


<p><b>JAGIELLONIAN UNIVERSITY IN CRACOW</b> <b>PUBLIC PROCUREMENT DEPARTMENT</b> ul. Straszewskiego 25/2, 31-113 Cracow tel. +4812-663-39-03 e-mail: <a href="mailto:bzp@uj.edu.pl">bzp@uj.edu.pl</a> ; <a href="http://www.uj.edu.pl">www.uj.edu.pl</a> <a href="http://www.przetargi.uj.edu.pl">www.przetargi.uj.edu.pl</a></p>	
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Cracow, May 19<sup>th</sup>, 2021

**Invitation to tender hereinafter referred to as the „Invitation” or „I”**

**1) Name (company) and address of the Ordering Party**

1. Jagiellonian University, ul. Gołębia 24, 31-007 Cracow.

**2. Case handling unit:**

2.1 Public Procurement Department of the Jagiellonian University in Cracow,  
ul. Straszewskiego 25/2, 31-113 Cracow;

2.1.1 phone +4812-663-39-03;

2.1.2 e-mail: [bzp@uj.edu.pl](mailto:bzp@uj.edu.pl);

2.1.3 website: [www.uj.edu.pl](http://www.uj.edu.pl);

2.1.4 announcements and information publication place: [www.przetargi.uj.edu.pl](http://www.przetargi.uj.edu.pl).

**2) Procurement mode**

1. A procurement procedure is handled under the mode of a procedure as applicable to the announcement of invitation to tender based on the Article 11 item 5 clause 1 of the Act of September 11, 2019 – Public Procurement Law (i.e. Journal of Law of 2019 item 2019 as amended) and Act of April 23, 1964 – Civil Code (i.e. Journal of Law of 2020 item 1740 as amended).

2. The records specified in the Invitation shall be applicable to the actions undertaken by the Ordering Party, hereinafter referred to as the “Ordering Party” and by the Interested Party, hereinafter referred to as the “Contractor”, in the procurement procedure.

**3) Description of the procurement subject**

1. The subject of the procurement shall be the delivery of the X-ray microscope for the PolyX beamline at the at National Centre for Synchrotron Radiation SOLARIS in Cracow (30-392), ul. Czerwone Maki 98.

2. The description of the procurement subject is included in Appendix A to the Invitation.

3. It is mandatory to secure the Subject of the order in such a way so that it was protected against any damaging in transit and secured.

4. Contractual warranty: 12 months. Warranty does not include objectives browning and scintillator ageing under X-Ray radiations. Detailed provisions with regard to terms and conditions of the quality warranty are included in the agreement template set out below.

5. Designation of the object of the contract according to the code of the Common Procurement Vocabulary CPV: 38580000-4 – Non-medical devices using radiation.

6. If in the provisions of the Invitation or attachments to the Invitation, proper names, types, models, symbols, etc. are indicated, these provisions should be understood as entries accompanied by the word "or equivalent", while the criterion used to assess equivalence is compliance with at least the same characteristics, technical, functional and other parameters a the level as described in the Invitation (at least).

7. Only Contractors with the necessary experience may participate in the procedure, i.e. the contractors who will demonstrate that during the last 3 years prior to the deadline for submittal of the bids, and if the period of activity is shorter – during this period – they have made at least two (2) deliveries of imaging microscopes adapted to synchrotron measurements under two separate contracts (two contracts against payments – not the sum of single oral or written orders carried out for the same entity).

- 7.1 In order to confirm the fulfillment of the condition for participation in the procedure (described in point 7 above), the Contractor is obliged to state a declaration, which is part of the bid form, that constitutes Appendix No 1 to the Invitation.
  - 7.2 The Contractor, at the request of the contracting authority (this is the Ordering Party's right in order to verify the condition for participation in the procedure described in point 7 above), may be obliged to present a list of deliveries, specifying their subject matter, dates of performance and entities for which the deliveries were made, and attaching evidence confirming whether these deliveries were properly performed, e.g. references or other documents drawn up by the entity for which the deliveries were performed, and if the Contractor is unable to obtain these documents for reasons beyond his control – the Contractor's declaration.
  - 7.3 In order to confirm the fulfillment of the condition for participation in the proceedings (point 7.1 above), the Contractor may rely on the professional abilities of entities providing resources, regardless of the legal nature of their legal relations, with the proviso that it may take place if these entities perform the supplies for which these capacities are required.
    - 7.3.1 A contractor who relies on the abilities of other entities providing resources submits along with the bid the commitment of these entities to provide the Contractor with the necessary resources for the purposes of implementing the contract or other evidence confirming that the contractor, while performing the contract, will have the necessary resources. In both cases the information indicated in Appendix No 2 to the bid form shall be presented.
- 4) Order execution date**
1. The order must be executed **up to 20 weeks** as of the contract award (conclusion of the Agreement).
  2. The partial deliveries are acceptable according to the provision of the contract template – appendix No. 2 to the Invitation.
- 5) Information on communication manner between the Ordering Party and the Contractors and declarations and documents submittal, as well as an indication of persons authorized to communicate with the Contractors**
1. It is permissible to communicate in writing or via e-mail.
  2. It is recommended to communicate electronically via the following e-mail address: [a.lukasik@uj.edu.pl](mailto:a.lukasik@uj.edu.pl).
  3. Shall the Ordering Party or the Contractor submit any documents or information by e-mail, each Party shall immediately confirm its receipt upon the request of the other Party.
  4. Prior to the submittal of bids, remarks may be sent to the Ordering Party by the Contractors as regards the content of the Invitation. In justified cases, the Ordering Party by taking into consideration the remarks sent, may amend the content of the Invitation and prolong the deadline for the submittal of bids as appropriate.
  5. Anna Łukasik, e-mail: [a.lukasik@uj.edu.pl](mailto:a.lukasik@uj.edu.pl), shall be a person entitled as regards the communication on any substantive and formal issues.
- 6) Description of bids preparation manner**
1. The Contractor may submit only one bid, covering the entire subject of the contract. The Contractor shall calculate the price for the whole subject of the contract. It is obliged to attach to the bid the price calculation, constituting an Appendix No 1 to the bid form.
  2. The Contractor is obliged to attach to the bid the technical and (or) functional specification of the devices or other document (e.g. catalog card or description) enabling the evaluation of the offered devices' compliance with the requirements of the Invitation indicating in particular the type of the offered devices.
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3. The bid along with the appendixes being an integral part hereof, shall be drafted by the Contractor in line with the content of the provisions of the Invitation, i.e. according to the content of the bid form and its appendixes attached to the Invitation.
4. The bid must be signed by a person (persons) authorized to represent the Contractor, in accordance with the entry in the National Court Register, Central Register and Information on Economic Activity or other appropriate register and written in Polish or English, and submitted in writing or sent electronically to the e-mail address specified in the Invitation.
  - 4.1 If the bid is signed by a proxy, the bid must be accompanied by a power of attorney or other document confirming the authorization to represent the contractor.
5. Any revisions or amendments to the content of the bid must be signed by the person (persons) signing the bid and affixed with the revision dates.
6. The Contractor has the right to reserve, at least by the day of conclusion hereof, that no information related to the tender constituting a company's secret under the meaning of the Act of April 16, 1993 on combating unfair competition (i.e. Journal of Law of 2019 item 1010 as amended) may be disclosed.
7. Any payments between the Ordering Party and the Contractor shall be made in polish currency (PLN) or in euro (EUR).
8. Any expenses related to the preparation and submittal of the bid shall be incurred by the Contractor.
9. By submitting a bid, the Contractor undertakes to execute the subject hereof in compliance with all the requirements of the Ordering Party as specified in the Invitation and its appendixes.

