Translation from Polish

Procedure No 18/DE/Z/15

Appendix No 4 to the ToR

CONTRACT No ………../DE/Z/2016

entered into on …………………. 2016 in Warsaw by and between:

**Instytut Lotnictwa**, address: 02-256 Warszawa, Al. Krakowska 110/114, entered into the Register of Entrepreneurs kept by the District Court for the Capital City of Warsaw in Warsaw, 13th Commercial Division of the National Court Register, under number KRS 0000034960, REGON 000037374, NIP 525-000-84-94, hereinafter referred to as the **Contracting Authority,** represented by:

…………………………………………………………………………

and:

**….........,** with its registered office in …………………., entered into the Register of Entrepreneurs kept by the District Court in …………., ………. Commercial Division of the National Court Register, under number KRS ..............., REGON: …………….., NIP: ……….., hereinafter referred to as the **Economic Operator**,represented by:

**……………………………**

and jointly referred to as the **Parties**.

The Economic Operator has been chosen in a public procurement contract procedure in the form of an unrestricted tender (procedure No 18/DE/Z/156 under Article 39 of the Public Procurement Law Act of 29 January 2004 (Journal of Laws of 2015, item 2164, as amended).

**MATERIAL PROVISIONS OF THE CONTRACT**

1. **Object of the Contract** – delivery of a system for transmitting signals from rotating measuring instruments for a research laboratory.
2. **Remuneration** – on account of proper performance of the Contract the Economic Operator shall receive a total net remuneration of PLN **…….. plus VAT, i.e. PLN …… gross**, on the terms and conditions set forth in § 7 of the Contract.
3. **Contract delivery date** – within 40 weeks of the date of signing the Contract.

**§ 1.**

# OBJECT OF THE CONTRACT

1. The Contracting Authority orders and the Economic Operator undertakes to **deliver system for transmitting signals from rotating measuring instruments for a research laboratory.**
2. The Object of the Contract includes design, delivery of the system, participation in its installation, start-up, testing at the registered office of the Contracting Authority and training employees in its operation.
3. A detailed description of the Object of the Contract is contained in Appendix No 1 to the Contract – Description of the Object of the Contract (Appendix No 2 to the ToR).
4. The Economic Operator shall deliver the Object of the Contract on the basis of a schedule of design delivery, factory tests, deliveries and training approved by the Contracting Authority.
5. The Economic Operator shall deliver the system documentation defined in Appendix No 1 to the Contract.
6. At the system design preparation stage the Contracting Authority reserves the right to make successive changes in the design. However, such changes may not result in an increase of the remuneration due to the Economic Operator referred to in § 7 hereof.
7. The Economic Operator shall be obligated to submit to the Contracting Authority a copy of a third party liability insurance policy covering the activity connected with the Object of the Contract, valid for the entire term of the Contract and with the sum insured of at least PLN 2,500,000.00. The Economic Operator shall submit to the Contracting Authority a copy of the third party liability policy with a confirmation of the required payments within 3 days of the date of signing the Contract. In the event of the validity period of the policy being shorter (i.e. not covering the entire Contract performance period) the Economic Operator shall be obligated to ensure and document to the Contracting Authority the continuity of the third party liability policy as specified above. In the event of the Economic Operator failing to submit the required insurance policy on time the Contracting Authority shall have the right to withdraw from the Contract within 14 days of the date of occurrence of the aforesaid default.
8. Any and all work not covered by the Contract and performed by the Economic Operator without a written contract shall be treated as work performed by the Economic Operator at his expense (no remuneration shall be paid for such work).

