Warszawa, 19.04.2016 r**.**

### STATEMENT No 4

The Commission on public procurement of Institute of Aviation informs about a questions received from Economic Operator to the tender procedure ref. No. 18/DE/Z/16. According to article 38 paragraph 1 of Public Procurement Law of 29 January 2004, the Contracting Authority answers as follows:

**Question 1**

§ 4 Documentation

We understand you require an exclusive license for the documentation (working and as-built) of the system.

For product liability reasons we cannot and will not grant a general license to our customers, allowing them to do whatever they want. The user manual has to be used as intended. It must not be used for other purposes, due to our product liability. Of course it can be used for internal purposes, such as test lab operating instructions, test protocols and information, but must not be published, changed, splitted, reduced or extended. In any case the intellectual property rights remain with us.

**Answer**

The Contracting Authority modifies § 4 of the contract in following way:

1. “The Economic Operator represents that he has the right to grant the Contracting Authority a non-exclusive license for the use of the software referred to in Appendix No 1 hereto (description of the object of the Contract
2. The Economic Operator represents that the performance of the Contract does not and will not breach third party intellectual property rights (in particular, patents, copyrights, trademarks) and that the software and documentation (working and as-built documentation) is not and will not be encumbered with any third party rights.
3. As of the date of acceptance of the software the Economic Operator grants the Contracting Authority a non-exclusive license for using the software to the extent necessary for its use in accordance with its purpose, including to the extent specified in Appendix No 1 hereto (description of the object of the Contract).
4. As of the date of acceptance of the documentation (working and as-built documentation) the Contracting Authority has the right to use the documentation for internal purposes necessary for the implementation of the project, ie. in the following areas:
	1. Laboratory instruction manuals preparation according to polish law regulations
	2. Test results documentation, in particular measurement chain credibility reports
	3. Training courses and information leaflets on laboratory operation
5. The Contracting Authority acquires the ownership of all copies on which the works referred to in section 4 have been fixated.
6. The software license granted to the Contracting Authority hereunder shall be limited to the territory of the Republic of Poland and shall be temporally unlimited. The Economic Operator undertakes not to exercise the right to terminate the license while the software is being used by the Contracting Authority, its legal successors or entities to which the software has been contributed as an asset, in particular, as an in-kind contribution.
7. In the event of third parties filing claims against the Contracting Authority for a breach of their copyrights the Economic Operator undertakes to satisfy them and release the Contracting Authority from the obligation to provide performances on this account.
8. In the event of third parties pursuing claims against the Contracting Authority for breach of their copyrights in court the Economic Operator undertakes to join the proceedings on the side of the Contracting Authority and take any and all steps aimed at releasing the Contracting Authority from participation in the case and to meet the costs of judicial proceedings.”

**Question 2**

§ 11 Liquidated damages Article 3

We will not accept liquidated damages with respect to warranty conditions. We will have a contract including warranty conditions and we will fulfill all necessary requirements, however, will not commit to liquidated damages on delays. The telemetry system is a customized system and, due to the individual production, we cannot foresee any and all possible reasons for a delay.

**Answer**

The Contracting Authority modifies § 11 article 3 of the contract in following way:

„In the event of a delay in eliminating defects of the object of the Contract by the Economic Operator (failure to meet the guarantee conditions), the Contracting Authority has the right to withdraw from the contract”.

**Question 3**

§ 11 Liquidated damages Article 4

We will have a good performance guarantee and therefore will not accept any additional liquidated damages.

**Answer**

The Contracting Authority modifies § 11 article 4 of the contract in following way:

„The Contracting Authority has the right to withdraw from the contract for reasons attributable to the Economic Operator, after unssuccesful call for proper execution of the contract with determined 30-day deadline.”