the Contractor shall inform the Awarding Authority whether selecting its bid results in arising of tax obligation by the Awarding Authority, indicating the name (type) of the good or service whose delivery or performance will lead to its arising, and indicating the value of such good or service exclusive of tax.
15. **Description of criteria applied by the Awarding Authority when selecting the bid along with the explanation of these criteria and the manner of evaluating the bids.**
    * + 1. The Awarding Authority selects the most advantageous bid from among valid bids submitted in the proceedings on the basis of the evaluation criteria for bids stipulated in the Terms of Reference.
        2. Criteria for the evaluation of bids and the significance thereof:
    1. **Total bid price - criterion weight 60%:**

Credits awarded under the "Bid Price" criterion will be calculated in accordance with the following formula:

C = (Cnaj / Coferty) x 60

Where:

C – means the number of credits awarded to a given bid

Cnaj - the lowest price among the evaluated bids

Coferty - the price of the bid subject to evaluation

Hence, the maximum number of credits to be obtained under this subject criterion is 60 credits.

* 1. **Warranty period - criterion weight 30%.**

Points awarded for the warranty period shall be calculated as follows:

* 24 months warranty offered – 0 points (it’s a minimum requirement)
* 30 months warranty offered – 5 points
* 36 months warranty offered – 10 points
* 42 months warranty offered – 15 points
* 48 months and more warranty offered – 20 points
  1. **Additional criteria – 20%.**
     1. **Design of the vacuum chamber of the straight section with RF components (tapers, absorbers and bellows)** – 10 points;
     2. **Minimization of the cryostat volume**

Minimizing of the cryostat capacity and demonstrating zero consumption of liquid He during the use of the wiggler, confirmed with appropriate tests – **5 points;**

* + 1. **Efficiency and time of non-invasive operation of cryocooler**

The Contractor will receive 1 point for each one full month extension of the period of crycooler’s operation between periodic, obligatory services without the need for service work, but not more than 5 points

* + - 1. All credit calculations will be made to the nearest two decimal places (without rounding up or down).
      2. A Contractor's bid, which will receive the highest total number of credits, shall be considered the most advantageous.
      3. Where the most advantageous bid may not be selected due to the fact that two or more bids quote the same price balance and other criteria for the evaluation of bids, the awarding authority selects the bid quoting the lowest price, and if the submitted bids quote the same price, the awarding authority calls on the contractors who have submitted these bids to submit additional bids within the time limit stipulated by the awarding authority.

1. **Information on administrative requirements which should be fulfilled after selecting the bid in order to conclude a public procurement contract.**
   * + 1. Prior to signing the Agreement, the Contractor should, at the request of the Awarding Authority, submit:
   1. If a bid submitted by contractors jointly applying for award of contract, a copy of the contract(s) regulating the cooperation of these contractors.
2. **Requirements for securing due performance of the agreement.**

The Awarding Authority does not provide for the necessity to lodge a security for due performance of the Agreement.

1. **The agreement template – Appendix no 3 to the Terms of Reference**
2. **Instructions on legal remedies available to the Contractor during the contract awarding proceedings.**
   1. Legal remedies shall be vested in contractors and participants in the call for proposals, as well as other entities, if they have or have had an interest in obtaining a given contract and have suffered or may suffer damage as a result of violation of the provisions of law by the awarding authority.
   2. Legal remedies against the contract notice and terms of reference of the contract shall also be available for organizations entered on the list kept by the President of the Public Procurement Office.
   3. The method of using and examining legal remedies is regulated by the provisions of the Public Procurement Law, Section VI, Art. 179 - Art. 198g of PPL.
3. **General provisions**
4. The Awarding Authority does not provide for the submission of bids for lots.
5. The Awarding Authority does not provide for the possibility of concluding a framework agreement.
6. The Awarding Authority provides for granting pursuant to Art. 67(1)(7) of the PPL Act to the Contractor selected as a result of the proceedings, additional deliveries aimed at partial replacement of delivered products or installations, or increasing current deliveries or extension of existing installations in the event that the contractor's change obliges the Awarding Authority to purchase materials having different technical characteristics, which would cause technical incompatibility or disproportionately large technical difficulties in using and maintaining these products or installations. The estimated amount of additional orders awarded on the basis of Art. 67(1)(7) PPL shall be in total PLN 1,000,000 net.
7. The Awarding Authority does not allow for submitting variant bids.
8. Settlements between the Contractor and the Awarding Authority shall be made in PLN or EUR depending on the currency of the submitted bid.
9. The selected Contractor shall conclude the agreement within 14 days from the date of sending the agreement to be signed electronically or by postal/courier service. The agreement signing date shall be the date of signing the agreement by both parties.
10. The Awarding Authority does not provide for an electronic auction.
11. The Awarding Authority provides for reimbursement of the costs of participation in the proceedings in the amount of EUR 300 net for each contractor who was not excluded from the proceedings and submitted a bid that was not subject to rejection and whose bid has not been selected as the most advantageous. The payment will be made upon the conclusion of the agreement with the selected contractor, on the basis of an invoice.
12. The original copy of ToR signed by persons authorized on behalf of the Awarding Authority, constituting the basis for resolving any disputes related to the content of this document, is available in paper form at the Awarding Authoroty and available on the website: www.przetargi.uj.edu.pl
13. **Appendices to the ToR**

Appendix A – Description of the subject of the contract together with appendices, list of them:

* 1. MECH1-Mechanics.pdf
  2. ALIGN - Guidelines in field of alignment.pdf
  3. VAC1 – Guidelines for UHV-components at Solaris.pdf
  4. VAC2 -Technologies and materials for SOLARIS UHV devices.pdf
  5. CS0-SOLARIS Control System Standard.pdf

Appendix no 1 – Bid form along with appendices

Appendix no 2 –A template of statement on belonging or not belonging to the same capital group.

Appendix no 3 – Agreement template

Appendix no 4 – Public key (downloadable file)

**Appendix no 1 to the ToR**

**THE BID FORM**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*THE AWARDING AUTHORITY –* **Jagiellonian University**

**ul. Gołębia 24, 31 – 007 Kraków;**

*Jednostka prowadząca sprawę –* **The Public Procurement Office at the JU**

**ul. Straszewskiego 25/2, 31 – 113 Kraków**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name (Business Name) of the Contractor –

…………………………………………………………………………………………….,

Address of the registered office –

………………………………………………………………….…………………………,

Address for correspondence –

……………………………………………………………………………….……………,

Tel. - .................................................................; fax - ........................................................;

E-mail: ..............................................................;

NIP - .................................................................; REGON - ...............................................;

*With reference to the announced unlimited tender proceedings to select the Contractor for the designing, manufacturing, delivery and commissioning of a superconducting wiggler (SCW) for the purpose of building of the SOLCRYS beamline at the SOLARIS NSRC, case ref. no: 80.272.104.2020, we hereby submit the following bid:*

1. we offer the execution of the whole subject of the basic order for the total **net amount ................................. \*, plus VAT due, which gives the gross amount .......................................... \* (say :………....\*),**
2. we declare that we offer warranty on terms which meet the conditions and requirements resulting from the terms of reference, in particular in relation to their period, scope and form of realization. However, taking into consideration the provisions of point 14) of the Terms of Reference, in order to obtain additional points in the evaluation criteria in this regard, we **herby declare that the quality warranty period is …... months \*.**
3. In order to obtain points in the qualitative substantive criteria, we declare that we offer:
   * + 1. Design of the vacuum chamber of the straight section with RF components (taper, absorber and bellows) - **YES \* / NO \***
       2. Minimization of the cryostat volume

Minimizing of the cryostat capacity and demonstrating zero consumption of liquid He during the use of the wiggler, confirmed with appropriate tests – **YES \* / NO \***

* + - 1. Efficiency and time of non-invasive operation of cryocooler

The full months amount of extension of the crycooler’s operation period between periodic, obligatory services without the need for service work ……………………month/s.