**7) Place, manner and deadline for the submittal and opening of bids**

1. Bids are to be submitted to the Public Procurement Department of the Jagiellonian University in Cracow, ul. Straszewskiego 25/2, 31-113 Cracow until **May 27<sup>th</sup>, 2021 by 1:00 pm** in writing or sent by e-mail to the following e-mail: [a.lukasik@uj.edu.pl](mailto:a.lukasik@uj.edu.pl) with a designation enabling for the identification of the Contractor and with the designation of the subject and number of the procedure by indication **"A bid for delivery of an X-ray microscope for the PolyX beamline in National Synchrotron Radiation Centre SOLARIS", case ref. no 80.272.75.2021"**.
2. Announcement of information on the submitted bids and offered prices as well as on any other essentials elements of submitted bids shall be public and take place as of **May 27<sup>th</sup>, 2021 at 1:05 pm (CET)** in the Public Procurement Department of UJ, ul. Straszewskiego 25/2, 31-113 Cracow.

**8) Description of the price calculation manner**

1. The lump sum of the bid shall be expressed in polish zloty (PLN) or in euro (EUR). The price shall include all costs required for the execution hereof, in particular any expenses related to the packaging, transport and insurances in transit, warranty. Delivery terms: DAP NSRC SOLARIS JU, Czerwone Maki street 98, 30-392 Cracow (Incoterms 2020).
2. Should the seat of the Contractor be premised outside the territory of Poland, VAT and any possible customs duties (if applicable) shall be added by the Ordering Party to the price, for the purpose of evaluation and comparison of the bids. The Contractor shall specify in the bid form the tariff code\* (\*if applicable).
3. Price indexation is not stipulated for the subject of the Agreement, whereas the calculated price shall be a lump sum for the whole Subject of the Agreement.
4. Neither pre-payments nor advance payments are stipulated for executing the subject of the procurement, and the payment shall be made in accordance with the provisions of the Agreement.
5. In the case of submitting an offer in euro (EUR), for the purpose of comparing the bids, the Ordering Party will convert the value of the bid into polish currency (PLN) according to table C published by the National Bank of Poland on the date of publication of the Invitation.

**9) Description of actions and criteria to be taken into consideration by the Ordering Party upon the selection of the best bid**

