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Kraków, 14<sup>th</sup> April 2023

**TERMS OF REFERENCE**  
**(hereafter referred to as ToR)**

**Chapter I - Name (company name) and address of the Contracting Authority.**

1. Jagiellonian University, ul. Gołębia 24, 31-007 Kraków.
2. Unit conducting the case:
  - 2.1 Public Procurement Department, ul. Straszewskiego 25/3 and 4, 31-113 Kraków; tel.: +4812 663-39-03;
  - 2.2 office hours: Monday to Friday; 07:30 to 15:30, excluding public holidays;
  - 2.3 website (url): <https://www.uj.edu.pl/>
  - 2.4 commercial tool for conducting the proceedings: <https://platformazakupowa.pl>
  - 2.5 address of the website of the proceedings where changes to and clarifications of the content of the ToR and other procurement documents directly related to the proceedings will be provided (address of the buyer's profile): [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu)
3. The proceedings are conducted by a tender board appointed to conduct these public procurement award proceedings.

**Chapter II – Type of the procurement procedure.**

1. The proceedings are conducted by way of open tender, in accordance with Article 132 of the Act of 11 September 2019 – Public Procurement Law (consolidated text Journal of Laws of 2022, item 1710, as amended), hereinafter referred to as the PPL, and in accordance with the requirements set out in these Terms of Reference, hereinafter referred to as the "ToR".
2. The activities undertaken by the Contracting Authority and Contractors during the procurement procedure shall be governed by the provisions of the aforementioned PPL and executive acts issued on its basis, and in cases not regulated thereby – by the Act of 23 April 1964 – the Civil Code consolidated text Journal of Laws 2020, item 1740 as amended).
3. The proceedings are conducted by a tender board appointed to conduct these public procurement award proceedings.

**Chapter III – Description of the subject-matter of the contract.**

1. The subject of the contract is the delivery of wiggler for the Solcrys beamline at National Synchrotron Radiation Centre SOLARIS (hereinafter NSRC SOLARIS), located in Krakow (30-392), Czerwone Maki 98.
  - 1.1. The scope of the contract includes, in particular, the design of the wiggler, FAT tests of the manufactured device, delivery, installation of the wiggler along with the SAT tests and training of NSRC SOLARIS employees in the use of the delivered device (maximum 5 people) during the SAT tests in accordance with Appendix A to ToR and the template of the contractual provisions (the agreement template).
  - 1.2. The 3PW should include all necessary components such as complete magnet structure, mechanical support system, control, monitoring and interlock system with all necessary

- instrumentation, software and documentation in order to ensure proper and reliable operation of the 3PW systems.
2. A detailed description of the subject-matter of the contract with an indication of the minimum technical and functional parameters is provided in the Appendix A to the ToR.
  3. **General requirements for the entire contract:**
    - 3.1. The Contractor must offer the subject of the contract in accordance with the requirements of the Contracting Authority specified in the ToR and in the agreement's template which (Appendix A to the ToR).
    - 3.2. The tender must be explicit and comprehensive, i.e. it must cover the entire scope of the subject of the contract.
    - 3.3. The Contractor must offer the subject of the contract in accordance with the requirements of the Contracting Authority specified in the ToR.
    - 3.4. The scope of the order covers the installation and commissioning of the ordered device at the following address: Czerwone Maki Street 98, 30-392 Krakow, Poland.
    - 3.5. The Contractor shall offer a guarantee (at least 12 months) and support at least at the minimum level and conditions indicated in Annex A to the SWZ and in the draft provisions of the contract (in the contract template).
    - 3.6. The Contractor must offer a guarantee and support at least at the minimum level and conditions indicated in the Appendix A to the ToR and in the draft provisions of the contract (the agreement's template).
  4. Submission of equivalent tenders - the subject of the contract has been described in a precise and understandable manner, without indicating trademarks, patents or origin, source or specific process that characterizes the products supplied by a specific contractor.
    - 4.1. If the provisions of the ToR indicate proper names, trademarks, patents or origin, source or specific process etc., these provisions should be understood as the criterion used to assess the equivalence is the fulfillment of at least the same features, technical and functional parameters. Therefore, it is clearly emphasized that names, trademarks, patents or provenances are accompanied by "or equivalent".
    - 4.2. The term "equivalence" shall be understood as offering devices with:
      - 4.2.1. at least the same characteristics (i.e. functional and operational properties) as stated in the Appendix A to the ToR and
      - 4.2.2. the technical parameters at a level at least as indicated by the Contracting Authority (in this respect, the Contracting Authority also allows better solutions than those described by it, in particular those resulting from the modernization of the technological production line).
    - 4.3. Each Contractor submitting an equivalent offer is obliged to demonstrate in the content of the submitted offer that the subject of the contract offered by him meets the requirements and technical and/or functional-utility parameters specified in the ToR, or provides better solutions than those described.
  5. Designation of the subject of the order according to the code of the Common Procurement Vocabulary: 38540000-0 – *devices for testing and measuring*.