1. we offer the date of order fulfillment in accordance with the requirements described in item 4) of the ToR.
2. we declare that we offer the subject of the order in accordance with the requirements and conditions specified by the Awarding Authority in the ToR and we confirm the acceptance of contractual terms and payment terms contained in the ToR and agreement template constituting Appendix no 3 to the ToR,
3. we declare that the selection of the bid will not lead to arising of a tax obligation under the provisions of the Tax on Goods and Services for the Awarding Authority. \*
4. we declare that the selection of the offer will lead to arising of a tax obligation under the provisions of the Tax on Goods and Services for the Awarding Authority. The above tax obligation will concern ……………………………..………… (*Enter the name/type of goods or services that will lead to arising of a tax obligation for the Awarding Authority in accordance with the provisions on tax on goods and services*) covered by the subject of the Contract.\*
5. we offer a payment period of up to 30 days, counted from invoice delivery, respectively for the requirements set forth in the ToR,
6. in the case of awarding the contract - we undertake to conclude the contract at the place and time set by the Awarding Authority,
7. we ask for a refund of the money lodged as a bid security to the account \*: ................................................................................... (the above applies to those Contractors who lodge a bid security by bank transfer) \* ,
8. we declare that we consider ourselves to be bound by this bid for the time specified in the terms of reference, i.e. 60 days from the date of opening thereof,
9. the person authorized to contact the Awarding Authority in the scope of the submitted bid and in matters regarding the possible performance of the contract is: ……….…………….., e-mail: …………………., tel.: ………………….. (to be filled in optionally)
10. the bid consists of ........................\* consecutively numbered sheets,
11. appendices to this bid form are:

**Appendix no 1** – a Contractor's statement on meeting the conditions in the proceedings and there being no grounds for exclusion (ESPD),

**Appendix no 2** – calculation of the bid price and description of the offered subject of the contract,

**Appendix no 3** –a Contractor's statement regarding the fulfillment of information obligations provided for in Art. 13 or Art. 14 of the GDPR,

**Appendix no 4** – a written commitment of a third party - (if applicable)\*

**Appendix no 5** – a list of subcontractors - (if applicable)\*

**Appendix no 6** - third-party statement on the fulfillment of the conditions in the proceedings and there being no grounds for exclusion (ESPD) or the statement of the ESPD of all entities submitting the bid jointly (e.g. in the form of a consortium) – if applicable \*,

**Appendix no 7**- an original copy of power of attorney (powers of attorney) or notarized copy, (if applicable)

**Appendix no 8** – proof of lodging the bod security

other – .................................................................\*.

***Attention! The Contractor shall complete or delete as appropriate the spaces dotted and/or marked with "\*" in the bid form template and templates of its appendices.***

**Appendix no 2 to the bid form**

Name of the Contractor:

**PRICE CALCULATION**

This appendix contains a detailed price calculation of the subject of the contract:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No** | **Elements and devices** | **Unit** | **Net price** | **Net amount** | **Gross amount** |
| 1 | Design of the subject of the contract |  |  |  |  |
| 2 | Multipole magnetic structure (wiggler) with power supplies |  |  |  |  |
| 3 | Kryostat and cryogenic system |  |  |  |  |
| 4 | Control system and measuring devices |  |  |  |  |
| 5 | * + 1. Cryocoolers     2. Vacuum components:   bellows  bellows  vacuum transitions (tapers)  Absorbers  vacuum pumps  Vacuum gauges  Vacuum valves |  |  |  |  |
| 6 | Delivery costs |  |  |  |  |
| 7 | SAT, installation, commissioning |  |  |  |  |
| 8 | ……………….. |  |  |  |  |
| **TOTAL** | |  |  |  |  |

**The calculation should include a description of the offered subject of the contract, which will be used to verify the conformity of the parameters of the offered subject of the contract with the requirements specified in the ToR, as well as for the needs of evaluation of bids in accordance with the adopted criteria**

# The submited description of the offered subject of the contract shall include:

- Calculation of the magnetic field.

- Cooling concept and calculation of thermal load and cooling.

- Conceptual design drawings of the system including the magnet, cryostat, and support.

- List of monitoring and interlock signals.

- List of recommended spare parts and costs.

- Expected schedule.

- Proposed wire and its properties.

- Proposed set of measurements.

- Confirmation of acceptance of all specifications.

- List of third party deliverables (cryocoolers, vacuum components – bellows, tapers, absorbers, vacuum pumps, gauges, valves) with detailed specifications of the parts.

- Items to be provided by SOLARIS (electricity, L-He, water, compressed air, etc.)

- List of maintenance work including expected time intervals (including specific information on whether SCW has to be warmed up for particular work), time estimate for maintenance work, necessary expertise to conduct this work.

***Appendix no 3 to the bid form***

Name of the Contractor:

**DECLARATION OF THE CONTRACTOR**

**IN THE SCOPE OF FULFILLING THE OBLIGATIONS OF INFORMATION PROVIDED FOR IN ART. 13 OR ART. 14 OF THE GDPR[[1]](#footnote-2)**

I hereby declare that I have fulfilled the information obligations provided for in Art. 13 or Art. 14 of the *Regulation of European Parliament and Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC* towards natural persons from whom personal data directly or indirectly, I have obtained for the purpose of applying for an award of a public contract in these proceedings.

***Appendix no 4 to the bid form***

## Name of the Third Party:

## A WRITTEN COMMITMENT OF THE ENTITY TO MAKE AVAILABLE TO THE CONTRACTOR THE NECESSARY RESOURCES FOR THE PERIOD OF USING SUCH RESOURCES TO PERFORM THE CONTRACT IN ACCORDANCE WITH ARTICLE 22a PPL

|  |  |
| --- | --- |
| Name | ...................................................................... |
| Address | ...................................................................... |

I (We) *(the document should be submitted in the original copy and with the qualified signature of persons representing the third party)*

……………………………………………………………………………………………………………………………………………………………………………………………………

Acting on behalf and for the benefit of : ……………………………………………………………………………………………………………………………………………………………………………………………………

declare that in an unlimited tender procedure:

to select the Contractor within the scope of designing, manufacturing, delivery and commissioning of a superconducting wiggler (SCW) for the purpose of building of the SOLCRYS beamline at the SOLARIS NSRC.

I (we) undertake to to make available my (our) resources to the Contractor:

……………………………………………………………………………………………………………………………………………………………………………………………………

(full name of the Contractor and address /registered office of the Contractor)

In order to assess whether the above Contractor will have at its disposal my resources necessary for the proper performance of the contract and to assess whether the relationship between us guarantees factual access to my resources I hereby provide:

1. the scope of my resources available to the Contractor:

……………………………………………………………………………………………………………………………………………………………………………………………………

1. the manner of using my resources by the Contractor in the performance of the contract:

……………………………………………………………………………………………………………………………………………………………………………………………………

1. the nature of the relationship that will connect me with the Contractor:

……………………………………………………………………………………………………………………………………………………………………………………………………

1. scope and duration of my participation in the performance of the contract:

……………………………………………………………………………………………………………………………………………………………………………………………………

***Appendix no 5 to the bid form***

Name of the Contractor:

**STATEMENT**

**(a list of subcontractors)**

We hereby declare that:

1. we **entrust** \* to the following subcontractors carrying out the following parts (scope) of the contract

The Subcontractor *(provide full name/business name, address, and also depending on the entity: NIP/PESEL, KRS/CEiDG) -* …………………………………………………………………………………………

Scope of the contract:

………………………………………………..........................

The Subcontractor *(provide full name/business name, address, and also depending on the entity: NIP/PESEL, KRS/CEiDG) -* …………………………………………………………………………………………

Scope of the contract:

………………………………………………..........................

1. we **do not** **entrust** \* to subcontractors any part (scope) of the contract.

(if the Contractor does not cross out any of the above options, the Awarding Authority will consider that it does not entrust subcontractors with performing any works covered by this contract)

*\* delete as appropriate*

**Appendix no 2 to the ToR**

Name of the Contractor:

**STATEMENT**

**(capital links)**

According to Art. 24(11) of the Public Procurement Law, **the Contractor, within 3 days from posting on the website the information referred to in Art.. 86(5), provides the Awarding Authority with a statement of belonging or non-belonging to the same capital group referred to in Art. 24(1)(23) of the Public Procurement Law.**

With reference to the information published on ............... on the website the Awarding Authority referred to in Art. 86(5) of the PPL, **we declare that:**

**we do not belong to the same capital group with any of the contractors who submitted a bid in these proceedings \***)

or

**we belong to the same capital group with the following Contractors \*)**

within the meaning of the Act of 16/02/2007 on competition and consumer protection.

A list of Contractors submitting a bid in this proceedings belonging to the same capital group \*)

.................................................................................................................................

.................................................................................................................................

.................................................................................................................................

Along with the submission of a statement, the contractor may provide evidence that links with another contractor do not lead to distortion of competition in the contract award proceedings.

*\* delete as appropriate*

**The statement signed with the qualified signature should be submitted** using the miniPortal <https://miniportal.uzp.gov.pl/> and ePUAP <https://epuap.gov.pl/wps/portal> or using electronic mail.

**Appendix no 3 to the ToR**

**CONTRACT TEMPLATE**

|  |  |
| --- | --- |
| **JAGIELLONIAN UNIVERSITY**  **The National Synchrotron Radiation Centre**  **SOLARIS**  **Ul. Czerwone Maki 98, 30-392 Kraków**  **www.synchrotron.uj.edu.pl** |  |

**AGREEMENT no 80.272.104.2020 – the template**

**concluded in Kraków on …………................. 2020 by and between:**

**Jagiellonian University** with its registered office at ul. Gołębia 24, 31-007 Kraków, NIP /Tax Identification Number/ 675-000-22-36, hereinafter referred to as **the "Awarding Authority",** represented by:

.........................................., **countersigned by the Bursar of the Jagiellonian University,**

**and**

**……………………………….,**

**hereinafter referred to as the "Contractor",**

**represented by: …………………………..**

**collectively referred to as the "Parties".**

This contract was concluded by way of open tender procedure in accordance with the provisions of the Act of 29 November 2004 on Public Procurement Law (i.e. Journal of Laws of 2019, item 1843, as further amended).