1. The Ordering Party selects the most advantageous bid from among valid bids submitted in the proceedings on the basis of the evaluation criteria for bids which are:  
**Total gross bid price for the whole Subject of the Agreement - criterion weight 100%**
  - 1.1 Credits awarded under the "Total gross bid price for the whole Subject of the Agreement" criterion will be calculated in accordance with the following formula:  
$$C = (C_{naj} / C_o) \times 100$$
Where:  
C – means the number of credits awarded to a given bid  
C<sub>naj</sub> – the lowest price among the evaluated bids  
C<sub>o</sub> – the price of the bid subject to evaluation  
Hence, the maximum number of credits to be obtained under this subject criterion is 100 credits.
2. During the course of the research and evaluation of the bids, the Ordering Party may request the Contractors to submit explanations as regards the content of the submitted bids, as well as negotiate the content and prices of the bids with the observance of the applicable rules pertaining to the transparency and fair treatment of the Contractors.
  - 2.1 The Ordering Party reserves that it may, in particular, conduct negotiations in order to change the content of the bids in particular regarding contractual terms and provisions as for example quality warranty, terms of payment, price, improvement of the technical aspects, and after the conclusion of the negotiations, the Ordering Party may invite Contractors to submit additional bids.
3. The Ordering Party shall correct any obvious typographical errors and obvious accounting errors in the content of the bid, with consideration of the accounting consequence of corrections made, as well as and any errors consisting in non-compliance of the bid with the requirements of the Invitation, not contributing to essential changes to the content of the bid, and immediately notify the Contractor whose bid was corrected about the hereinabove.
4. The Ordering Party shall have the right to reject an bid, in particular, if it was submitted after the bids submittal date or if it is non-compliant with the requirements of the Invitation, or should there be any other reasonable circumstances effecting in non-compliance of the bid with the existing legislation.
5. The Ordering Party shall reject the bid submitted by:
  - 5.1 a Contractor being a natural person being lawfully convicted for the following crime:
    - 5.1.1 participation in an organized criminal group or association aimed at committing a crime or a fiscal offense referred to in Art. 258 of the Penal Code;
    - 5.1.2 trafficking in human beings, as referred to in Art. 189a of the Penal Code,
    - 5.1.3 being the subject of Art. 228-230a, Art. 250a, Art. 258 or Art. 270-309 of the Penal Code or Art. 46 or Art. 48 of the Act of June 25, 2010 on the sport;
    - 5.1.4 financing a terrorist offense, referred to in art. 165a of the Penal Code, or the crime of frustrating or obstructing the determination of the criminal origin of money or concealing its origin, as referred to in Art. 299 of the Criminal Code;
    - 5.1.5 of a terrorist nature being the subject of Art. 115 § 20 Penal Code, or with the aim of committing that crime;
    - 5.1.6 entrusting the performance of work to a minor foreigner referred to in art. 9 paragraph 2 of the Act of June 15, 2012 on effects of the assignment of work to foreigners who stay within the territory of the Republic of Poland (Journal of Law 769) against the law;
    - 5.1.7 against the economic turnover referred to in art. 296-307 of the Penal Code, the offense of fraud referred to in Art. 286 of the Penal Code, the crime against the credibility of the documents referred to in Art. 270–277d of the Penal Code, or a tax offense;
    - 5.1.8 being the subject of Art. 9 or Art. 10 of the Act of June 15, 2012 on effects of the assignment of work to foreigners who stay within the territory of the Republic of

- Poland (Journal of Law 769) against the law – or for an appropriate prohibited act specified in the provisions of foreign law;
- 5.2 a Contractor whose member of the Management Board or Supervisory Board, a partner in a general partnership or limited liability partnership or a general partner in a limited joint-stock partnership or a proxy was convicted for crimes being the subject of the hereinabove (point 5.1);
  - 5.3 a Contractor who has been issued a legally-binding decision of the court or a final administrative decision of the court on default of payment of taxes, fees or social or health insurance premiums, unless the Contractor proceeded with the payment of taxes, fees and social or health insurance premiums due along with any applicable interests or fines or entered into a binding Agreement on the repayment of dues;
  - 5.4 a Contractor who was adjudicated with a ban of participating in public procurements;
  - 5.5 a Contractor, if the Ordering Party can state, on the basis of reliable premises, that the Contractor has entered into an Agreement with other Contractors with the aim of disrupting the competition in particular, if belonging to the same capital group within the meaning of the Act of February 16, 2007 on competition and consumer protection, they submitted separate bids, partial bids or applications to participate in the procedure, unless they prove that they have prepared these bids or applications independently of each other;
  - 5.6 a Contractor, if, in the cases referred to in Art. 85 sec. 1 of the PPL Act, there was a distortion of competition resulting from the prior involvement of the Contractor or entity that belongs with the Contractor to the same capital group within the meaning of the Act of February 16, 2007 on competition and consumer protection, unless the resulting distortion of competition can be eliminated other than by excluding the Contractor from participation in the procurement procedure.
6. The Ordering Party shall invalidate the procurement procedure in particular if no bid is submitted, if all submitted bids are rejected, if the price of the best bid exceeds the amount which may be assigned by the Ordering Party for the financing of the order, or should there be any other justified circumstances effecting in invalidity of the Agreement on the procurement.
  7. The Ordering Party shall notify at the same time all Contractors participating in the tender on the decision taken in the procedure by giving factual substantiation.

**10) The bid validity period.**

1. The bid validity period shall be 30 days.

**11) Information on formalities to be met after the selection of the bid for the conclusion of the Agreement**

1. The Ordering Party shall immediately release information on the procurement at the website of the Bulletin of Public Information by providing the name (company) or name and surname of the entity chosen for the conclusion of the Agreement for the execution of the order, or information on abstaining from the procurement. The contract shall be concluded in writing or electronic form else being null and void.

**12) Sample Agreement is Appendix No. 2 to the Invitation**

**13) Information on personal data processing – pertaining to a Contractor being a natural person**

In accordance with Art. 13 items 1 and 2 of the Resolution of the European Parliament and the Council (EU) 2016/679 of April 27, 2016 on the protection of natural persons under the personal data processing and free movement of personal data and repeal of the directive 95/46/WE (general resolution on data protection, hereinafter referred to as the „General Resolution”), the Jagiellonian University in Cracow hereby informs, as follows:

1. **The Administrator** of your personal data is the Jagiellonian University in Cracow, ul. Gołębia 24, 31-007 Cracow, represented by the University President of UJ.
2. **The following Data Protection Inspector was appointed by Jagiellonian University in Cracow**, ul. Gołębia 24, 31-007 Cracow, room no. 31. Contact with the Inspector is possible via: [iod@uj.edu.pl](mailto:iod@uj.edu.pl) or by phone: 12 663 12 25.
3. Your personal data will be processed **based on Art. 6 item 1 letter c of the General Resolution with the purpose of participation in the public procurement procedure within the area of science, case ref. no. 80.272.75.2021**
4. Providing your personal data is needed under the statutory requirement as specified in the provisions of the Act of September 11, 2019, Public Procurement Law (i.e. Journal of Law of 2019 item 2019 as amended, hereinafter referred to as „PPL”) with regard to the participation in the public procurement procedure.
5. The consequences related to the failure to provide personal data arising out of Act on PPL.
6. Recipients of your personal data shall be individuals or entities to whom the documentation related to the procedure will be disclosed based on Art. 8 and Art. 96 item 3 of PPL.
7. Your personal data will be stored in accordance with Art. 97 item 1 of PPL for the period of: at least 4 years as of the public procurement procedure’s end date or until the lapse of the deadline for the possibility of controlling the project co-financed or financed under the financial means of the European Union or durability of the project or other Agreements or liabilities arising out of the handled projects.
8. **You shall have the right to:** access the content of your data, clarify your data, limit your data processing – in the events and on terms as specified in the General Resolution.
9. **You shall not have the right to:** remove your personal data, relocate your personal data or raise an objection against your personal data processing, since the legal basis for the processing of your personal data shall be Art. 6 item 1 letter c of the General Resolution.
10. You shall have the right to submit a **claim to the President of the Personal Data Protection Office**, should you acknowledge that processing of your personal data violates upon the provisions of the General Resolution.
11. **Taking advantage** of the entitlement to rectify or complete your personal data as specified in Art. 16 of the General Resolution, may neither effect in the change of the public procurement procedure’s result nor change the provisions of the Agreement within the scope non-compliance with the Act on PPL, or violate the integrality of the protocol related to the public procurement procedure and its addendums.
12. In the event the execution of duties specified in Art. 15 item 1-3 of the General Resolution, with the purpose of executing your entitlements as specified in clause 6 and 8 hereinabove and with the purpose of obtaining copies of data subject to processing, would require an incommensurable effort, **the Ordering Party shall have the right to ask you** to provide extra information aimed at defining the request, in particular to provide the name or date of initiated or finished public procurement procedure.
13. **Submit** a request on the limitation of your personal data processing as specified in Art. 18 item 1 of the General Resolution shall not effect in the limitation of your personal data processing until the end of the public procurement procedure.

**Appendixes to the Invitation:**

Appendix A – description of the subject of the procurement

Appendix no 1 – sample of the bid form

Appendix no 2 – sample of the Agreement

**Appendix 1 to the Invitation**

**BID FORM**

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**ORDERING PARTY** – Jagiellonian University  
ul. Gołębia 24, 31 – 007 Cracow;  
**Case handling unit** – Public Procurement Department of JU  
ul. Straszewskiego 25/2, 31-113 Cracow

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Name (Company) of the Contractor –

.....;

Address of the seat –

.....;

Address to the correspondence –

.....;

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

NIP: .....; REGON: .....

With reference to the invitation to tender for choosing a Contractor for delivery of an X-ray microscope for the PolyX beamline at National Synchrotron Radiation Centre SOLARIS”, we would like to submit the following bid:

- 1) we do hereby offer the execution of the whole subject of the procurement for the total net amount of ..... **PLN\*/EUR**, (say: ..... **PLN\*/EUR**) which includes all the costs specified in point 8)1 of the Invitation\*.  
[\*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 Ordering Party on the account of the relevant Tax Office in case a tax obligation of the Ordering Party occurs in accordance with the VAT tax regulations],
- 2) we declare that we offer the quality warranty which meets terms and conditions indicated in the Invitation and its appendixes (12 months).
- 3) we do hereby offer the deliver the subject of the procurement **up to 20 weeks** as of the conclusion of the Agreement,
- 4) we do hereby declare to get acquainted with the specification included in the Invitation and acknowledge to be bound by the terms and rules of the procedure specified herein,
- 5) by submitting a bid, we do hereby declare that there are no premises specified in clause 9)5. of the Invitation effecting in the rejection of the bid,
- 6) we do hereby declare that we fulfill the condition for participation in the procedure specified in clause 3)7 of the Invitation, i.e.: during the last 3 years prior to the deadline for submittal of the bids, and if the period of activity is shorter – during this period – we have made at least two (2) deliveries of imaging microscopes adapted to synchrotron measurements under two separate contracts\*  
or  
we do hereby declare, that in order to fulfil the condition for participation in the procedure specified in clause 3)7 of the Invitation, we rely on the professional abilities of entities providing

resources in accordance with clause 3)7.3. of the Invitation and in accordance with Appendix no 2 to the bid form, and also there are no premises specified in clause 9)5 of the Invitation effecting in rejection of the bid against this entity\*

- 7) we do hereby declare to get acquainted with the terms and conditions of the sample of the Agreement and we acknowledge to be bound by them,
- 8) we do hereby declare that the bid is valid for 30 days as of the date of its opening,
- 9) we hereby declare that we 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, we have obtained for the purpose of applying for an award of a public contract in this proceeding'
- 10) the tariff code (HS code) is.....\*
- 11) the bid shall consist of ..... subsequently numbered pages,
- 12) the appendixes to the bid form shall be the following:
  - Appendix no 1** – a price calculation;
  - Appendix no 2** – a commitment of the other entity (if applicable);
  - Others**.....

Town ..... date ..... 2021

.....  
(seal and signature of the person authorized to make declarations  
on behalf of the Contractor)

**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 1 to the bid form**

(Name of the Contractor)

**PRICE CALCULATION**

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

No	Elements and devices	Net price / (pcs*/set*)	Unit	Net amount
1	Design <sup>1</sup>		1	
2				
3				
4	...			
5	...			
6	...			
<b><u>TOTAL</u></b>				

**\*Delete as appropriate**

Town ..... date ..... 2021

.....  
(seal and signature of the person authorized to make declarations  
on behalf of the Contractor)

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<sup>1</sup> Up to 20% to the amount of the total remuneration according to § 3 point 3 / 3.1 of the sample of the Agreement.

**Appendix no 2 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**

Name .....  
Address .....

I (We) signed below

.....  
.....

Acting on behalf and for the benefit of :

.....  
.....

declare that in an unlimited tender procedure:  
to select the Contractor within the scope of delivery of an X-ray microscope for the purpose of building of the POLYX beamline at the SOLARIS NSRC.