#### **Chapter IV – Qualitative evidence**

1. The Contracting Authority requires the following qualitative evidence to be submitted along with the bid:
  - 1.1. Technical descriptions allowing for the assessment of the compliance of the offered devices and their parameters with the requirements of the ToR. The Contracting Authority allows the submission of the above-mentioned evidence in English.  
The above-mentioned descriptions must be signed with a qualified electronic signature, in accordance with the provisions of the ToR.
2. If the solutions proposed by the Contractor meet the requirements specified in the description of the subject of the contract in equivalent manner, the Contractor must prove in the bid, in particular by submitting the qualitative evidence that the offered deliveries meet the requirements, characteristics or criteria specified by the Contracting Authority.

3. If the Contractor has not submitted the evidence or the submitted evidence is incomplete, the Contracting Authority calls for its submission or supplementation within the specified time, not less than two (2) business days. The above does not apply to the qualitative evidence confirming the equivalence, which must be submitted together with the bid.
4. The provision of sec. 3 shall not apply if the evidence is used to confirm compliance with the features or criteria set out in the description of the tender's evaluation criteria or, despite the submission of the evidence, the bid is rejected or there are grounds for annulling the procedure.
5. The Contracting Authority may request the Contractors to provide explanations regarding the content of the qualitative evidence.

#### **Chapter V – The term of the contract's execution**

1. The subject of the contract shall be performed within **17 months** from the date of award of the contract, i.e. from the conclusion of the contract, in accordance with the following time limits:  
**Phase I:** the construction design of the wiggler in accordance with the Appendix A to within 2 months from the date of awarding the contract, i.e. from the conclusion of the contract,  
**Phase II:** manufacturing, conducting FAT tests, delivery to the Contracting Authority's unit (NCPS SOLARIS, Czerwone Maki 98, 30-392 Krakow) up to 15 months from the agreement signing date.  
**Phase III:** installation, SAT tests, commissioning the device and conducting training in the use of the equipment for employees of the Jagiellonian University up to 17 months from the agreement signing date.
2. The Contractor shall ensure readiness to perform the contract on the day of conclusion of the contract.

#### **Chapter VI – Description of the conditions for participation in the tender proceedings.**

1. Trading capacity - the Contracting Authority does not impose any condition in this respect.
2. Authorisation to pursue specific commercial or professional activities, if it results from separate regulations – the Contracting Authority does not impose any condition in this respect.
3. Economic or financial standing – the Contracting Authority does not impose any condition in this respect.
4. Technical or professional capacity – only those Contractors may apply for awarding the contract, who will demonstrate that: in the last 3 years prior to the lapse of the time limit for submission of bids, and if the period of conducting their business activity is shorter – during this period, they have duly completed at least one (1) executed contract which covers the design and the delivery of (including SAT tests) of at least one with a magnetic field induction of at least 3 Tesla with a contract value of not less than EUR 350 000,00 net (in words: three hundred and fifty thousand 00/100 euro).
5. The Contracting Authority shall verify and evaluate the conditions for participation in the tender proceedings on the basis of statements and documents submitted by the Contractors participating in the tender proceedings, in accordance with the manner and form referred to in this ToR.
6. For the conversion into EUR of the value indicated in the documents submitted to confirm the fulfillment of the conditions for participation in the tender proceedings, expressed in currencies other than EUR, the Contracting Authority shall use the average exchange rate published by the National Bank of Poland for this currency on the date of the announcement of the tender proceeding.
7. With regard to the conditions regarding education, professional qualifications or experience the Contractor may rely on the capabilities of the entities providing resources, if these entities perform the services for which these capabilities are required.
8. The Contractor who relies on the capacity or the situation of the other entities providing the resources, shall submit, along with the bid, the statement of such other entity to provide the Contractor with the necessary resources for the purposes of implementing the contract, or other subjective evidence confirming that the Contractor, when performing the contract occur, will have the needed resources of these entities.
9. When assessing the technical or professional capacity, the Contracting Authority may, at any stage of the tender proceedings, conclude that the Contractor does not have the required abilities, if the Contractors' conflicting interests, in particular the involvement of the Contractor's technical or

professional resources in other economic undertakings may have a negative impact on execution of the awarded contract.