**§ 1**

**THE SUBJECT OF THE AGREEMENT AND OBLIGATIONS**

1. The subject of the Agreement shall be the design, manufacturing and delivery, installation and commissioning by the Contractor of the superconducting wiggler with indirect cooling and other devices (hereafter referred to as the Wiggler) in the SOLARIS storage ring placed at National Synchrotron Radiation Centre (SOLARIS), Czerwone Maki 98 Street, 30-392 Krakow (hereafter referred to as SOLARIS).
2. The subject of the Agreement also includes carrying out factory acceptance tests (FAT) and site acceptance tests (SAT), executed by Contractor with the participation of Awarding Authority at a place of wiggler’s manufacturing (FAT) and in SOLARIS (SAT), including the training of SOLARIS employees in handling the subject of the contract.
3. A detailed description of the subject of the Agreement is included in the documentation of the open tender procedure no 80.272.104.2020, including the Terms of Reference (hereinafter referred to as the ToR) along with appendixes and in the Contractor's bid etc. The documentation of the proceedings forms an integral part of this Agreement, provided however that in any case of discrepancies between the Agreement and the documentation of the open tender procedure, the Agreement shall prevail.
4. The Awarding Authority orders, and the Contractor accepts to perform all necessary actions with a view to making the best possible performance of the subject of the Agreement referred to above.
5. The Contractor shall perform the Subject of the contract using the highest quality materials and the highest standards of performance, on agreed dates and with due diligence, taking into account the professional nature of its business activity and specific technical characteristics of the Subject hereof described in the ToR and the Contractor's bid.
6. The Contractor declares that it has adequate knowledge, experience, and resources necessary to perform the Subject of the Contract.
7. Authorized representatives of the Awarding Authority shall have the right to visit the Contractor's premises or production sites, including the Contractor's subcontractors, at every stage of the production cycle in order to inspect it.
8. To carry out the design, installation and commissioning of the Subject of the contract, the Contractor shall specify the design team in accordance with the submitted offer, which is an integral part of the contract (Contractor’s key personnel - point 5)3 of the ToR).
9. The Contractor may change the persons indicated in section (8), only with the Awarding Authority’s prior consent, expressed in an established form (in writing/e-mail) being a condition for validity. Any change of any person/persons during the execution of the Subject of the contract must be justified by the Contractor in writing. The new person must have qualifications and experience the same or higher than the requirements specified in ToR to confirm the fulfilment of theparticipation in the proceeding’s conditions. The Contractor shall submit documents confirming that the qualified persons have qualifications and experience not lower than required in accordance with ToR, valid as of the date of the notification about changing intention
10. Change of persons referred to section (7) does not require an annex.

**§ 2**

**DECLARATION OF INTENT**

The Parties take into account that continuous development and changes in synchrotron technologies may create new situations (factual circumstances) neither described, nor specifically regulated by this Agreement which may affect the manner of implementation hereof. In this case, the Parties shall seek a joint agreement during the term hereof in relation to the occurrence of the abovementioned circumstances and requirements of the other Party. This Agreement shall be based on the reciprocal mutual trust of the Parties.

**§ 3**

**THE VALUE OF THE CONTRACT**

1. The Awarding Authority shall pay to the Contractor remuneration for the executed and received Subject of the Agreement in the amount of …………net (say:…………net).
2. The amount of net remuneration shall be increased by an appropriate amount of VAT at the rate of 23% or VAT tax due on the amount of remuneration, will be covered by the Awarding Authority on the account of the relevant Tax Office in case a tax obligation of the Awarding Authority occurs in accordance with the VAT tax regulations (\* *depending on the tender*).
3. The remuneration referred to in section (1) covers all payments due to the Contractor, including but not limited to all license fees for third parties, packaging costs, safe transport, insurance, documentation, tests by the Contractor (Factory Acceptance Test - FAT), costs of customs clearance, costs of installation,, costs of participation in acceptance tests after delivery (Site Acceptance Test - SAT), costs of training of the Awarding Authority’s employees, commissioning’s costs, statutory and contractual warranty, fees and customs declarations in export and other costs which the Contractor must incur in order to implement the Subject of the Agreement. The Contractor shall also be remunerated by the remuneration for granting the intellectual property rights to the Awarding Authority, including for transferring copyrights to the Awarding Authority or granting the license to the Awarding Authority, in each of the areas of exploitation stipulated in the Agreement, as well as granting to the Awarding Authority derivative rights to the works to which the license is granted. The Contractor shall also be remunerated for transferring to the Awarding Authority the ownership of the media carriers, on which the works to which the license is granted, have been recorded.

**§ 4**

**TERMS & CONDITIONS OF EXECUTION OF THE AGREEMENT**

1. The implementation of the subject of the Agreement shall take place in the following stages:
   1. Preparation of the design of the Subject of the Agreement in accordance with the requirements described in the ToR and in cooperation with the Awarding Authority and its delivery for approval by the Contractor **within no more than 5 months** from the date of signing the contract. As part of this stage, the so-called Design Review Meeting shall take place at the headquarters of NCPS SOLARIS at which the Contractor shall present the preliminary design to receive the Awarding Authority’s approval. The final design shall be submitted to Awarding Authority within no more than 14 buisness days before the Design Review Meeting (hereafter called as: the Meeting). During the Meeting the Awarding Authority shall accept the final project or provide comments / objections to the project. In the event of comments or objections, the Contractor shall make an appropriate correction of the project to the Awarding Authority within not more than 10 buissnes days of the Meeting. The approval of the final, corrected design by the Awarding Authority shall be within no more than 20 buissnes days after its receiving. The Awarding Authority’s design approval is the basis for starting manufacturing. The design approval shall not release the Contractor from liability for achieving by the Subject of the Agreemnet the parameters and requirements specified in the ToR, appendix A to ToR and in the submitted offer.
   2. Execution, FAT tests, and delivery of the Subject of the Agreement to SOLARIS, along with the required documentation shall be implemented within **17 months** from the Agreement’s conlusion. Within 10 days after delivery the Awarding Authority shall perform the minuted site acceptance tests according to Appendix A to ToR confirmed by signing the acceptance protocol.
   3. Installation and SAT and
   4. Commissioning and training carried out by the Contractor within **3 months of delivery** (i.e. the date the acceptance protocol was unconditionally signed by the Awarding Authority).
2. The installation and commissioning of Wiggler performed by the Contractor shall be carried out under the supervision of at least 1 employee of the Awarding Authority. The Parties shall draw up a protocol on the activities carried out.
3. The Awarding Authority reserves the right to change the deadline for installation, SAT and commissioning of the wiggler according to section 1 point 1.3 and point 1.4 due to the operational plans of the SOLARIS, about which the Awarding Authority will inform the Contractor. The activities indicated in section 1 point 1.3 and point 1.4, however, shall take place no later than **9 months** from the date of delivery of the Subject of the agreement.
4. The Contractor is obliged to provide the Awarding Authority every **two** **month**s concise reports describing the progress of works, including the state of design and production of the Subject of the Contract and any problems related to it. The Contractor shall provide the first report within not more than 2 months from the date of the contract’s signing.
5. The Contractor shall inform the Awarding Authority about planned FAT tests of individual parts of the subject of the Agreement, at least 4 weeks in advance, in order to enable the representatives of the Awarding Authority to participate in these tests.
6. Delivery of the subject of the agreement will be made in the DDP Kraków formula to ul. Czerwone Maki 98, 30-392 Kraków in accordance with the regulations of Incoterms 2010. Not later than 30 days before the planned delivery date, the Contractor shall provide documentation and/or guidelines describing safety procedures for unloading, internal transport and assembly and disassembly of each component of the subject of the Agreement.
7. The Contractor shall deliver the Subject of the Agreement in an appropriate packaging, protecting content from damage during transport. Shock and inclination indicators must be mounted on the packaging.
8. Along with delivery, the Contractor shall provide the Awarding Authority with the following documents:
   1. A list – by quantity and by type of transferred devices, including in particular: the invented name of the device, manufacturer, year of manufacture, serial number, and characteristic operational parameters,
   2. Device warranty cards, operation and maintenance manuals for all key elements of the Subject of the contract in Polish and/or English, including those whose manufacturers were Contractor's subcontractors.
9. Attests, certificates, declarations of conformity, and other documents required in accordance with the ToR.