**§ 2.**

# CONTRACT PERFORMANCE CONDITIONS

1. Place of delivery: registered office of the Contracting Authority, Al. Krakowska 110/114, 02-256 Warszawa. The Economic Operator shall be obligated to assemble the delivered equipment at a place designated by the Contracting Authority.
2. Contract performance deadline: within 40 weeks of the date of signing the Contract; delivery of the system by ………………… according to the choice of the Economic Operator indicated in the tender.
3. The Economic Operator represents that his has any and all qualifications, experience, material resources, equipment and human resources in the form of specialised employees necessary for the proper performance of the Contract and undertakes to perform it with utmost diligence which is customary in such relations.
4. The Economic Operator represents that the equipment is new and meets all legal standards applying to such equipment.
5. The Economic Operator shall be liable for the tasks outsourced to third parties as for his own actions or omissions.
6. The Economic Operator shall be obligated to provide the Contracting Authority at its request with any and all information regarding the delivery by the Economic Operator of the object of the Contract and allow the Contracting Authority to audit its correct performance at any stage. The Contracting Authority reserves the right to hold weekly meetings with the Economic Operator or in the form of teleconferences.
7. The Economic Operator shall be obligated to immediately inform the Contracting Authority in writing of any and all circumstances which may affect the performance of the Contract.
8. In the event of the occurrence of a situation which permanently or temporarily hampers or prevents the delivery of the object of the Contract the Economic Operator shall be obligated to immediately inform the Contracting Authority of this fact in writing at the address given in the Contract, no later than within 3 working days of the occurrence of the aforesaid situation.
9. The Contracting Authority shall not be liable for settlements between the Economic Operator and third parties engaged by him for the purpose of Contract performance.
10. The Economic Operator may not transfer his claims under this Contract to a third party without the consent of the Contracting Authority.
11. Subcontracting any part of the contract shall not change the obligations of the Economic Operator towards the Contracting Authority for the delivery of that part of the Contract.
12. The Economic Operator shall be liable for the actions and omissions of his subcontractors as for his own actions and omissions.

**§ 3.**

**NON-DISCLOSURE CLAUSE**

1. The Parties undertake to keep confidential any and all information regarding the other Party and the object of this Contract obtained in connection with its performance, and in particular:
	1. to keep confidential information constituting business secrets within the meaning of Article 11 section 4 of the Act on Combating Unfair Competition,
	2. not to copy, reproduce or otherwise distribute information received from the other Party, except cases where this is necessary for the purpose of Contract performance,
	3. to observe personal data protection regulations in force.
2. Any and all materials submitted to the Economic Operator by the Contracting Authority in connection with the delivery of the object of the Contract, as well as resulting from its performance (written, graphic, recorded electronically or otherwise) shall be confidential and may not be disclose to a third party or otherwise disclosed without the prior written consent of the Contracting Authority, except if this is necessary for the purpose of Contract performance.
3. The Parties shall be liable for the observance of confidentiality, as referred to in section 1, by all third parties used by them in the course of Contract performance.
4. The Parties shall be released from the non-disclosure clause, if the information covered by this clause:
5. was publicly known on the day of disclosure without culpable contribution of the Parties to its disclosure;
6. must be disclosed in accordance with legal regulations or decisions of the courts or competent State authorities;
7. must be disclosed for the purpose of Contract performance, and the Economic Operator has obtained the consent of the Contracting Authority to its disclosure.
8. Disclosing the fact of the conclusion of this Contract to third parties or providing the confidential information to the associates of the Economic Operator performing this Contract shall not constitute a breach of this non-disclosure clause, provided such associates have been obligated by the Economic Operator to keep information confidential to the extent specified in this Contract.

**§ 4.**

**SOFTWARE, DOCUMENTATION - LICENSE**

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) and an exclusive license for the documentation (working and as-built documentation) elaborated for the purpose of Contract performance.
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 Economic Operator grants the Contracting Authority an exclusive license for the documentation referred to in section 1 in all areas of exploitation known at the time of conclusion of this Contract, and in particular:
	* + - 1. with regard to fixating and reproducing works – production by a specified technique of copies of the work, including by printing, reprographic technique, magnetic recording and digital technology;
				2. with regard to marketing the original or copies used for fixating the work – marketing, lending for use or hire or the original or copies;
				3. with regard to dissemination of the work in a manner other than described in clause 2 – public performance, staging, screening, replay and broadcasting and re-broadcasting and making the work available to the public so that everybody can have access to it at a place and time chosen by them, including entering in the Internet and allowing recording and displaying on request and entering in the memory of servers and computers.
5. The Contracting Authority shall be authorised to make the necessary changes and modifications in the works referred to in section 4 resulting from the manner of their use (e.g.: typesetting or editorial compilation). The Contracting Authority shall also be authorised to create compilations of the work, including its further versions and the Economic Operator grants a permission for using and disposing of such compilations without any restrictions.
6. Upon the granting of the exclusive license for the documentation the exclusive right to consent to exercising derivative copyright shall pass to the Contracting Authority.
7. The Contracting Authority acquires the ownership of all copies on which the works referred to in section 4 have been fixated.
8. The software and documentation 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.
9. 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.
10. 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.