#### **Chapter VII – Grounds for exclusion of Contractors.**

1. The Contracting Authority shall exclude from the procedure a Contractor in the event of any of the circumstances:
  - 1.1. referred to in Article 108(1) of the PPL, subject to the provisions of Article 110 sec. 2 of the PPL;
  - 1.2. a contractor against whom the conditions described in Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835);
  - 1.3. Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111, 8.4.2022, p. 1) – further as „the Sanctions Regulation”;
  - 1.4. In the event that the subcontractor or supplier accounts for more than 10% of the contract value, the Contracting Authority shall verify the entity in the absence of grounds for exclusion according to Article 5k of the Sanctions Regulation.
2. Pursuant to Article 109(1) of the PPL, the Contracting Authority shall exclude from the procedure the Contractor:
  - 2.1 who has breached the obligations relating to the payment of taxes, levies or social or health insurance contributions, except in the case referred to in Article 108(1)(3) of the PPL, unless the Contractor has paid taxes, levies or social or health contributions due, including interest or fines, or has entered into a binding arrangement with a view to paying the claims, as appropriate, before the expiry of the time limit for submission of tenders (Article 109 sec. 1.1. PPL Act);
  - 2.2 who is the subject of winding-up or insolvency proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the legislation of the place where this procedure is initiated (Article 109 sec. 1.4. PPL Act);
  - 2.3 being guilty of grave professional misconduct, which renders its integrity questionable; in particular where the Contractor, as a result of intentional action or gross negligence failed to perform or unduly performed the contract, what the Contracting Authority can demonstrate by means of relevant evidence (Article 109 sec.1.5 PPL Act);
  - 2.4 who, for reasons attributable thereto, to a large degree or extent, has failed to perform or has persistently unduly performed a material requirement under a prior public contract or concession contract, what led to early termination or withdrawal from the prior contract, compensation, substitute performance or exercise of rights under the implied warranty for defects (Article 109 sec. 1.7. PPL Act);
  - 2.5 who, as a result of deliberate action or gross negligence, has been guilty of serious misrepresentation in providing the Contracting Authority with information on absence of grounds for exclusion or on the fulfilment of the participation conditions or selection criteria, what might have a material influence on the decisions made by the Contracting Authority in the procurement procedure, or has withheld such information or is not able to submit the required qualitative evidence (Article 109 sec. 1.8 PPL Act);
  - 2.6 who has unlawfully influenced or has attempted to influence the activities of the Contracting Authority, has attempted to obtain or has obtained confidential information that may confer upon it advantages in the procurement procedure (Article 109 sec. 1.9 PPL Act);
  - 2.7 who, as a result of recklessness or negligence, has provided misleading information, what might have a material influence on the decisions taken by Contracting Authority in the procurement procedure (Article 109 sec. 1.10 PPL Act).

3. In the cases, referred to section 2 (1)-(4), the Contracting Authority is not required to exclude an Contractor if such exclusion would be clearly disproportionate, in particular if the amounts of overdue taxes or social insurance contributions are minor or the economic or financial standing of the Contractor, referred to in section 2(2) is sufficient to perform the contract.

### **Chapter VIII – List of statements and documents to be provided by Contractors to confirm the fulfilment of the conditions for participation in the procedure and absence of grounds for exclusion.**

#### 1. Mandatory statements submitted with the offer:

1.1. In order to confirm the fulfilment of the conditions for participation in the procedure and there being no grounds for excluding the Contractor from the public procurement proceedings in the circumstances referred to in Chapter VII of the ToR, the Contractor must enclose with the bid a declaration - a single document (ESPD), the template of which is attached as Appendix no 1 to the bid form. To supplement the statement in the form of ESPD, it should be downloaded from the website [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu), saved on the hard disk, and then imported and completed via the ESPD service available at: <http://espd.uzp.gov.pl>. The completed ESPD should be signed with a qualified electronic signature. The ESPD does not archive files. The Awarding Authority informs that on the website of the Public Procurement Office: [https://www.uzp.gov.pl/\\_data/assets/pdf\\_file/0015/32415/Jednolity-Europejski-Dokument-Zamowienia-instrukcja.pdf](https://www.uzp.gov.pl/_data/assets/pdf_file/0015/32415/Jednolity-Europejski-Dokument-Zamowienia-instrukcja.pdf) the instruction for completing the European Single Procurement Document is available (in Polish).

***The Contracting Authority emphasizes that the Single European Procurement Document (ESPD) shall be in electronic form with a qualified electronic signature.***

1.2. In order to confirm there being no additional grounds for excluding the Contractor from the public procurement proceedings the Contractor must enclose with the bid a statement of non-exclusion on the basis of Article 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835);

1.3. In order to confirm there being no additional grounds for excluding the Contractor from the public procurement proceedings the Contractor must enclose with the bid a statement of non-exclusion on the basis of Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111, 8.4.2022, p. 1);

#### 2. Additional statements, which shall be submitted along with the bid:

2.1. In the case of joint bidding by contractors the European Single Procurement Document (ESPD) mentioned in sec. 1.1 above and the statements indicated in sec. 1.2 and 1.3 above shall be submitted by each of the contractors jointly applying for the contract. In this case, ***the European Single Procurement Document (ESPD) shall be submitted in electronic form (a separate file for each contractor appearing jointly) with a qualified electronic signature issued for each contractor.***

2.2. Contractors jointly applying for the award of a contract shall attach to their bid a statement from which it is clear which construction works, supplies or services will be performed by each of the Contractors.