**§ 5**

**THE PROCEDURE FOR ACCEPTANCE AND COLLECTION**

1. Subject to the provisions of section 6(b), confirmation of completion of each stage of the Contract implementation referred to in §4(1.1.) – (1.4.) shall be signing by the Awarding Authority an appropriate unconditional acceptance protocol. The Parties agree that the moment of delivery of the subject of the Agreement (devices) shall be the signing by the Awarding Authority an unconditional acceptance protocol, subject to the provisions of section 6(b) below; The Parties however expressly state that the quality warranty and the statutory warranty (§9) commencing from the date stipulated in §9 below, not from the moment of delivery. Terms referred to in § 4(1.1) – (1.2.) shall be deemed to have been fulfilled, provided that the Contractor delivers thereunder the subject of the Agreement, which will be unconditionally accepted by the Awarding Authority, subject to the provisions of section 6(b) below.
2. In the event of finding upon collection, i.e. on the day of delivery or within 10 business days from the day of delivery or within commisioning, defects in the subject of the agreement, both in its execution and those arising during transport or resulting from other reasons, including in particular lack of securing the subject of delivery in a manner that would protect it properly during transport, the Awarding Authority shall notify the Contractor immediately thereof and set an additional time limit (not shorter than 2 weeks and not longer than 8 weeks) to remove defects through repair or replacement with a new device. The Awarding Authority recognizes that finding no defects in the subject of the Agreement within the time limits referred to in this section 2, subject to the provisions of section 6(b) as the situation in which the received delivery complies with the list referred to in §4(8)(a) and having no visible damage or losses and in case of SAT tests or commissioning– if the tested devices will pass all the tests specified in the ToR.
3. The Parties agree that the Awarding Authority shall document defects/damage, in particular by photographing them.
4. The Parties agree that if defects or damage to the subject of the Agreement are noticed (ascertained) by the Awarding Authority during the presence of the means of transport performing the delivery, the Awarding Authority shall have the right to demand that the means of transport take such subject of the Agreement at the cost and risk of the Contractor. The Contractor declares that the supplier who will deliver the subject of the Contract will be informed about such authority of the Awarding Authority and if such solution is payable additionaly to the supplier, the Contractor shall cover the costs of such possibility. In the event that, despite the provisions of this section (4), the supplier refused to take the subject of the Agreement, in which the Awarding Authority noticed the damage/ defects or defects/damage within 10 business days (section (2) above), the Parties agree that such defective/damaged subject of the Agreement shall be submitted (detained) in the Awarding Authority's warehouse at the Contractor's cost and risk. For the avoidance of doubt, the Parties agree that this shall not constitute a delivery of this subject to the Agreement to the Awarding Authority (the risk of accidental loss or damage shall be borne by the Contractor).
5. If the supplier (means of transport) was no longer present at the time of finding the defects/damage, the Contractor shall, after receiving notification from the Awarding Authority (section 2), ensure at its own expense and risk as soon as practicable - collection and transport of the defective/damaged subject of the Agreement from the Awarding Authority's warehouse (SOLARIS NSRC). This shall not apply if the Contractor, on the basis of information received from the Awarding Authority, determines that the defect/damage may be removed on site at SOLARIS NSRC. In such case, the Contractor shall remove the defect/damage within the time specified in section (2).
6. If the Awarding Authority considers the ascertained defect/damage to be insignificant, i.e. in particular, it makes possible the use of the subject of the Agreement (device) in accordance with its intended purpose, the Awarding Authority may, at its option:
   1. exercise the rights provided for in the preceding sections or
   2. sign the acceptance protocol, briefly describing the identified defect/damage. In the case referred to in this section (b), the delivery shall have been considered to have been completed on time, while the Awarding Authority shall have the right to reduce the Contractor's remuneration in relation to which the ascertained defect/damage reduces the value of the subject of the Agreement (device) or shall request removal of the defect at the expense of the Contractor.

**§ 6**

**CONTACT PERSONS**

1. The person authorized for contacts within the scope of the implementation of this Agreement on the part of the Contractor will be: ………………………….., e-mail: …………………., phone: ……………………...
2. The persons authorized for contacts on the Part of the Awarding Authority will be the following SOLARIS employees:
   1. ……………, e-mail: …………………… , phone: ………………………….
   2. ………………………, e-mail: ……………………. , phone: ………………….
3. The Parties authorize the abovementioned persons to make on their behalf ongoing arrangements under the Agreement which do not constitute a change hereof as well to carry out the acceptance procedure of individual stages hereof (§5(1)), including signing of acceptance protocols. The abovementioned persons shall also be authorized to carry out the acceptance procedure of individual elements constituting a given stage.

**§ 7**

**TERMS & CONDITIONS OF PAYMENT**

The remuneration referred to in § 3(1) shall be paid in parts, in the following manner:

* 1. The **first payment** of **20%** of the remuneration referred to in **§ 3(1)** shall be paid as an advance upon signing the agreement. The payment shall be made after delivery to the Awarding Authority of the appropriate proforma invoice along with irrevocable, payable on first demand and unconditional bank or insurance guarantee for the same amount, valid for the period from the day when the first payment shall be credited on the Contractor’s account up to 60 days inclusive from the date on which the delivery date falls in accordance with § 4(1) item 1.2 hereof.
  2. **Second payment** **of 10** **%** of the remuneration referred to in § 3(1) shall be paid after approval by the Awarding Authority the design in accordance with § 4(1) item 1.1
  3. **The third payment of 40 % of the renumeration referred to in** § 3(1) shall be paid after FAT tests.
  4. **The fourth payment of 20 % of the renumeration referred to in** § 3(1) shall be paid after SAT and installation.
  5. **The fifth payment of 10 % of the renumeration referred to in** § 3(1) shall be paid after Wigglers’s commissioning and achieving of the parameters indicated in Appendix A and in the offer.

Payments for each stage of the agreement implementation shall be made on the following dates:

* 1. The advance payment referred to in section (1) item 1.1 shall be implemented within 21 days from the date of delivery of the relevant proforma invoice along with the appropriate bank or insurance guarantee.
  2. Payment referred to in section (1) item 1.2-1.5 above shall be fulfilled within 30 days from the date of delivery to the Awarding Authority of a correctly issued invoice and signing by the Awarding Authority an appropriate acceptance protocol, i.e. without reservations, subject to the provisions of §5(6)(b). If the date of receipt of the invoice is unknown, the payment time limit commences to run from the date of signing by the Awarding Authority of the relevant acceptance protocol. In case that an invoice is delivered to the Awarding Authority before the Parties sign the acceptance report without comments, the payment deadline begins on the date of signing such a protocol. In case that an invoice is delivered to the Awarding Authority before the Parties sign the acceptance protocol without reservations, the payment deadline begins on the date of signing mentioned protocol.

The Awarding Authority shall have the right to withhold disbursement of all or part of the payment, and to demand a return of the advance payment from the Contractor or the guarantor, in the event that the delivered subject of the agreement does not meet the required technical parameters, has been damaged in transport, or has not been delivered in a timely manner.

In the event that the delivered Subject of the Agreement does not meet the technical requirements, in particular it has not achieved the parameters declared by the Contractor in the offer for purposes of assessment of the quality criterion in accordance with the ToR, the Awarding Authority, along with others claims stipulated herein, shall have the right, at its own discretion, to reduce the remuneration of the Contractor accordingly:

- down to the amount of the bid of another Contractor participating in the tender proceedings, whose bid has been rated lower because of lower quality parameters declared, or

- by an amount determined by an independent expert appointed for this purpose, or

- by an amount agreed upon jointly by the Parties.

The place of payment shall be the bank of the Awarding Authority. The effective date of payment shall be the date of transfer order submitted by the Awarding Authority.

The Awarding Authority shall return to the Contractor the bank guarantee or insurance guarantee referred to in section (1) item 1.1 above and in §17, within 30 days after the expiry thereof.

The remuneration payable to the Contractor shall be paid by bank transfer from the Awarding Authority’s account to the account of the Contractor indicated in the invoice, with the proviso that the Contractor is required to provide the account number that has been disclosed in the register of VAT payers, non-registered entities, entities excluded and reinstated into the VAT register held by the Head of the National Tax Administration (hereinafter: the ‘White List’ – art. 96b sec. 1 of the Act of 11 March 2004 on the value added tax, uniform text of the Journal of Laws of 2018, item 2174, as amended).

In case the account number of the Contactor has not been disclosed in the White List, the Awarding Authority shall be entitled to pay the remuneration to the account number indicated in the invoice, together however with the fulfillment of the obligations arising out of the applicable law, including notification of the National Tax Administration.

The Contractor hereby acknowledges that its relevant tax administration office is as follows:………………………………………..

If the Contractor is registered as a VAT taxable person, the Contracting Authority shall pay the remuneration in accordance with the split payment system, i.e. in accordance with provisions of Art. 108a sec. 2 of the Act of 11 March 2004 on the value added tax (uniform text of the Journal of Laws of 2018, item 2174, as amended). Provisions of the first sentence are not applicable if and when the subject matter of the contract is a service exempt from VAT or subject to a 0% VAT rate.

The Contractor hereby confirms that the account number indicated in the invoice is being used by it for settlements due to its business activities, for which the VAT account number is being carried.

**§ 8**

**ISSUING INVOICES**

1. The Awarding Authority is a VAT payer and holds NIP (Tax Identification Number):

PL 675-000-22-36.