I (we) undertake 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:

.....  
.....

2) the manner of using my resources by the Contractor in the performance of the contract:

.....  
.....

3) the nature of the relationship that will connect me with the Contractor:

.....  
.....

.....  
(seal and signature of the person authorized to make declarations on behalf of the entity)

**Appendix 2 to the Invitation**

**THE SAMPLE OF THE AGREEMENT 80.272.75.2021**

Concluded in Cracow as of ..... 2021, by and between:

**Jagiellonian University in Cracow with headquarters at ul. Gołębia 24, 31-007 Cracow, NIP 675-000-22-36, hereinafter referred to as the „Ordering Party”, represented by:**

**1. .... –....., within the financial countersignature of the Finance Officer of UJ**

**and .....,**

**hereinafter referred to as the „Contractor”, represented by:**

**1. ....**

As a result of a procedure held under the mode of a procedure related to the invitation to tender based on Art. 11 item 5 clause 1 of the Act of September, 11<sup>th</sup>, 2019, Public Procurement Law (i.e. Journal of Law of 2019, item 2019 as amended), hereinafter referred to as „PPL” and Act of April 23, 1964 – Civil Code (i.e. Journal of Law of 2020, item 1740), hereinafter referred to as „CC”, the Agreement was concluded, whereas:

**§ 1**

**SUBJECT OF THE AGREEMENT AND OBLIGATIONS**

1. The subject of the Agreement (hereinafter referred to as the „Agreement”) shall be the delivery of X-ray microscope for PolyX beamline at National Centre for Synchrotron Radiation SOLARIS in Cracow, including also the design of the X-ray microscope and carrying out the site acceptance tests (SAT) at NCPS SOLARIS and other obligations specified in the Agreement.
2. A detailed description of the subject of the Agreement shall be included in the Appendix A to the Invitation to submitting bids as of ..... hereinafter referred to as the „**Invitation**” and in the Contractor’s bid, including all attachments to the Invitation and the bid, constituting an integral part hereof. In case of any discrepancies between the Agreement and its attachments (i.e. Invitation and the bid), provisions of the Agreement shall prevail, including but not limited to provisions concerning quality warranty (§6), unless the attachments provisions are more favourable for the Ordering Party.
3. The Parties confirm that they are bound by the Agreement with the content specified therein and in its attachments. If the Contractor applies general terms and conditions, general terms and conditions of contracts, regulations, etc., their provisions shall not apply, even if the Contractor referred to them in his bid, unless the contract clearly stipulates otherwise

**§ 2**

**AGREEMENT EXECUTION DEADLINE AND TERMS**

1. The Contractor shall be liable to deliver the subject hereof within the period up to **20 weeks** as of the conclusion of the contract.. The deadline indicated in the first sentence shall be considered met, provided that the Ordering Party signs the acceptance protocol of the delivery without remarks, subject to the provisions of sec. 5 *in fine* below. The subject of the Agreement also includes online assistance at the microscope installation and first tests, using a laboratory X-ray source radiation or on a synchrotron and online training (after delivery); the date of those activities will be agreed by the Parties.
  - 1.1 The Contractor shall deliver the design of the X-ray microscope to the acceptance of the Ordering Party up to **30 days** as of conclusion of the contract. The Ordering Party shall present its remarks to the design or accept it within 14 days of its receipt by signing the acceptance

- protocol. The Contractor shall include the Ordering Party's remarks and submit the design for the re-approval within 7 days of receipt of the remarks. Signing the acceptance protocol without remarks by the Ordering Party is the base for payment according to point (1) of § 3(3) of the contract. The acceptance protocol with remarks may also be the base for payment according to point (1) of § 3(3) of the Contract if the Ordering Party declares it clearly in it.
2. The delivery of the subject of the Agreement shall be made in the form of Delivered At Place (DAP) in accordance with the regulations of Incoterms 2020 to the following address:  
Narodowe Centrum Promieniowania Synchrotronowego SOLARIS  
ul. Czerwone Maki 98  
30-392 Cracow, Poland, subject to the provisions of sec. 7 below.
  3. The subject of the Agreement must be delivered in proper packaging securing the content against damaging in transit and secured. Shock watch indicators should be placed inside and outside (in a well visible place) of the packaging.
  4. The Contractor shall notify the Ordering Party via e-mail (to the address: [pawel.korecki@uj.edu.pl](mailto:pawel.korecki@uj.edu.pl) or [k.sowa@uj.edu.pl](mailto:k.sowa@uj.edu.pl)) on the planned delivery date, at least upon 7 days' notice. The basis for acceptance of the subject of the Agreement will be an acceptance protocol signed by both Parties without remarks subject of the provisions of sec. 5 below.
  5. In the event that the subject of the Agreement reaches the Ordering Party damaged or defective, the Ordering Party shall indicate damage or defects in the protocol, whereby such acceptance protocol does not confirm the performance of the Contract and does not constitute the basis for payment of the Contractor's remuneration, unless the Ordering Party clearly indicates otherwise in the protocol.
  6. The Parties set forth that the Ordering Party shall document the faults/defects, in particular by photographing them. This applies especially to the defects and damages caused during the delivery (transport).
  7. If, it will happen that the subject of the Agreement reaches the Ordering Party damaged or will have defects making it unfit for the use, the Contractor shall proceed with it exchange at its risk and expenses in the shortest possible term, agreed by both Parties.