2.3. The Contractor relying on the technical or professional capacity of the other entities, shall submit along with the bid:

2.3.1. the European Single Procurement Document (ESPD) of the other entity and the statements indicated in the sec. 1.2 and 1.3 in order to demonstrate the lack of grounds for exclusion in relations to such entities and fulfillment - as far as it refers to the resources thereof – of terms & conditions for participation in the proceedings,

2.3.2. the statement of such other entity to provide the Contractor with the necessary resources for the purposes of implementing the contract, or other subjective evidence confirming that the Contractor, when performing the contract occur, will have the needed resources

- of these entities. The content of the commitment shall confirm that the relationship between the Contractor and the entities providing access to resources guarantees actual access to these resources and indicates in particular:
- a) the scope of the commitment of such other entity, s
  - b) the manner and period of the availability to the contractor of the resources of the entity providing the resources while performance of the contract;
  - c) whether and to what extent the entity providing resources, whose capabilities the Contractor relies on in relation to the conditions for participation in the tender proceedings regarding education, professional qualifications or experience, would perform the services to which the indicated capabilities relate
3. Documents and statements submitted by the Contractor at the request of the Contracting authority - applies to the Contractor whose bid has been evaluated as the most advantageous.
- 3.1. Prior to awarding the contract, the Awarding Authority will call the Contractor whose bid has received the highest result, to submit the following statements or documents (valid as at the date of submission) within the prescribed period, not shorter than 10 days:
- 3.1.1. a list itemizing contracts confirming the fulfilment of the condition of participation in the proceedings indicated in chapter VI sec. 4.1 of the ToR together with information on the type of implemented contracts and their scope, dates of implementation and entities for whom deliveries have been or are being performed and their values;
  - 3.1.2. the evidence specifying whether the contracts included in the list of completed contracts have been carried out properly, in particular whether the deliveries along with the works have been properly completed. The evidence shall be relevant references or other documents issued by the entity for which the delivery was made, and if, for a justified reason of an objective nature the Contractor is unable to obtain these documents – other proper documents;
  - 3.1.3. Information from the National Criminal Register in the scope specified in Article 108 Paragraph 1 point 1), 2) of the PPL Act and in Article 108 Paragraph 1 point 4) of the PPL Act, regarding the ruling of a ban on applying for a public contract as a criminal measure - prepared no earlier than 6 months before its submission;
  - 3.1.4. Statement of the Contractor in scope of Article 108 sec. 1.5 regarding non belonging to the same capital group, within the meaning of the Act of 16 February 2007 on competition and consumer protection (consolidated text: the Official Journal of Laws of 2020 item 1076 and 1086 as further amended) with other Contractor who submit the bid, the partial bid or statement regarding the belonging to the same capital group together with the documents or information confirming preparing the bid or the partial bid independent to the other Contractor belonging to the same capital group;
  - 3.1.5. a certificate from the competent head of the tax office confirming that the Contractor is not in arrears with the payment of taxes and fees, in the scope of Art. 109 sec. 1 item 1 of the PPL Act, issued not earlier than 3 months before the deadline for submission of bids. In the case of arrears with the payment of taxes or fees, together with a certificate, the Contracting Authority requests the submission of documents confirming that, respectively, before the deadline for submitting requests to participate in the procedure or before the deadline for submitting of the bids, the Contractor has paid the taxes or fees due, together with interest or fines, or has entered into a binding agreement on the repayment of these amounts;
  - 3.1.6. a certificate or other document of the appropriate local organizational unit of the Social Insurance Institution or the appropriate regional branch or the appropriate local unit of the Agricultural Social Insurance Fund confirming that the Contractor is not in arrears with the payment of social and health insurance contributions, in the scope of Art. 109 sec. 1 point 1 of the Act, issued not earlier than 3 months before the deadline for submission of bids. In the case of arrears with the payment of social or health insurance contributions the Contracting Authority requests the submission of documents confirming that, respectively, before the deadline for submitting requests to participate in the procedure or before the deadline for submitting of the bids, the Contractor has paid the due social security or health insurance