1. The Contractor is/is not a VAT payer in the territory of the Republic of Poland and holds a VAT register number: ………………………...
2. The Awarding Authority indicated on the invoice shall be:

Jagiellonian University

ul. Gołębia 24

31-007 Kraków

NIP: PL 675-000-22-36

1. The invoice must indicate the formula and delivery location, i.e. DDP Kraków, payment date, and the tariff code (HS code), as well as the net weight of the delivered equipment.
2. Invoices should be issued in writing and sent to the address indicated in § 13(2)(a) of the Agreement.
3. If and when the Contractor issues structured electronic invoices within the meaning of Art. 6 sec. 1 of the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for construction works or services, and public-private partnership (Journal of Laws of 2018, item 2191, as amended), using the Platforma Elektronicznego Fakturowania [E-invoicing Platform] available at: https://efaktura.gov.pl/, in the ‘reference’ field, the Contractor shall provide the following e-mail address: [**k.tokarz@uj.edu.pl**](mailto:k.tokarz@uj.edu.pl)

**§ 9**

**QUALITY WARRANTY AND THE STATUTORY WARRANTY FOR DEFECTS**

1. The Contractor shall undertake to deliver the subject hereof free of defects and faults. The liability under the warranty title shall cover both faults being the effect of reasons on the side of the subject hereof as of the moment of its release to the Awarding Authority as well as any other physical faults formed due to reasons on the side of the manufacturer or Contractor, provided the faults are disclosed within the quality warranty validity period specified herein below. The Parties set forth that the provisions and obligations of the Contractor indicated in the paragraph shall constitute a modification of rules of the Civil Code only in relation to the quality warranty, as regards issues it is related to (other regulations of the Civil Code pertaining to the quality warranty shall be applicable).
2. The Contractor shall ensure delivery of the Subject hereof covered by the quality warranty for the period of ……………. counting from the date of commissioning the Subject of the Agreement, confirmed by an appropriate acceptance protocol. In the event that SAT tests are not carried out or completed within the period provided for in §4(1) item 1.4, due to reasons attributable to the Awarding Authority (SOLARIS), the quality warranty period begins to run after 3 months from the date of delivery of the entire subject of the agreement stipulated in in the relevant acceptance protocol.
3. The Awarding Authority may at any time request the Contractor to remove a fault or defect under the quality warranty. The Awarding Authority shall undertake to meet the basic maintenance terms as specified by the Contractor or manufacturer of the elements of the subject hereof in the records of the guarantee card and/or operating manuals delivered by the Contractor, in accordance with §4 item 7 letter b) of the Agreement.
4. The Awarding Authority shall notify the Contractor without any unnecessary delay in one or several out of the following ways: in writing, by e-mail or phone on any defects or faults formed in the subject hereof.
5. In the event of any fault being noticed in the delivered subject hereof, the Contractor shall be liable to an immediate and free of charge repair or replacement of the faulty element without any risk or costs for the Awarding Authority. Any repairs shall be made as soon as possible, yet not later than within 20 buisness days as of the date of sending the application by the Awarding Authority to the Contractor, unless otherwise agreed by the Parties.
6. In line with the preference of the Awarding Authority, any repairs arising out the quality warranty shall be made at the place of the installation of the subject hereof in SOLARIS. After receipt of the application, the Contractor shall decide, while taking into consideration the type and scope of the reported fault/defect, if the repair may be performed at the seat of SOLARIS. In case of repair of the subject hereof outside the installation place, the Contractor shall also be liable to cover all the expenses related thereto, in particular costs related to disassembly, transport to the place of the repair and back, as well as costs related to the re-installation of the faulty element. In case any of the elements were already repaired, the Awarding Authority shall reserve the right to demand a free of charge replacement of the subject matter part by the Contractor, to a part being free of defects, should it be subject to another (second) fault.
7. The Parties shall enable for the possibility of performing a repair of the noticed defect or fault by employees of the Awarding Authority or third parties liaising with them, to the cost and risk of the Contractor and based on the instruction given by the Contractor. In particular, it shall pertain to minor and uncomplicated defects and faults which cost of the repair is lower than the cost of delegating an employee of the Contractor to the seat of SOLARIS. The appraisal of the relevance and level of complexity of the repair in this case shall finally depend on the Awarding Authority, and its removal by the Awarding Authority or third party shall not release liability under the quality warranty or statutory warranty title specified in the paragraph and in the applicable law. Each repair commissioned to the employees of the Awarding Authority or third parties shall require the approval of the Contractor in writing, via e-mail or fax.
8. In the event the Contractor fails to discharge his duties within the deadline specified in item 5 hereinabove, the Awarding Authority, with reservation of the right to apply contractual liabilities specified in §15 item 2 letter d), may appoint in writing a suitable extra period for the performance of liability by the Contractor, yet not shorter than 5 buissnes days. If the Contractor fails to discharge its liabilities within the extra deadline assigned, the Awarding Authority shall be entitled at its discretion to:
   1. requesting, in relation to the reduced value of the subject of the Agreement, a reduction of the price of the Agreement and payment of the sum specified within 21 days from the date of receipt by the Contractor of the request from the Awarding Authority. The sum by which the value of the object of the Agreement will be reduced shall be determined on the basis of the Contractor's bid or in the absence of such possibility, the Parties shall jointly determine this sum or appoint an independent expert to do so,
   2. make a repair at the cost and risk of the Contractor, maintaining at the same time the entitlements attributable under the Agreement. In such cases, the Awarding Authority shall have the right to engage other entity to the removal of the defect (faults), and the Contractor shall be liable to cover any expenses related thereto within 30 days as of the receipt of the notice along with the proof of payment.
9. The repairs under the quality warranty title shall be rendered by the Contractor, manufacturer or authorized service or individuals to the cost and risk of the Contractor.
10. In case of a defect or fault contributing to lack of possibility of using the subject of the Agreement with the purpose agreed by the Parties, including in particular lack of the performance of the researches by the Awarding Authority (SOLARIS), the quality warantee period being the subject of item 2 hereinabove shall be automatically extended for the entire subject hereof, along with each element by the repair period, i.e. period between being noticed on the fault/defect and removal of the said defect/notice (by repair or replacement of the element).
11. Should the defect or fault not contribute to impossibility of using the subject hereof and performing researches, the quality warrantyperiod being the subject of item 2 hereinabove shall be automatically extended only in relation to parts of the subject hereof which were repaired, by the repair period, i.e. period between being noticed on the fault/defect and removal of the said fault/defect (by repair or replacement of the element).
12. The quality warranty terms given by the Contractor or manufacturer shall be specified in the delivered warantee cards being the subject of  §4 item 8 letter b) of the Agreement. In the event of failure to deliver the warranty cards or operating manuals of the subject hereof, the basis for claims under the warranty title shall be the content of the Agreement and Civil Code (§20 item 4). In such case, the Contractor shall provide a warranty directly to the Awarding Authority. The Parties hereby decide that in case of a non-conformity between the provisions of the Agreement and provisions of the warranty cards or in other documents related to the execution of the quality warranty manufactured by the Contractor or by the manufacturer, the records of the Agreement shall prevail. The provisions of the Agreement shall be applicable also if the aforementioned documents fail to meet appropriate regulations.
13. Regardless of the entitlements arising out of the quality warranty, specified in the hereinabove clauses, the Awarding Authority may at any time turn to the Contractor for removal of the defect or fault based on the statutory warranty under Art. 556 to Art. 576 of the Civil Code. The statutory warranty shall cover both faults formed due to reasons on the side of the subject of the Agreement as of the moment of its release to the Awarding Authority as well as any other physical faults formed due to reasons on the side of the manufacturer or Contractor, provided the defects are reported within the period of the statutory warranty validity period. The statutory warranty for defect shall also cover legal defect of the subject of the Agreement. The repair deadline indicated in sec. 5 second sentence shall also apply to removing defects / making repairs under the statutory warranty.
14. In the event of execution of entitlements under the quality warranty by the Awarding Authority, the course of the period for the execution of the entitlements under the statutory warranty title shall be subject to suspension as of the day of being noticed by the Contractor on the defect (fault). The same shall pertain to the event of execution of entitlements by the Awarding Authority under the statutory warranty (course of the period for the execution of entitlements under the quality warranty title shall be subject to a suspension as of the day of being noticed by the Contractor on the fault (defect).
15. The Parties agree that at any time the statutory warranty period shall amount to 24 months counting from the date of commissionin, confirmed by an appropriate acceptance protocol. In the event that SAT tests are not carried out or completed within the period provided for in §4(1) item 1.4., due to reasons attributable to the Awarding Authority (SOLARIS), the statutory warranty period begins to run after three (3) months from the date of delivery of the entire subject of the Agreement stipulated in in the relevant acceptance protocol.
16. The Contractor shall declare and acknowledge to understand that the Awarding Authority is not an expert within the scope of the delivered subject of the Agreement, hence in the event of formation of a defect (fault), any expenses related to the explanation of the reasons of its occurrence (either under the quality warranty or staturory warranty), and in particular the costs of appropriate expertise shall be incurred by the Contractor. It shall be deemed that the fault (defect) was formed due to reasons for which the Contractor or manufacturer is held liable.

**§ 10**

**LIABILITY TOWARDS THIRD PARTIES**

The Contractor shall be fully liable for damages for any personal and material damage which may arise in relation to third parties caused by the Contractor in connection with and in the implementation of this Agreement.