**§ 5.**

**PERSONS RESPONSIBLE FOR THE CORRECT PERFORMANCE OF THE CONTRACT**

1. The persons responsible for the correct performance of the Contract are:
	1. On the side of the Contracting Authority: …………………………….
	2. On the side of the Economic Operator: ………………………………..
2. A change of the aforesaid persons shall require notifying the other Party but shall not require an annexe hereto.
3. The persons listed in section 1 shall be responsible for the substantive and formal acceptance of the object of the Contract.

**§ 6.**

**TERMS AND CONDITIONS OF GUARANTEE AND TECHNICAL SUPPORT**

1. The Contracting Authority requires the Economic Operator to grant a guarantee for the entire object of the Contract for a period of……………… .
2. If the software, equipment/materials turn out to be defective during the guarantee period the Economic Operator shall be obligated to repair them or replace with new software, equipment/materials free of defects and with identical parameters.
3. In the event of ascertaining defects of the software medium during the guarantee period the Economic Operator shall be obligated to replace such medium with a medium free from defects at his expense within 7 days of the date of submission of a written complaint.
4. Each repair carried out under the guarantee shall extend the guarantee by the duration of such repair. The response time shall be no more than 48 hours of the working day following the day on which the Economic Operator was informed of the defect and its type.
5. The defect elimination time or the repair time shall not be longer than 30 calendar days of the date of filing the defect notice. If the aforesaid time exceeds 30 days the Contracting Authority requires installation of a replacement device with parameters no worse than those of the device being replaced.
6. Defects may be reported by e-mail or by completing the defect notice form on the technical suport portal of the Economic Operator (if the Economic Operator has such a portal).

**§ 7.**

# PRICES AND PAYMENT TERMS

1. In return for the correct performance of the object of the Contract the Contracting Authority shall pay the Economic Operator a consideration of PLN ……………. net and the VAT, i.e. PLN …………… gross.
2. The consideration referred to in this section constitutes the entire consideration due to the Economic Operator on account of the performance of this Contract and includes the delivery, transport protection and any and all due customs duties and taxes and other public levies, transfer by the Economic Operator to the Contracting Authority of any and all rights pertaining to the works created in the course of Contract performance, in particular the licenses in all areas of exploitation listed in § 4, the right to exercise the derivative copyright, the right to consent to exercising the derivative copyright and the ownership of the medium on which the works are recorded.
3. The consideration referred to in section 1 shall be paid in three tranches in accordance with the following schedule:
4. after the delivery of the design and its acceptance by the Contracting Authority, 30% of the value of the object of the Contract,
5. after completing the FAT tests, 65% of the value of the object of the Contract,
6. after completing the SAT tests, 5% of the value of the object of the Contract,
7. Payment shall be made on the basis of a partial acceptance report within 30 calendar days of the date of receipt of a duly issued VAT invoice, by transfer into the account of the Economic Operator given in the invoice.
8. Each invoice shall be issued on the basis of the acceptance report referred to in § 13 section 5 of the Contract, signed by persons authorised to act for the Contracting Authority and the Economic Operator.
9. The day on which the bank account of the Contracting Authority is debited shall be deemed as being the payment date.

§ 8.

OBLIGATIONS OF THE Contracting Authority

1. The Contracting Authority undertakes to pay on time the consideration due to the Economic Operator as specified in § 7 hereof.
2. The Contracting Authority undertakes to make available to the Economic Operator at his request the information required for the performance of this Contract, in particular, to provide feedback regarding the correctness of changes made and to endorse each change in writing within 5 working days of the working day following the day of receipt of a notice of the changes and undertakes to perform other obligations resulting from the Contract.

**§ 9.**

**OBLIGATIONS OF THE Economic Operator**

1. The Economic Operator undertakes to deliver the object of the Contract with due diligence, in accordance with legal regulations in force.
2. The Economic Operator shall be liable for the quality and timeliness of the delivery of the object of the Contract.
3. The Economic Operator shall be liable for the actions and omissions of persons he uses to perform the Contract as for his own actions and omissions.
4. The Economic Operator shall be obligated to inform the Contracting Authority of all events which affect or may affect the delivery of the object of the Contract, including institution of enforcement, reorganisation, liquidation or other proceedings in respect of the Economic Operator.