- premiums with interest or fines or has entered into a binding agreement on the repayment of these amounts,
- 3.1.7. a copy or information from the National Court Register or the Central Register and Information of Business Activity, in the scope of art. 109 sec. 1 point 4 of the Act, issued not earlier than 3 months before the deadline for submission of bids, if separate provisions require entry in the register or records, unless the Contractor attached these documents to the tender or indicated in the ESPD data enabling access to free and publicly available databases, from which the Contracting Authority can obtain them,
- 3.1.8. the Contractor's statement on the validity of the information contained in the ESPD statement submitted to the tender, with regard to the grounds for exclusion from the tender proceedings indicated by the Contracting Authority, referred to in:
- a) Article 108 sec. 1 point 3 of the PPL,
  - b) Article 108 sec. 1 point 4 of the PPL, concerning the decision of prohibition to apply for a public procurement as a precautionary measure,
  - c) Article 108 sec. 1 point 5 of the PPL, regarding the conclusion of an agreement with other Contractors aimed at distorting competition,
  - d) Article 108 sec. 1 point 6 of the PPL,
  - e) Article 109 sec. 1 point 1 of the PPL, regarding the violation of obligations regarding the payment of local taxes and fees referred to in the Act of January 12, 1991 on local taxes and fees (i.e. Journal of Laws of 2019, item 1170, as amended ),
  - f) Article 109 sec. 1 point 5 and from 7 to 10 of the PPL.
4. If the Contractor has its registered seat or place of residence outside the territory of the Republic of Poland, instead of:
- 4.1 the information from the National Criminal Register (referred to in sec. 3.1.3 above) shall submit information from a relevant register, such as a court register, or, in the absence of such a register, another equivalent document issued by a competent judicial or administrative authority of the country in which the Contractor has its registered seat or place of residence - issued no earlier than 6 months before the deadline for submission of bids.
- 4.2 a certificate or other document referred to in sec. 3.1.5, certificate or other document referred to in sec. 3.1.6, a copy or information referred to in sec. 3.1.7 above, the Contractor shall submit a document or documents issued in the country in which it has its registered office or place of residence, confirming respectively that:
- the Contractor has not violated the rules referred to payment of taxes, fees or contributions for social or health,
  - the Contractor is not in liquidation or any bankruptcy was declared against the Contractor, its assets are not administered by a liquidator or by a court, it has not entered into an arrangement with creditors, its business activities are not suspended or it is not in any other similar situation arising from a similar procedure provided for in the legislation of the place where the procedures - issued not earlier than 3 months before the deadline for submission of bids.
- 4.3 If in the country of the person's place of residence or in the country where the Contractor has its registered office or place of residence, the documents described in Chapter VIII sec. 4.1-4.2 of the ToR and in Article 109 sec. 1.1 PPL Act, which are indicated in Chapter VII sec. 2 of the ToR are not issued, such documents are replaced by a document containing the Contractor's statement, indicating the person or persons authorized to represent it, or a statement of the person whom the document was to concern, made under oath, or, if in the country in which the Contractor has its registered office or place of residence there are no such provisions on a statement under oath, the statement shall be drawn up before a judicial, administrative, or professional self-regulatory or economic body competent for the registered office or place of residence of the person or place of residence of the person. Provisions with regard to time limits for issuing such documents indicated in Chapter VIII sec. 4.1 and sec. 4.2 of the ToR shall apply as appropriate.
5. If during the tender proceedings the Contractor fails to submit evidence, other documents or statement(s) necessary to carry out the procedure, the submitted statement(s) or documents are

incomplete, contain errors, the Contracting Authority shall call for their submission, supplementation or correction within the time limit indicated by the Contracting Authority, not shorter than two (2) business days, unless, despite their submission, supplementation or correction the Contractor's bid would be rejected or it would be necessary to cancel the tender proceedings.

6. Subjective evidence prepared in a foreign language shall be submitted together with a translation into Polish or English.

## **Chapter IX - Information on the manner of communicating between the Contracting Authority and Contractors and on the manner of providing statements and documents, as well as identification of persons authorised to communicate with Contractors.**

### 1. General information.

1.1 The public procurement procedure is carried out with the use of a commercial tool <https://platformazakupowa.pl> – address of the buyer's profile: [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu)

1.2 By entering into this public procurement procedure, the Contractor:

1.2.1 accepts the terms and conditions of using <https://platformazakupowa.pl> as defined in the regulations posted under the "Regulations" tab and acknowledges them as binding;

1.2.2 will get acquainted with the instructions for using <https://platformazakupowa.pl>, in particular with the rules of logging in, submitting requests for clarification of the content of the ToR, submitting tenders and carrying other activities in these proceedings using <https://platformazakupowa.pl> available at <https://platformazakupowa.pl> – link below: <https://drive.google.com/file/d/1Kd1DttbBeiNWt4q4slS4t76lZVKPbkyD/view> or in the bookmark: <https://platformazakupowa.pl/strona/45-instrukcje> and will apply it.

1.3 The technical and organisational requirements for submitting tenders, sending and receiving electronic documents, digital images with a document in paper form, statements and information transmitted using them are described on <https://platformazakupowa.pl>, in the regulations posted under the "Regulations" tab and in the instructions for submitting tenders (links in section 1.2.2 above).

1.4 Size of files:

1.4.1 for tender – the maximum number of files is 10 at 150 MB each;

1.4.2 for communication – message to the Contracting Authority max. 500 MB;

1.5 Communication between the Contracting Authority and Contractors shall take place using a commercial tool <https://platformazakupowa.pl> - address of the buyer's profile: [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu)

1.5.1 To shorten the time needed to answer questions, communication between the Contracting Authority and Contractors regarding:

- a. questions to the Contracting Authority on the content of the ToR;
- b. answers sent to Contracting Authority's request for qualitative evidence;
- c. answers sent to Contracting Authority's request to submit/revise/complete the statement referred to in Article 125(1), qualitative evidence, other documents or statements submitted in the procedure;
- d. answers sent to Contracting Authority's request for explanations regarding the content of the statement referred to in Article 125(1) or submitted qualitative evidence or other documents or statements submitted in the procedure;
- e. answers sent to Contracting Authority's request for explanations regarding the content of qualitative evidence;
- f. answers sent to other Contracting Authority's requests resulting from the Act – Public Procurement Law;
- g. requests, information and statements sent by the Contractor;
- h. appeals/other

takes place via <https://platformazakupowa.pl> and the form: "Send a message to the Contracting Authority".