**§ 11**

**INSURANCE**

1. The Contractor shall have civil liability insurance in relation to damage to health or death and damage to property related to obligations hereunder, for the period from the Agreement signing date to the date of completion hereof.
2. At the request of the Awarding Authority, the Contractor shall immediately send to the Awarding Authority to the address specified in § 13(2)(a) hereof, a copy of the insurance policy or other equivalent proof of conclusion of a valid insurance. Should the Contractor fail to fulfill the above obligation, the Awarding Authority shall have the right to conclude an insurance agreement at the expense of the Contractor.

**§ 12**

**SUBCONTRACTORS**

1. The Contractor shall be liable for actions and omissions of subcontractors as for its own actions or omissions.
2. Contracts with subcontractors with regard to the execution of the Subject matter of the Agreement shall not affect the obligations of the Contractor in relation to the Awarding Authority resulting herefrom.

**§ 13**

**CORRESPONDENCE**

1. All correspondence between the Parties shall be carried out in writing. The Parties shall also consider the information sent via e-mail by persons specified in § 6 hereof and persons authorized to represent the Parties (in accordance with the instrument of incorporation of the institution, company register, or other document such as power of attorney) to be in written form for the purposes of correspondence. The provisions of this section (1) shall not prejudice the provisions of §21(1) - changes to the Agreement shall be made in writing under penalty of nullity.
2. All correspondence shall be delivered to the following addresses of the Parties:
3. The SOLARIS National Synchrotron Radiation Centre

ul. Czerwone Maki 98

30-392 Kraków

1. ..............................................
2. The Parties shall notify each other time by registered letter of each change of the correspodence address specified in section (2) within 7 days from the occurrence of such change, or else correspondence sent to the previously known address shall be deemed to have been effectively delivered.

**§ 14**

**ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

1. The rights and obligations of the Parties resulting from the subject-matter Agreement shall not be assigned or otherwise transferred by one of the Parties to third parties without the prior written consent of the other Party, under penalty of nullity. In particular, the Contractor shall not be entitled to assign or transfer claims and obligations arising herefrom to third parties without prior written consent of the Awarding Authority, under penalty of nullity.
2. The Contractor shall obtain the written consent of the Awarding Authority to assign or transfer the rights and obligations hereunder also in the event of a change of the Contractor's legal form.

**§ 15**

**CONTRACTUAL PENALTIES**

1. The Parties reserve the right to calculate and seek payment of liquidated damages for inconsistent or improper implementation of obligations hereunder.
2. The Contractor shall pay liquidated damages to the Awarding Authority in the following cases:
3. Withdrawal from the Agreement by any of the Parties hereto due to circumstances attributable to the Contractor, in the amount of 5% of the total net remuneration of the Contractor determined in accordance with § 3(1) hereof,
4. Delay of more than 4 weeks in delivery of the subject of the Agreement, in relation to the time limit referred to in § 4(1) item 1.2. The amount of liquidated damages shall be 0.1% of the net value of the undelivered subject of the Agreement, calculated for each day of delay starting from the first day hereof, but not more than 5% of the Contractor's total net remuneration determined in accordance with § 3(1) hereof. In the event of revealing defects/faults during the acceptance and collection procedure of the subject of the Agreement, and also SAT tests no liquidated damages shall be calculated as stipulated in this point b), provided however that the subject of the Agreement (defective) was delivered in a timely manner which did not result in calculating such liquidated damages.
5. Delay of more than 7 calendar days in the removing defects or faults ascertained during the acceptance and collection procedure or during SAT tests or commissioning in relation to the time limit set by the Awarding Authority in accordance with §5(2) hereof, in the amount of 0.2% of the net value of the defective part of the subject of the Agreement. Liquidated damages shall be calculated for each day of delay, but not more than 10% of the net value of the defective part of the Subject of the Agreement.
6. Delay of more than 7 calendar days in removing defects or faults ascertained during the quality warranty or statutory warranty period, in the amount of 0.1% of the net value of the defective part of the subject of the Agreement. Liquidated damages shall be calculated for each day of delay in relation to the time limit (day) determined in accordance with §9(5) or §9(13) hereof, however, not more than 10% of the net value of the defective part of the subject of the Agreement.
7. The Awarding Authority reserves the right to deduct any liquidated damages from the due invoice. Liquidated damages reserved above shall be calculated independently of one another (cumulatively), unless expressly stated otherwise.
8. The Contractor shall have the right to calculate liquidated damages, and the Awarding Authority shall pay such, for withdrawal from the Agreement by the Contractor attributable solely to the Awarding Authority, in the amount of 5% of the total net remuneration of the Contractor determined in accordance with § 3(1) hereof.
9. The claim for payment of the contractual penalty shall be due from the day following the day on which the facts specified in this contract occur, as the basis for its calculation.
10. Where the Contractor ascertains that the delivery is not be possible (or such is likely) within the agreed time limit, the Contractor shall immediately notify the Awarding Authority thereof. The Parties will then agree a new delivery date, while the Awarding Authority shall not lose its right to calculate liquidated damages.
11. The Parties may seek damages in excess of the liquidated damages on general terms.

**§ 16**

**WITHDRAWAL FROM THE AGREEMENT**

1. In addition to the cases listed in the Act of 23 April 1964 – the Polish Civil Code, the Parties shall have the right to withdraw from the Agreement within 30 days of becoming aware of existence of one of the following circumstances:
2. Becoming aware that the Contractor, as a result of insolvency thereof, has not satisfied any monetary obligations for a period of at least 3 months,
3. There will be undertaken liquidation of the Contractor,
4. There has been issued an order to seize the Contractor's assets,
5. The Contractor has been in default with the development and delivery of a detailed design of the subject of the Agreement for over 21 days in relation to the time limit stipulated in § 4(1) item 1.1, or has been delayed with making a design correction in the case of submission by the Awarding Authority of comments/reservations for over 14 days in relation to the time limit stipulated in § 4(1) item 1.1;
6. The Contractor has been in default for more than 4 weeks in relation to the time limit stipulated in § 4(1) item 1.2 with the delivery of the subject of the Agreement or with the removal of defects in the subject of the Agreement ascertained on delivery, for over 7 calendar days in relation to the time limit set by the Awarding Authority,
7. The Contractor has provided equipment which does not meet the terms and conditions of the Agreement and in an additional period of not shorter than 14 days, set by the Awarding Authority, has not performed the Agreement in accordance with the provisions hereof. This applies especially in the event if the circumstances specified in the sentence 1 shall appear during carring out the activities referred specified in § 4(1) item 1.3. and 1.4.
8. In the case of the Contractor having major financial difficulties, in particular seizure by a bailiff or other seizure by authorized bodies with a total value exceeding PLN 200,000.00 (say: two hundred thousand Polish zlotys) or the equivalent in the currency of the country in which the Contractor has its registered office,
9. The Contractor shall not be entitled to damages for withdrawal of the Awarding Authority from the Agreement for reasons attributable to the Contractor.
10. Withdrawal from the agreement should be in writing under penalty of nullity of such statement and should contain justification thereof.
11. In the event of withdrawal from the agreement, the Parties shall retain the right to enforce liquidated damages and the right to claim additional compensation, in excess of the amount of liquidated damages.
12. In addition, if there is a significant change in circumstances which means that performance of the contract is not in the public interest, which could not have been foreseen at the time the contract was concluded, the Contrcting Authority may withdraw from the contract within 30 days of becoming aware of these circumstances (article 145(1) PPL Act).
13. In the event of withdrawal from the contract referred to sec. 5 the Contractor may demand remuneration only for the part of the contract completed up to the date of withdrawal, without the right to claim damages in this respect.
14. The Party which intends to invoke the circumstances indicated above shall immediately inform the other Party thereof in writing.
15. The Awarding Authority reserves the right to withdraw from the agreement only to the extent of the part indicated thereby, retaining ownership of the remaining part of the subject of the Agreement.

To the extent that the Awarding Authority has not exercised its right of withdrawal, all provisions of the Agreement, in particular with regard to payments and warranties, shall remain in force.d

1. In the event of withdrawal from the Agreement, the Parties agree that the completed so far and free of defects deliveries of the part of the subject of the Agreement, shall be paid for and shall remain the property of the Awarding Authority.