### § 3

#### VALUE OF THE AGREEMENT AND PAYMENT

1. The Ordering Party shall pay a total remuneration in the amount of ..... **PLN/EUR net** (say: ..... **PLN/EUR net**) for the executed and picked-up Subject of the Agreement.
2. The amount of net remuneration shall be increased by an appropriate amount of VAT at the rate of 23%, which is a ..... gross or VAT tax due on the amount of remuneration, will be covered by the Ordering Party on the account of the relevant Tax Office in case a tax obligation of the Ordering Party occurs in accordance with the VAT tax regulations (\* *depending on the bid*).
3. The remuneration referred to in sec. 1 above shall be paid in parts, in the following manner:
  - 3.1 First payment up to the amount of **20%** of the remuneration referred to in sec. 1 above shall be paid after Ordering Party's acceptance of the X-ray microscope's design. This payment shall be made in the amount provided in the price calculation (appendix to the Contractor's bid);
  - 3.2 Second payment shall be the result calculated as the remuneration referred to in § 3(1), reduced by the first payment and will take place after the delivery of the Subject of the Agreement.
4. The payments shall be handled within 30 days as of the moment of receipt of a correctly issued invoice by the Ordering Party and signing the applicable handing over protocol of the subject of the Agreement (or its elements) by the Ordering Party (without remarks as a rule). In the event the invoice is delivered prior to the delivery of the subject hereof or in the event it will be impossible to determine the invoice delivery date. The payment date shall be counted as of the date of signing of the applicable handing over protocol by the Ordering Party.
5. The Ordering Party shall have the right to withhold the execution of the payment in total or in part in the event the delivered subject of the Agreement fails to meet the required technical parameters, if it was damaged in transit or failed to be delivered within due time.
6. The payment place shall be the bank of the Ordering Party. The effective date of payment shall be

- the date of transfer order submitted by the Ordering Party.
7. The remuneration payable to the Contractor shall be paid by bank transfer from the Ordering Party'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 2020, item 106, as amended). (*\*depending on the bid*).
  8. If the Contractor is registered as a VAT taxable person, the Ordering Party is entitled to 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 2020, item 106, 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. (*\* depending on the bid*).
  9. 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.
  10. The remuneration referred to in section (1) covers all payments due to the Contractor, including all license fees for third parties, packaging costs, safe transport, insurance, quality 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 for granting the intellectual property rights to the Ordering Party, including for granting the license to the Ordering Party, in each of the fields of exploitation stipulated in the Agreement, as well as granting to the Ordering Party derivative rights to the works to which the license is granted. The Contractor shall also be remunerated for transferring to the Ordering Party the ownership of the media carriers, on which the works to which the license is granted, have been recorded.

#### § 4 CONTACT PERSONS

1. The contact person for the purpose of the execution hereof from the side of the Contractor shall be ....., e-mail: ....., mobile: .....
2. The contact person on the side of the Ordering Party shall be: ....., e-mail: ....., mobile: .....
3. The Parties hereby authorize the hereinabove persons to make arrangements on their behalf under the Agreement which shall not constitute its change and to handle the receipts, including the signing of the handing over the protocol.

#### § 5 INVOICING

1. The Ordering Party shall be VAT payer and shall have NIP number (Tax Identification Number): PL 675-000-22-36.
2. The Contractor is not VAT payer within the territory of the Republic of Poland and shall have VAT register number: .....
3. **The Buyer specified in the invoice shall be:**  
**Uniwersytet Jagielloński**  
**ul. Gołębia 24, 31-007 Cracow**  
**NIP: PL 675-000-22-36.**
4. Invoices may be issued in writing and sent to the address indicated in **§ 8 of the Agreement**. The Ordering Party also allows electronic invoices to be issued.
5. 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: [zamowienia.synchrotron@uj.edu.pl](mailto:zamowienia.synchrotron@uj.edu.pl).

**§ 6**

**QUALITY WARRANTY**

1. The Contract shall undertake to deliver the subject hereof free of defects and faults.
2. The Contractor guarantees the qualities and characteristics stipulated in the technical specifications attached to the bid.
3. The Contractor shall ensure that the delivery of the subject hereof covered by the quality warranty for the period as of the date the delivery of the Subject of the Contract (NSRC Solaris, Czerwone Maki 98, Cracow) confirmed by the appropriate protocol to the lapse of **12 months**.
4. The Ordering Party may at any time request the Contractor to remove a fault or defect under the quality warranty. The Ordering Party 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 maintenance instructions delivered by the Contractor. The Ordering Party shall notify the Contractor without any unnecessary delay in one or several out of the following ways: in writing, by e-mail, phone or fax on any defects or faults 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 Ordering Party. Any repairs shall be made as soon as possible, and shall be provided by the Contractor, manufacturer (producer) or authorized maintenance centre at the cost and risk of the Contractor.
6. In case any of the elements were already repaired, the Ordering Party 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 warranty period is extended by the time during which the Ordering Party could not use the delivered subject hereof due to its defect (fault).
8. The Contractor declares and acknowledges that it understands that the Ordering Party is not an expert within the scope of the delivered subject of the Agreement, hence in the case of a defect (fault), any expenses related to the explanation of the reasons of its occurrence, 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.
9. The quality warranty does not cover:
  - a) decrease in the utility values of the subject of the Agreement resulting from normal wear and tear of elements i.e. objectives browning and scintillator ageing under X-Ray radiations,
  - b) deterioration by the Ordering Party or cases resulting from the gross negligence of the Ordering Party, including lack or off-grade maintenance or faulty use of the products being the subject of the Agreement.

**§ 7**

**THIRD PARTIES LIABILITY**

The Contractor shall be fully liable for the compensation of any personal or material damages, which may be formed in relation to third parties, caused by the Contractor in relation to and upon execution hereof.

**§ 8**

**CORRESPONDENCE**

1. Any correspondence between the Parties shall be made in writing or in electronic form (qualified electronic signature). The Parties also allow email correspondence by individuals specified in §4 of the Agreement and individuals entitled to represent the Parties (in accordance with the status of the institution, company register or other documents such as i.e. POA).
2. Any deliveries of the letters shall be made to the following addresses of the Parties:
  - a) Narodowe Centrum Promieniowania Synchrotronowego SOLARIS  
ul. Czerwone Maki 98  
30-392 Cracow  
and
  - b) .....