The date of transmission (receipt) of statements, applications, notifications and information is the date of their sending via <https://platformazakupowa.pl> by clicking the button: "Send a message to the Contracting Authority", after which a message will appear indicating that the message has been sent to the Contracting Authority.

- 1.5.2 The Contracting Authority shall send messages to Contractors via <https://platformazakupowa.pl>. Messages concerning answers to questions, changes to the specification, changes to the time limit for submission and opening of tenders shall be posted by the Contracting Authority on the platform in the section: "Communications". Correspondence, which according to the applicable regulations is addressed to a particular Contractor, shall be sent via <https://platformazakupowa.pl> to a particular Contractor.
- 1.5.3 The Contractor, as a professional entity, is obliged to check messages and communications sent by the Contracting Authority directly on <https://platformazakupowa.pl>, because the notification system may fail or the notification may end up in the SPAM folder.
- 1.5.4 The Contracting Authority, in accordance with the Regulation of the Prime Minister of 30 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (Journal of Laws of 2020, item 2452), specifies the necessary hardware and application requirements to work on <https://platformazakupowa.pl>, i.e:
  - a. permanent access to the Internet with a guaranteed bandwidth of not less than 512 kb/s;
  - b. PC or MAC computer with the following configuration: min. 2 GB Ram, processor Intel IV 2 GHZ or its newer version, one of the operating systems - MS Windows 7, Mac Os x 10 4, Linux, or their newer versions;
  - c. Any web browser other than Internet Explorer installed;
  - d. JavaScript enabled,
  - e. Adobe Acrobat Reader or other software supporting .pdf file format installed.
- 1.5.5 Encryption at <https://platformazakupowa.pl> is using TLS 1.3 protocol.
- 1.5.6 Indication of data reception time by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronised with the clock of the Central Office of Measures.
- 1.6 The method of preparation and transmission of electronic documents and digital images with the document in paper form must meet the requirements laid down in the Regulation of the Prime Minister of 30 December 2020 on the method of preparation and transmission of information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (consolidated text: Journal of Laws of 2020, item 2452 as amended) and the Regulation of the Minister of Development, Labour and Technology of 23 December 2020 on qualitative evidence and other documents or declarations that the Contracting Authority may require from the Contractor (consolidated text: Journal of Laws of 2020, item 2415 as amended), i.e:
  - a. documents or statements, including the tender (the bid), shall be submitted in the original in an electronic format using a qualified electronic signature. In the case of putting a qualified signature and using the XAdES external signature format, the Contracting Authority requires that an appropriate number of files be included, i.e. data files to be signed and signature files in the XAdES format. A tender submitted without an appropriate electronic signature shall be rejected pursuant to Article 226(1)(3) of the PPL due to non-compliance with Article 63 of that Act;
  - b. documents issued in electronic form shall be transmitted as electronic documents, providing the Contracting Authority with an opportunity to verify the signatures;
  - c. if the original document, statements or other documents submitted during the procurement procedure have not been prepared in the form of an electronic document, the Contractor may prepare and submit a digital image with the document or statement

- in paper form, putting a qualified electronic signature thereon, which is equivalent to certifying the transmitted documents or statements as true copies of the original;
- d. in case of transferring by the Contractor of a digital copy with a document in a paper form – putting a qualified electronic signature by the Contractor or respectively by the entity on whose capacity or situation the Contractor relies pursuant to Article 118 of the PPL, or by a subcontractor, shall be equivalent to certifying the transmitted documents or statements as true copies of the original.
  - e. Documents or statements shall be certified as true copies of the original by the Contractor, the entity on whose capacity or situation the Contractor relies, Contractors jointly competing for a contract, or a subcontractor, respectively, with regard to the documents that concern each of them (as regards powers of attorney – according to the principle specified in Chapter XII section 7 of these ToR).
2. Methods of communication between the Contracting Authority and Contractors for effective submission of a bid (atender).
- 2.1 The bid must be prepared in electronic form in a data format compliant with the Notice of the Prime Minister of 9 November 2017 on the announcement of the consolidated text of the Regulation of the Council of Ministers on the National Interoperability Frameworks, minimum requirements for public registers and exchange of information in electronic form and minimum requirements for ICT systems, and must be signed with a qualified electronic signature. The following formats are recommended: *.pdf, .doc., .xls, jpg (.jpeg) with particular emphasis on .pdf*. The following formats are recommended for possible data compression: *.zip, 7Z*. Common formats not covered by the aforementioned Regulation include: *.rar, .gif, .bmp, .numbers, .pages*. Documents submitted in such files shall be considered as filed ineffectively.
  - 2.2 The Contractor shall submit a tender via <https://platformazakupowa.pl> <https://platformazakupowa.pl/> – address of the buyer's profile: [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu), in accordance with the regulations referred to in section 1 of this chapter. The Contracting Authority shall not be liable for submission of a tender in a manner contrary to the instructions for use of <https://platformazakupowa.pl>, in particular for a situation where the Contracting Authority reads the content of the tender before the time limit for submission of tenders (e.g. submission of a tender in the "Send a message to the Contracting Authority" tab). Such a tender shall be considered by the Contracting Authority as a commercial offer and shall not be taken into account in the proceedings, because an obligation imposed in Article 221 of the Public Procurement Law has not been met.
  - 2.3 The method of encrypting the tender is described in the instructions for submitting tenders (links in section 1.2.2 above). The Contracting Authority stipulates that the encryption of the bid shall be made via a tool built into the purchasing platform.
  - 2.4 After the tender submission time limit, the Contractor may not effectively change or withdraw a previously submitted tender.
3. Jolanta Szymanek-Górniak, tel. +4812-663-39-57, is authorised to communicate with Contractors in formal and substantial matters.