**§ 17**

**BANK/INSURANCE GUARANTEE**

* + - 1. An irrevocable, payable on first demand and unconditional bank guarantee or insurance guarantee referred to in §7(1) item 1.1, constitutes a security for advance payment granted to the Contractor, in accordance with Art. 151a(6) and (7) of the Public Procurement Law. This guarantee constitutes a security for the return of the advance payment in the event of improper performance of the Agreement or withdrawal from the Agreement by the Awarding Authority or Contractor and shall apply for a period from the day when the first payment shall be credited on the Contractor’s account up to 60 days inclusive from the date on which the delivery date falls in accordance with § 4(1) item 1.2 hereof.
      2. Any changes to the Agreement or documents forming an integral part hereof, in particular appendices, made after the date of granting the above-mentioned guarantees do not release the Guarantor from liability to the Awarding Authority due to the granted guarantees.
      3. The validity of the abovementioned guarantee may not be conditional upon execution by the Contractor of a timely payment of the premium or installment of the premium.
      4. Liability of the Guarantor towards the Beneficiary specified in the abovementioned guarantees shall not be subject to limitation on the basis of documents used by the Guarantor, such as general terms & conditions of insurance or bank guarantees, regulations, instructions, or contracts for ordering a grant of a guarantee concluded between the Contractor and the Guarantor.
      5. In the event of an extension of the period of Agreement performance, the Contractor, 14 days prior to the lapse of security validity, shall provide an annex to the guarantee letter issued by the Guarantor extending the guarantee period or granting a new security covering the extended Agreement term, corresponding to the scope and provisions of the original security, under penalty of exercising by the Awarding Authority of rights resulting from security. The cost of extending the guarantee and any annexes shall be charged to the Contractor.
      6. In the case of finding on delivery defects in the subject of the Agreement resulting in the need to send it back for repair, the Contractor, under penalty of the Awarding Authority's right to return the advance payment by the Guarantor, shall immediately provide an annex to the letter of guarantee (bank / insurance guarantee) issued by the Guarantor, extending the time limit of validity the bank or insurance guarantee or a new security covering designated in accordance with §5(2) time of repair and additional 30 days upon the lapse of time limit. The cost of extending the guarantee and any annexes shall be charged to the Contractor. An annex to the letter of guarantee or the provision of a new security shall not be necessary if the time limit for repair designated in accordance with §5(2) does not exceed the original period of validity of the security in accordance with §7(1) item 1.1.
      7. The Guarantor should make the payment to the Awarding Authority due to the granted guarantee within 5 business days from the date of delivery to the Guarantor of the written request for payment of the guarantee sum, within the period of guarantee validity, including only:

1. Indication of the amount of the claim;
2. The bank account number to which the Guarantor is due to pay the amount of the claim;
3. Signature of the person authorized to represent the Awarding Authority;
4. A statement that the Contractor has not performed or improperly performed the obligation under the Agreement.
   * + 1. The request for payment of the claim under the guarantee shall be transmitted by the Awarding Authority to the address of the Guarantor by courier service or SWIFT key message via the bank maintaining the Awarding Authority's bank account at the latest on the last day of validity of the guarantee by 23.59. Where the time limit for submitting a guarantee payment lapses on a Saturday, a public holiday, or other day on which the Guarantor is not operating, then the time limit shall be extended to the nearest day on which the Guarantor conducts operational activities.
       2. The term for payment of the amount of the claim under the granted guarantee due to the Awarding Authority may not be:
5. Confirmation of documents or evidence confirming the Awarding Authority's statement indicated in section 7(d) above;
6. Providing evidence of a prior request for the Contractor to pay the claim of the Awarding Authority and a statement that despite such request, the Contractor has not satisfied the claim of the Awarding Authority within the scope indicated in section 7(d);
7. Uncontested claim for payment;
8. Submission by the Contractor of any statement.

**§ 18**

**FORCE MAJEURE**

1. In the event of the impossibility of fulfilling obligations resulting from the subject matter Agreement in connection with circumstances beyond control of the Parties and which could not have been foreseen (force majeure), the Parties shall be released from any mutual obligations, including liability for the damage suffered. The Parties shall also have the right to change the time limits for performance of the Agreement.
2. The provisions referred to in section (1) shall apply accordingly if the performance of obligations hereunder is not possible due to operation of force majeure, which affected the Contractor's subcontractors.
3. If, due to operation of force majeure, the Agreement has not been implemented for a period longer than 2 (two) months, each Party shall have the right to terminate the Agreement without any consequences, by submitting to the other Party an appropriate written statement under penalty of nullity. Termination of the Agreement in such manner shall take place by mutual agreement of the Parties, and each Party hereby declares that it already grants its consent to terminating the Agreement in such circumstances and in such manner.
4. Each Party shall immediately notify the other Party of the occurrence of circumstances referred to in section (1).

**§ 19**

**COPYRIGHT**

1. The Contractor declares that to the best of its knowledge, the performance of its obligations hereunder does not violate intellectual property rights of third parties.
2. The Contractor shall have responsibility for and shall repair all damage resulting from any violation of copyright, patent rights, or other intellectual property rights which may result from the implementation hereof and which does not result from the fault of the Awarding Authority.
3. In the case of works created or delivered hereunder, including but not limited to all elements of the Front-end section (hereinafter the "Works"), including software and its technical doumentation, the Contractor, as part of the remuneration, as of the date of accepting the Work by the Awarding Authority, transfers to the Awarding Authority all copyright to the Work created under the Agreement, including the design of Wiggler (§4.1 item. 1.1.) along with ensurance of possibility to use them in the below indicated fields of exploitation. The fields of explotation include:
4. with regard to recording and reproduction of the Work - production of copies of the work by specific technique, including printing, reprographic, magnetic recording, and digital technique;
5. with regard to trading in the original copy or copies on which the Work has been recorded - marketing, lending, or rental of the original copy or copies;
6. with regard to dissemination of the work in a manner other than stipulated in item (2) - public performance, exhibition, displaying, and publicly sharing the Work in such manner that every person can have access thereto in the place and time chosen by them.
7. Upon transfer of the copyright to the Works, the right to exercise author’s derivative rights to the Works, as well as to modify the Works in the scope depending on the Awarding Authority's discretion, shall pass to the Awarding Authority.
8. The transfer of copyright is awarded to the Awarding Authority for the territory of the whole world and it is not limited in time.
9. The transfer of author’s economic copyrights covers the following fields of exploitation:
   1. Use, transfer, and storage regardless of format, system or standard,
   2. Permanent or temporary recording or reproduction in whole or in part, including saving the computer's memory and permanent or temporary recording or reproduction of records, including making copies and any use and disposal of such copies, including to the extent that it is necessary for the actions indicated in item (a) above,
   3. translation, adaptation, layout changes, modifications, or any other changes to the computer programme,
   4. Creating new versions and adaptations or any other changes,
   5. distribution of the programme or a copy thereof, including marketing, lending, or leasing of the computer programme or a copy thereof, as well as saving thereof in the computer's memory, the Internet and Intranet, and making it available in digital form.
   6. The right to reproduce the source code as well as decompile it, including the right to reproduce permanently or temporarily in whole or in part, without limiting the admissibility conditions of these activities, in particular for use for the purpose of interoperability with computer software or other forms of use. At the moment of transferring the Work consisting of a software (computer program), the Contrator will deliver Awarding Authority the source code of this software in such manner that the Awarding Authority may use the software according to terms and conditions of the Agreement, its goal and purpose of this software,
   7. The right to specify the names under which it will be used or distributed, including the right to register for its benefit the trademarks which it is going to bear,
   8. The right to use for marketing or promotion purposes, as well as to mark or identify products and services and other activities, as well as for educational purposes,
   9. The right to dispose of the computer programme and its studies and the right to make them available for use, including licensing for third parties, on all areas of exploitation listed in the contract.
10. In case of other works, i.e. works delivered but not created during execution of the Agreement, for which the economic copyrights are not vested in Contractor, including also elements of software necessary for proper functioning of the subject of the Agreement, the Contractor, as of the date of accepting the Work by the Awarding Authority, will grant it a license in the fields of exploitation stipulated in sec. 3 and 6. If granting a license is impossible due to legal reasons, the Contractors commits itself, that it will transfer to the Awarding Authority the licenses in the scope the Contractor is entitled itself. In case this would be impossible too, the Contractor commits, that the entitled entity will grant the Awarding Authority a licence under the terms and conditions provided in this §19, including the fields of exploiotation stipulated in sec. 3 and 6.
11. A granted license is perpetual, worldwide and non-exclusive, authorising the Awarding Authority to granting sublicenses. The Contractor obligates that neither it nor any third person (entity) will terminate the granted license else the Contractor will pay a contractual penalty in the amount of 20% of the net value of the the subject of the Agreement provided in §3 sec. 1. In case the termination would take effect despite the previous provisions, the Parties agree, that notice period will amount 10 years and is efficient at the end of the year.
12. The Contractor hereby grants its consent to the Awarding Authority’s ability to photograph the subject of the Agreement, in particular the devices, and to the use of photos for promotion of the Awarding Authority and the SOLARIS NSRC in the press, radio, and television and on the Internet, especially on the website of the Awarding Authority and the SOLARIS NSRC, and in social media of the Awarding Authority and the SOLARIS NSRC.

**§ 20**

**DISPUTES**

1. The Parties shall resolve disputes, which may arise in connection with the implementation of the Agreement, in an amicable way.
2. If it is impossible to reach an agreement in the manner set out in section (1), all disputes arising hereof shall be examined by the Polish court competent for the seat of the Awarding Authority.
3. The invalidity of one or several provisions of the Agreement shall not affect the validity of the Agreement in its entirety, in which case the Parties shall replace the invalid provision with a provision consistent with the purpose and other provisions hereof.
4. In matters not covered by this Agreement, provision of the Polish law shall apply, in particular the provisions of the Act of 23 April 1964 the Polish Civil Code (consolidated text: the Official Journal of Laws of 2019, item 1145, as further amended) and the Act of 29 January 2004 Public Procurement Law (consolidated text: the Official Journal of Laws of 2019, item 1843, as further amended).