3. The Parties undertake to inform each other every time by a registered mail on the change of the correspondence address as specified in item 2, within 7 days as of the change, under the pain of acknowledging the correspondence to be effectively delivered to the present address.

## § 9

### ASSIGNMENT OF RIGHTS AND OBLIGATIONS

Any rights and obligations of the Contractor arising out of the Agreement shall not be assigned or in any other way transferred by him to any third parties without the prior consent of the Ordering Party in writing under the pain of being null and void. In particular, the Contractor shall not have the right to assign the obligations arising out of the Agreement to any third parties without the prior consent of the Contractor under the pain of being null and void.

## § 10

### CONTRACTUAL PENALTIES

1. The Ordering Party shall be liable to demand payment of the contractual penalties from the Contractor in case of the following:
  - a) delay in the delivery of the subject hereof of more than 4 weeks, in the amount of 0,5% of the net value of subject of the Agreement for each full week of the delay counting as of the delivery date in accordance with the Agreement (§2 item 1), yet not more than 8% of the total remuneration of the Contractor net as specified in §3 item 1. In the event of disclosure of any defects/faults during the course of the receipt of the subject hereof the contractual penalty stipulated in this letter **Błąd! Nie można odnaleźć źródła odwołania.** shall not apply, provided that the subject hereof (faulty) was delivered within the period not contributing to its accrual.
  - b) delay of more than 4 weeks in removing defects or faults ascertained during the acceptance and collection procedure in relation to the time limit agreed by both Parties in accordance with §2 item 7, in the amount of 1% of the net value of the defective part of the subject of the Agreement. This contractual penalty shall be calculated for each week of delay, but not more than 10% of the net value of the defective part of the subject of the Agreement.
  - c) violation of the provisions specified in §13 (Confidentiality) in the amount of 10 000 PLN (*or its equivalent in in the currency of the country where the seat the Contractor is premised*) net for each case of the violation.
2. The Contractor shall be entitled to request payment of a contractual penalty from the Ordering Party in the event of withdrawal from the Agreement by the Contractor or by the Ordering Party due to the exclusive fault of the Ordering Party not formed by the operation of force majeure, in the amount of 5% of the remuneration net as set forth in § 3 item 1 of the Agreement.
3. The Ordering Party shall have the right to deduct any possible contractual penalties from the remuneration of the Contractor and seek compensation on the general terms over the stipulated contractual penalties. Contractual penalties reserved above shall be calculated independently of one another (cumulatively), unless expressly stated otherwise.
4. Claim as regards the payment of contractual penalties shall become effective as of the day of occurrence of the calculation basis as specified in the Agreement.
5. Payment of contractual penalties shall not release the Contractor from liability of executing the Agreement.

## § 11

### WITHDRAWAL FROM THE AGREEMENT

1. Apart from the instances specified in the provisions of the Polish law, the Ordering Party shall have the right to withdraw from the Agreement within 30 days as of the moment of being noticed on the occurrence of one of the following circumstances:
  - a) being informed that the Contractor as a result of his insolvency fails to execute pecuniary liabilities for the period of at least 3 months,
  - b) liquidation of the Contractor will be initiated,
  - c) a warrant on the seizure of the Contractor's assets was issued,

- d) The Contractor is delayed in the delivery of the subject hereof for the period of more than 6 (six) weeks in relation to the period specified in §2 item 1 or with the removal of a repair of the subject hereof noticed upon the receipt, for the period of more than 6 (six) weeks in relation to the period agreed by both Parties in accordance with §2 item 7,
  - e) in the event of major financial problems of the Contractor, in particular debt collector seizures or other seizures handled by entitled entities of the total amount of more than PLN 200 000,00 (say: two hundred thousand Polish zloty) or equivalence of the amount in the currency of the country where the seat the Contractor is premised,
  - f) in the event being the subject of § 12 item 4.
2. Withdrawal from the Agreement shall be made in writing else being null and void and shall include the appropriate statement of grounds.
  3. Except the right to withdrawal from the Agreement in full, the Ordering Party reserves the right to withdraw from the Agreement only to the extent of its part indicated thereby, including the unexecuted part of it, retaining ownership and other rights of the remaining part of the subject of the Agreement. To the extent to which the Ordering Party did not withdraw from the Agreement, the provisions of the Agreement, in particular related to the payment and guarantee shall become effective.
  4. In the event of withdrawal from the Agreement, the Parties shall reserve the right to the enforcement of the contractual penalties.
  5. The Contractor shall not have the right to the compensation for the withdrawal from Agreement due to reasons on the side of the Contractor.

## **§ 12**

### **FORCE MAJEURE**

1. In the event of impossibility to execute obligations arising out of the subject-matter Agreement in relation to circumstances on which the Parties shall not have influence and which could not have been foreseen (force majeure), the Parties shall be released from mutual obligations, including an obligation for defects incurred and shall be entitled to change the dates of the Agreement's execution. As force majeure the Parties consider extraordinary causes beyond Party's reasonable control, which could not be predicted nor prevented, including but not limited to war, state of emergency, floods, fires or essential change of socio-economic environment. As force majeure the Parties also recognize the situation occurring on the day of conclusion of the Agreement related to the spread of coronavirus (COVID-19 disease) despite the fact that these are circumstances known to the Parties on the day of the conclusion of the Agreement. The Party may invoke this situation only if it cannot fulfill its contractual obligations through this situation and through no its own fault.
2. The provisions being the subject of item 1 shall be applied respectively if the execution of obligations arising out hereof is impossible as a result of the force majeure which has affected the subcontractors of the Contractor.
3. The Ordering Party may request the Contractor to provide appropriate documentation of the circumstances related to the occurrence of force majeure, including the coronavirus (COVID-19 disease), consisting in particular in indicating how it influenced the Contractor's or the Contractor's subcontractor's ability to perform the Contract.
4. If as a result of the operation of force majeure, the Agreement is not handled for a period of more than 4 weeks, each Party shall be entitled to a unilateral withdrawal from the Agreement without any consequences, by submitting an applicable declaration in writing to the second Party.
5. Each Party shall immediately inform the second Party on the formation of circumstances being the subject of item 1.