#### **Chapter X – Requirements for the bid security.**

1. The bid security is not required in the proceeding.

#### **Chapter XI– Bid validity period**

1. The Contractor shall be bound by its tender for 3 months from the bid submission time limit, i.e. until 15<sup>th</sup> August 2023 inclusive.
2. If the most advantageous bid is not selected before the expiry of bid validity period defined in the ToR, the Contracting Authority, before the expiry of the bid validity period, shall ask the Contractors once to agree to extend that period by a period specified by the Contracting Authority, not longer than 30 days.

3. The extension of the tender validity period referred to in section 2, requires the Contractors to submit a written statement of consent to extend the bid validity period.

#### **Chapter XII – Description of the method for a bid (tender) preparation.**

1. Each Contractor shall submit only one bid covering the implementation of the entire subject of the contract.
2. The bid shall be submitted in the form and manner indicated in Chapter IX of the ToR.
3. It is allowed for two or more Contractors to submit one tender, subject to provisions of Article 58 of the PPL.
4. The bid shall be drawn up in Polish or English language.
5. It is required that the tender (the bid) and all appendices are signed by persons authorised to represent the Contractor. In order to confirm that the person acting on behalf of the Contractor is authorised to represent it, the Contracting Authority requires from the Contractor a copy or information from the National Court Register, Central Register and Information on Business Activity or other relevant register. The Contractor shall not be obliged to submit the documents referred to in sentence 2 if the Contracting Authority can obtain them using free and publicly available databases, provided that the Contractor has indicated the data enabling access to such documents in the text of the ESPD. If the Contractor is represented by a person whose power of representation does not result from the documents mentioned in sentence 2, the Contractor shall submit together with the tender a power of attorney or another document confirming the power to represent the Contractor.
6. If tenders are submitted by Contractor jointly competing for a contract or if the Contractor is represented by a proxy, the original power of attorney or its notarised copy has to be attached to the tender. The document confirming the right to grant the power of attorney shall be submitted along with the power of attorney.
7. The power of attorney shall be drawn up in electronic form signed with qualified electronic signature. It is also acceptable to submit an electronic copy (scan) of the power of attorney previously drawn up in writing, in the form of an electronic attestation made in accordance with Article 97(2) of the Act of 14 February 1991 - Notary Public Law (Journal of Laws of 2020, item 1192, as amended), which is certified by a notary public with a qualified electronic signature, or principal.
8. A tender, together with appendices forming an integral part thereof, should be prepared by the Contractor in accordance with the provisions of the ToR and the appendices, in particular a tender shall include:
  - 8.1. A bid form (**Appendix 1 to the ToR**) with at least the following appendices:
    - 8.1.1. a single document (ESPD), which is draw up in electronic form with a qualified electronic signature - in the case of Contractors jointly applying for the contract, the ESPD shall be submitted by each of them;
    - 8.1.2. a statement on non-exclusion from the tender proceedings - Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them.
    - 8.1.3. a statement on non-exclusion from the tender proceedings - Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111, 8.4.2022, p. 1) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them;
    - 8.1.4. individual bid's price calculation;
    - 8.1.5. list of subcontractors;
    - 8.1.6. qualitative evidence, in accordance with Chapter IV of the ToR,

- 8.1.7. power of attorney (according to sections 5-7 above) or other document confirming the power to represent the Contractor.
- 8.1.8. Information from National Court Register (KRS) or the Central Register and Information of Business Activity (CEiDG) or information from a relevant register - unless data for publicly available databases are provided in the ESPD
9. The Contractor which, when submitting a tender, reserves the right not to disclose to other participants in the proceedings information which constitutes a trade secret in the meaning of the unfair competition regulations, must clearly indicate this in the tender by submitting an appropriate statement containing a list of the reserved documents and proving that the reserved information constitutes a trade secret. Documents marked as "Restricted document" shall be attached together with the statement and shall constitute separate files encrypted with other files constituting the tender. The Contractor may not stipulate that the information referred to in Article 222(5) of the PPL should not be disclosed.
10. All costs related to the preparation and submission of the tender shall be borne by the Contractor.