**§ 21**

**CHANGES AND SUPPLEMENTS**

1. Changes and supplements to this Agreement may only be made in writing or else shall be deemed invalid, and must be signed by authorized representatives of both the Awarding Authority and Contractor.
2. The Parties provide for the possibility of changing the Agreement, without changing the amount of the Contractor's remuneration, by signing an annex hereto, in the following cases:
3. Changes to the time limits for performance of the subject of the Agreement referred to in § 4(1) through their extension due to causes attributed to the operation of force majeure referred to in § 18.
4. Changes to the time limits for performance of the Agreement referred to in § 4(1) through their extension due to reasons attributable to the Awarding Authority, in particular in the event of introducing at the request of the Awarding Authority changes to the technical parameters of the subject of the Agreement, requiring a change to the time limit for performance of the Agreement. A change of the date of execution of the Agreement in this respect requires a consent of both Parties.
5. Changes to time limits of execution of the Agreement referred to in § 4(1) by means of extension thereof due to reasons attributable to the Awarding Authority concerning no preparation of the site for delivery and installation of the subject of the Agreement.
6. Changes to the time limits of performance of the Agreement referred to in § 4(1) by means of extension thereof due to a delay on the part of subcontractors in the performance of their obligations to the Contractor. A change of the date of execution of the Agreement in this respect shall be made at the request of the Contractor and requires acceptance of the Awarding Authority. The Awarding Authority may refuse to accept if the change of the time linit exposes it to inconveniences related to the use of the synchrotron, or exposes it to losses related to, e.g., the risk of losing a subsidy from the Ministry of Science and Higher Education for the construction of the SOLCRYS experimental line.
7. Extending the term of the statutory warranty or guarantee, in the event of extension thereof by the Contractor,
8. Improvement of quality or other parameters characteristic of a given element of the subject of the Agreement or change of technology to an equivalent or better one, increase of equipment efficiency and security, in the event of withdrawal from the market by the manufacturer or cessation of manufacturing of the subject of the Agreement offered by the Contractor,
9. Updating solutions due to technological progress or changes in existing regulations,
10. , Change of the subcontractor due to extraordinary circumstances or other reasons beneficial to the Awarding Authority, if the Contractor declares the execution of the contract with the help of subcontractors,
11. The Parties allow for the possibility of changing the Agreement while changing the Remuneration of the Contractor, by signing an annex to the Agreement, in the following cases:
12. changes of the rate in value added tax (VAT)
13. a change to the amount of minimum wage or minimum hourly wage, determined on the basis of the provisions of the Act of 10 October 2002 on the minimum wage,
14. changing the rules of being subject to social insurance or health insurance, or the level of the social security or health insurance premium,
15. changing the principles of accumulation and amount of payments to employee capital plans referred to in the Act of 4 October 2018 on Employee Capital Plans (i.e. the Official Journal of Laws of 2018, item 1986)

- on the terms set out in the below sections , if these changes affect the cost of execution of the Agreement by the Contractor.

1. set out in Art. 144(1) items 2- 6 of the Public Procurement Law.
2. A change to the amount of remuneration in the cases referred to in section 3(a), (b), (c) and (d) above will relate only to part of the subject of the Agreement performed in accordance with the deadlines indicated in the Agreement and cover only part of the remuneration due to the Contractor in respect of which there has been a change to the cost of performance of the Agreement by the Contractor, in connection with the entry into force of the provisions referred to in section 3(a), (b), (c) and (d).
3. In the case of the change referred to in section 3(a) the net value of the Contractor’s remuneration will not change, and the gross value of its remuneration will be calculated in the amendment on the basis of new regulations (new rate of VAT).
4. In the case of the change referred to in section 3(b), the Contractor's remuneration shall change by the value of the Contractor's total cost increase, resulting from the increase of remuneration of persons directly performing the order up to the amount of the changed minimum remuneration or the minimum hourly rate. The Contractor's remuneration shall increase only by that part of the remuneration of employees, which corresponds to the extent to which they perform work directly related to the implementation of the subject of the Agreement.
5. In the case of the change referred to in section (3)(c) the Contractor's remuneration shall change by the amount of the Contractor's total cost increase, which it shall be additionally obliged to bear in order to take into account this change, while maintaining the net amount of remuneration of persons directly performing orders for the Awarding Authority. The Contractor's remuneration shall increase only by that part of the remuneration of employees, which corresponds to the extent to which they perform work directly related to the performance of the Subject of the Agreement.
6. In the event of a change referred to in section (3)(d), the Contractor's remuneration will change by the amount corresponding to the change in the Contractor's cost incurred in connection with the payment of remuneration to employees providing services. The amount corresponding to the change in the Contractor's cost will relate only to the part of the remuneration of employees providing services referred to the previous sentence, corresponding to the extent to which they perform works directly related to the performance of the subject of the Contract.
7. In order to execute the changes referred to in section 3(a), (b), (c) and (d) above, each Party may request the other Party to change the amount of remuneration payable to the Contractor, along with a justification including, in particular, a detailed calculation of the total amount by which the Contractor's remuneration should be changed and indication of the date at which such change to the amount of the costs of execution of the Agreement has occurred or will occur.
8. In the case of changes referred to in section 3(b), (c) or (d), if the application is made by the Contractor, it shall attach to such application the documents setting out the extent to which the changes affect the costs of performance of the Agreement.
9. No annex to the Agreement is required in the case of a change to the terms & conditions of payment consisting in the fact that a part or all of the payments referred to in §7(1) item 1.1 – 1.5., shall be paid upon the completion of the entire Subject of the Agreement confirmed by the final acceptance protocol. Such change may be made at the Contractor's written request.

**§ 23**

**CONFIDENTIALITY**

1. In the event of being provided with any Confidential Information by the Awarding Authority, the Contractor shall be liable to keep confidential and ensure the protection of the personal data to the extent at least equal to the level of protection applied towards the protection of his own Confidential Information, yet not to a lower extent than justified to a certain circumstance. The „Confidential information” shall be deemed by the Parties to be technical, technological and organizational information or any other information of economic value, in relation to which required actions were taken by the Awarding Authority aimed at ensuring confidentiality or which were handed over with the observance of confidentiality.
2. The Contractor shall undertake in particular to the following:
3. not to disclose Confidential Information to any third parties, apart from his employees and coworkers with whom the subject hereof is being handled, unless such a disclosure of Confidential Information shall be essential for the execution, and if the aforementioned entities gave their consent for the compliance with the terms of confidentiality within the scope specified herein. The Contractor shall be liable for any violations made by the entities;
4. not to make any copies of the Confidential Information provided by the Awarding Authority, except for copies required for employees and coworkers with whom the subject of the Agreement is being executed. Any copies shall be deemed to belong to the Awarding Authority and shall be labeled as: „confidential”, „reserved” or any similar inscription;
5. not to use the Confidential Information disclosed for any other purposes others than the ones stipulated for the execution hereof;
6. after the end of the execution hereof, the Contractor shall be liable to immediately return all documents and information including Confidential Information, without storing any copies. Execution of the subject hereof shall not release the Contractor from the obligation to keep confidential any Confidential Information as entrusted on terms specified in the Agreement for the period of 5 years counting as of the Agreement termination date.
7. The Contractor shall not be liable for the disclosure of Confidential Information which:
8. were given to public notice in a manner not constituting the violation of the Agreement,
9. are known to the Contractor from other sources, without the obligation of keeping them confidential and without violation of the Agreement,
10. were independently developed by the employees of the Contractor,
11. were disclosed to public notice based on the permit of the Awarding Authority in writing under the pain of being null and void.
12. The Contractor shall be liable to immediately inform the disclosing Party in writing on any instance related to the following:
13. violation of obligation related to the confidentiality of Confidential Information;
14. suspicion on the possibility of disclosure, passing or unauthorized use of Confidential Information;
15. loss, theft or unauthorized damaging of the carriers, documents or other materials including Confidential Information.
16. Upon the request of the Awarding Authority, the Contractor shall immediately return all materials, information and documentation constituting Confidential Information, yet not later than within 7 (seven) calendar day as of the request submission date.
17. The obligation of keeping confidential information specified in the paragraph shall not be applicable, if the obligation related to the disclosure of Confidential Information by the Contractor arises out of the provisions of the law. In the event specified above, the Contractor shall be liable to disclose Confidential Information and immediately inform the Awarding Authority on the occurrence.

**§ 23**

**FINAL PROVISIONS**

1. This Agreement shall be effective from the date of its signing by both Parties hereto.
2. The Parties recognize as business days the days from Monday to Friday, excluding public holidays in the territory of the Republic of Poland.
3. The Agreement has been drawn up in four counterparts: two (2) in Polish and two (2) in English, one of each language version for each Party. In any discrepancies between the language versions, the Polish version shall prevail.

*............................................ ........................................*

*The Awarding Authority The Contractor*

1. Required only if the contractor provides personal details of persons other than directly related thereto and there is no exclusion of the obligation to provide information, pursuant to Art. 13(4) or Art. 14(5) of the GDPR. In other cases, the contractor does not submit a statement.

   [↑](#footnote-ref-2)