## **§ 13**

### **CONFIDENTIALITY**

1. In the event of being provided with any Confidential Information by the Disclosing Party, the Receiving Party 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 Disclosing Party aimed at ensuring confidentiality or which were handed over with the observance of confidentiality.

2. The Receiving Party shall undertake in particular to the following:
  - a) 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 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 Receiving Party shall be liable for any violations made by the entities;
  - b) not to make any copies of the Confidential Information provided by the Disclosing Party, 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 Disclosing Party and shall be labeled as: „confidential”, „reserved” or any similar inscription;
  - c) not to use the Confidential Information disclosed for any other purposes others than the ones stipulated for the execution hereof;
  - d) after the end of the execution hereof, the Receiving Party 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 Receiving Party 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.
3. The Receiving Party shall not be liable for the disclosure of Confidential Information which:
  - a) were given to public notice in a manner not constituting the violation of the Agreement,
  - b) are known to the Receiving Party from other sources, without the obligation of keeping them confidential and without violation of the Agreement,
  - c) were independently developed by the employees of the Receiving Party,
  - d) were disclosed to public notice based on the permit of the Disclosing Party in writing under the pain of being null and void.
4. The Receiving Party shall be liable to immediately inform the Disclosing Party in writing on any instance related to the following:
  - a) violation of obligation related to the confidentiality of Confidential Information;
  - b) suspicion on the possibility of disclosure, passing or unauthorized use of Confidential Information;
  - c) loss, theft or unauthorized damaging of the carriers, documents or other materials including Confidential Information.
5. Upon the request of the Disclosing Party, the Receiving Party shall immediately return or destroy and provide the Disclosing Party with an evidence of such destroy all materials, information and documentation constituting Confidential Information, yet not later than within 7 (seven) calendar days as of the request submission date.
6. 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 Receiving Party arises out of the provisions of law. In the event specified above, the Receiving Party shall be liable to disclose Confidential Information and immediately inform the Disclosing Party on the occurrence.

## **§ 14**

### **INTELLECTUAL PROPERTY**

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 Ordering Party.

3. The Contractor shall not be liable for violation of patents or copyright resulting from changes to the subject of the Agreement not approved by the Contractor.
4. In the case of works created or delivered hereunder, including but not limited to X-ray microscope layout design (hereinafter referred to as the "Works") even if they consist of a Confidential information of the Contractor (§13), the Contractor, as part of the remuneration, as of the date of accepting the Work by the Ordering Party, grants to the Ordering Party a non-exclusive, worldwide license to the Work in the following fields of exploitation:
  - a) with regard to recording and reproduction of the Works - production of copies of the Works by specific technique, including but not limited to printing, reprographic, magnetic recording, and digital technique;
  - b) with regard to trading in the original copy or copies on which the Works have been recorded - marketing, lending, or rental of the original copy or copies;
  - c) with regard to dissemination of the work in a manner other than stipulated in item (b) - 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, including but not limited to Internet or other informatic networks in any manner, system, standard and format, both when the recipient decides about the place and time of access and when he does not decide about the place and time of access, including in particular the use on websites or social networks, also any type of dissemination via mass media.
5. The license granted is perpetual. Its termination is possible after 10 years and for important reasons only. If the important reason is a violation the license terms by the Ordering Party, the Contractor shall previously request the Ordering Party to cease the infringement, setting the adequate time limit to do so. Termination period amounts 5 years. The license does not contain the right for Ordering Party to sublicense.
6. Upon granting the license to the Work, the Ordering Party may modify the Work in the scope depending on the Ordering Party's. The Parties agree, that the Ordering Party shall particularly have the right to use the Works in all purchasing procedures, including those under public procurement regime.
7. In case the Contractor provides the Ordering Party with software necessary for the proper utilization of the X-ray microscope, the Contractor will grant or transfer to the Ordering Party the license for such software, which shall be one of the "open source" licenses. The Ordering Party will use the software under the terms and conditions stipulated in such license.
8. The Contractor hereby grants its consent to the Ordering Party's ability to photograph the subject of the Agreement, in particular the devices, and to the use of photos for promotion of the Ordering Party and the NSRC SOLARIS in the press, radio, and television and on the Internet, especially on the website of the Ordering Party and the SOLARIS, and in social media of the Ordering Party and the SOLARIS.

## **§ 15 DISPUTES**

1. The Parties shall resolve disputes, which may arise in connection with the implementation of the Agreement, in an amicable way.
2. 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.
3. In matters not covered by this Agreement, provision of the Polish law shall apply, in particular the provisions of the CC and PPL. The Parties undergo the Polish courts competent for the seat of the Ordering Party.

**§16**

**SIGNING OF THE AGREEMENT**

1. The contract shall be concluded in writing or electronic form as provided below else being null and void.
2. Changes and supplements to this Agreement may be made exclusively in writing or electronic form else being null and void. The Agreement, changes and supplements to it must be signed by the duly authorized representatives of both the Ordering Party and the Contractor.
3. The Agreement has been drawn up in two equal counterparts in Polish and in English or in a form of electronic document bearing a qualified electronic signature of each Party. In case of any discrepancies between the language versions Polish version shall prevail.

.....  
***The Ordering Party***

.....  
***The Contractor***