**§ 10.**

**GOOD PERFORMANCE GUARANTEE**

Upon the conclusion of this Contract the Economic Operator shall present a good performance guarantee in the form of …………………….. equal to 10% of the consideration due to the Economic Operator referred to in § 7 section 1 hereof.

The good performance guarantee is provided to satisfy claims for non-performance or undue performance of the Contract.

The guarantee shall be returns pursuant to the provisions of Article 151 of the PPL Act.

**§ 11.**

# LIQUIDATED DAMAGES AND COMPENSATIONS

1. In the event of a delay in delivering the object of the Contract the Contracting Authority may impose upon the Economic Operator liquidated damages of 0.2% of the gross consideration specified in § 7 section 1 hereof for each day of such delay.
2. If the delay in delivering the object of the Contract referred to in section 1 exceeds 7 calendar days, the Contracting Authority shall have the right to withdraw from the Contract by fault of the Economic Operator within 30 days of the date of the occurrence of the aforesaid situation.
3. 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 may impose upon the Economic Operator liquidated damages of 0.2% of the gross consideration specified in § 7 section 1 hereof for each day of such delay.
4. In the event of the Contracting Authority withdrawing from the Contract for reasons attributable to the Economic Operator the Economic Operator shall pay the Contracting Authority liquidated damages equal to 20% of the gross consideration specified in § 7 section 1 hereof.
5. The withdrawal notice must be made in writing and contain grounds.
6. In the event of a breach of the confidentiality obligations referred to in § 3 by the Economic Operator or his employees, consultants, advisers, subcontractors or other persons used by him to perform the Contract, the Economic Operator shall pay the Contracting Authority liquidated damages equal to 2% of the gross consideration specified in § 7 section 1 hereof for each case of breach.
7. Payment of liquidated damages shall not preclude the Parties from seeking compensation in line with general principles exceeding the amount of liquidated damages if the liquidated damages are insufficient to cover the damage suffered by the Party.
8. The liability of the Economic Operator shall be excluded to the extent to which the Contracting Authority uses the object of the Contract not in accordance with its purpose.
9. In the event of the Economic Operator committing a gross breach of the Contract and fails to remedy such breach within 14 (fourteen) working days of the date of receipt from the other Party of a written demand to do so the Contracting Authority shall have the right to terminate the Contract with immediate effect. Termination must be made in writing, otherwise being null and void.
10. Liquidated damages shall be offset against the consideration due to the Economic Operator.

**§ 12.**

**FORCE MAJEURE**

1. Neither Party shall be liable for non-performance or undue performance of the obligations resulting from the Contract if this is due to force majeure understood as an objective, external event having no source within the enterprise, impossible to predict, unexpected, the results of which cannot be foreseen or prevented, which occurred despite exercising due diligence aimed at proper provision of a performance.
2. The Party citing the occurrence of the obstacle referred to in section 1 shall be obligated to notify the other Party as soon as possible after the occurrence of the obstacle and after receiving information on the effect of the obstacle upon its ability to perform the contractual obligations. The Party shall also be obligated to notify the other Party of the cessation of the obstacle referred to in section 1.
3. The cause of the release from liability mentioned in section 1 shall be effective as of the occurrence of the event. The Party failing to notify the other Party of the event shall be liable for the damage suffered by the other Party which could have been avoided by giving notice on time.
4. The cause of the release from liability mentioned in section 1 shall release the Party failing to pay compensation, liquidated damages and other indemnities for as long as the reasons for the release from liability exist and proportionately to the degree to which the existence of these reasons actually prevents the full performance of the contractual obligations of the Party.
5. The cause of the release from liability mentioned in section 1 shall extend the Contract performance period by the period in which the delivery of the object of the Contract was impossible due to force majeure, thus excluding the right of the other Party to withdraw from the Contract, subject to section 6 below. Estimating a justified period it is necessary to take into account the ability of the Party not providing the performance to recommence the performance of the Contract and the interest of the other Party in receiving this performance despite the delay. While waiting for the resumption of Contract performance by the Party which has stopped this performance the other Party may suspend the performance of its obligations.
6. If the cause of the release from liability mentioned in section 1 lasts in excess of three months each Party may terminate the Contract with immediate effect.

§ 13.

ACCEPTANCE OF THE OBJECT OF THE CONTRACT – ACCEPTANCE REPORT

1. The Economic Operator shall be obligated to notify the Contracting Authority in writing of having delivered the object of the Contract or its part and present duly authorised representatives of the Contracting Authority with documents attesting to the completion of the work no later than on the day on which the Contract performance deadline lapses in accordance with § 2 section 2.
2. The written form specified in section 1 shall be observed if the representation on the completion of the work is sent to the registered office of the Contracting Authority by e-mail. The Contracting Authority shall be obligated to immediately confirm the receipt of the representation of the Economic Operator sent by e-mail.
3. The acceptance of the object of the Contract shall take place at the registered office of the Contracting Authority and shall be effected by an acceptance commission made up of the representatives of the Economic Operator and the Contracting Authority (at least one duly authorised person representing each Party), within 5 working days of the date on which the Economic Operator informed of the readiness for acceptance, pursuant to sections 4–6.
4. The acceptance of the object of the Contract shall be effected in the form of an acceptance report. In the event of disputes regarding the quality and scope of the work performed, the Parties shall draw up a record of divergences.
5. Acceptance reports drawn up and signed in accordance with the preceding sections shall constitute proof of the correct and complete performance of the work and the basis for issuing an invoice for this work.
6. In the event of signing a record of divergences the Parties shall commence the elimination of the defects and objections specified in the record. After completing the aforesaid additional work the acceptance procedure described in this paragraph shall be repeated.

**§ 14.**

**AMENDMENTS TO THE PUBLIC PROCUREMENT CONTRACT**

1. Pursuant to Article 144 section 1 of the Act, the Contracting Authority provides for amendments to the public procurement contract:
2. if it is necessary to change the contract performance deadlines specified in the public procurement contract caused by objective factors resulting from the needs of the Contracting Authority or factors not controlled by the Economic Operator, as a result of which the delivery of the object of the contract is not possible within the aforesaid deadlines, with a proviso that the consideration due to the Economic Operator is not changed,
3. in the event of a change of the conditions and manner of payment of the consideration – without increasing the consideration due to the Economic Operator,
4. if it is possible to use newer and better technological or technical solutions than those existing at the time of signing the contract, without changing the consideration due to the Economic Operator. Solutions better addressing the issue of costs or usability shall be considered more advantageous for the Contracting Authority.
5. in the event of changes in the technology or parameters characteristic for a given component of the object of the Contract, made at the request of the Economic Operator, approved by the Contracting Authority, with a proviso that this does not result in a change of the consideration due to the Economic Operator hereunder and that such change of technology or parameters does not impair the quality of the object of the Contract,
6. in the event of changes in mandatory legal regulations to an extent affecting the cost of delivering the object of the Contract, i.e. changes regarding: the rate of the goods and services tax (VAT), the minimum pay set under Article 2 sections 3-5 of the Minimum Pay Act of 10 October 2002 (Journal of Laws of 2002, No 16, item 1679, as amended), social or health insurance rules or the amount of the social or health insurance contribution.
7. Changes specified in section 1 clause 5 above shall require the Economic Operator to submit a written request to the Contracting Authority and shall come into force on the day of signing an annexe to the Contract by the Parties, with a proviso that the parties shall endeavour to sign the annexe no later than within 7 days of the request submitted by the Economic Operator.

**§ 15.**

**OTHER PROVISIONS**

1. All amendments to this Contract, as well as any and all notices, queries or information pertaining to or resulting from the delivery of the object of the Contract must be made in writing, otherwise being null and void.
2. The Parties shall endeavour to amicably resolve any disputes which may arise in connection with the Contract.
3. If no agreement can be reached, the dispute shall be referred to a common court of law with jurisdiction over the registered office of the Contracting Authority.
4. To the extent determined by mandatory legal regulations, invalidity of any of the provisions of the Contract (including provisions of the Appendices hereto) shall not affect the validity of the remaining provisions of the Contract. In the event of some of the provisions of the Contract being declared invalid the Parties shall endeavour to replace such invalid provisions with provisions having the same economic effect.
5. The persons signing this Contract for and on behalf of the Parties represent that they are duly authorised to make declarations of will and contract obligations for them.
6. In matters not regulated by this Contract provisions of the Civil Code and the Copyright and Neighbouring Rights Act shall apply.
7. The Contract is executed in two identical counterparts, one for each Party.

**Contracting Authority: Economic Operator:**