### **Chapter XIII – Place and deadline for bids submission and opening.**

1. Tenders (bids) shall be submitted **by 18<sup>th</sup> May 2023 until 2:00 p.m.**, according to the rules described in Chapter IX sections (1)-(2) of the ToR.
2. Before the deadline for submission of tenders, the Contractor may withdraw a bid in accordance with the rules at <https://platformazakupowa.pl> . The method of withdrawing a bid is described in the instructions available at: <https://platformazakupowa.pl/strona/45-instrukcje>. A tender may not be withdrawn after the tender submission deadline.
3. The Contracting Authority shall reject a tender submitted after the time limit for submission of tenders.
4. Tenders shall be opened on **18<sup>th</sup> May 2023 at 2:15 p.m.** via <https://platformazakupowa.pl>
5. In the case of changing the deadline for submission of tenders, the Contracting Authority shall post information about its extension on <https://platformazakupowa.pl> – address of the buyer’s profile – [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu), in the tab appropriate for the conducted proceedings, in the "Communications" section.
6. In the event of a failure of the IT system resulting in the inability to open tenders within the time limit set by the Contracting Authority, tenders shall be opened immediately after the failure has been removed.
7. Before opening of tenders, the Contracting Authority shall provide on <https://platformazakupowa.pl> – address of the buyer’s profile – [https://platformazakupowa.pl/pn/uj\\_edu](https://platformazakupowa.pl/pn/uj_edu), in the tab appropriate for the procedure, in the "Communications" section, information on the amount it intends to allocate to finance the contract.
8. Immediately after opening the tenders, the Contracting Authority shall provide on the website of the conducted tender proceedings the information about
  - 8.1 company names or names and surnames, registered offices or places of business activity or places of residence of Contractors whose tenders have been opened;
  - 8.2 prices or costs contained in the tenders.
9. The Contracting Authority does not foresee a public tender opening session with the participation of Contractors, nor broadcasting the opening session via electronic tools for on-line video transmission.

### **Chapter XIV – Description of the method for price calculation.**

1. The price of the bid should be given in EUR and calculated on the basis of an individual calculation with the unit prices of at least specific elements indicated in Appendix no 2 to the bid form.
2. The tender price for the performance of the entire subject-matter of the contract shall cover all the terms and requirements of the ToR along with the appendices and also all costs related to the performance of the contract (i.e. delivery costs of apparatus, FAT costs, installation costs at NSRC Solaris, warranty costs, technical assistance etc. and duties – if applicable) including taxes and rebates, discounts, etc., which the Contractor intends to grant.

3. Prices must be given and calculated with rounding to two decimal places (rounding rule - decimal numbers below 5 should be dropped, decimal numbers above and equal to 5 should be rounded up).
4. The total price given in the calculation of the tender price) shall correspond to the price given by the Contractor in the bid form.
5. The payment shall be made in accordance with the provisions of the contract template attached to this ToR.
6. None of the items (elements) indicated in the individual calculation can be valued by the Contractor at the amount of 0,00.
7. Neither pre-payments nor advance payments are stipulated for executing the subject of the contract.
8. Should the selection of the submitted tender result in a tax liability on the Contracting Authority under the regulations on the tax on goods and services, the Contracting Authority shall add, in order to evaluate such a tender, the tax on goods and services (VAT) that it would have to settle under these regulations.
9. In the case of submitting a bid by a Contractor who is not obliged or exempt from the obligation to pay VAT, during the evaluation of bids, the Contracting Authority shall add to the price offered by the Contractor the relevant tax which he would be obliged to pay. In this case, the cost of the tax is covered by the Contracting Authority.
10. When submitting the bid, the Contractor shall inform the Contracting Authority whether selecting its bid results in arising of tax obligation by the Contracting Authority, indicating the name (type) of the good or service whose delivery or performance will lead to its arising, and indicating the value of such good or service exclusive of tax.
11. The Contracting Authority shall convert the bid price into Polish zloty (PLN) by using the foreign currency selling rate (Table C) published by the National Bank of Poland on the day of opening the bids, for the needs of this tender proceedings.

**Chapter XV - Description of criteria which the Contracting Authority will apply in selecting a bid (a tender), specifying also the importance of particular criteria and method of tenders evaluation;**

1. Tender evaluation criterion:  
**Gross price for the entire subject-matter of the contract – 100%**
2. Points awarded for the criterion "Gross price for the entire subject-matter of the contract" shall be calculated according to the following formula:

$$C = (C_{naj} : C_o) \times 100$$

where:

C – number of points awarded to a given tender,

$C_{naj}$  – the lowest price among valid tenders,

$C_o$  – the price given by the Contractor for whom the result is calculated,

**The maximum number of points to be awarded to the Contractor is 100.**

3. All calculations will be made to two decimal places (without rounding)
4. The bid which receives the highest number of points will be considered the most advantageous.
5. Where tenders for the same price have been submitted, the Contracting Authority shall invite the Contractors who have submitted those tenders to submit additional ones within a deadline set by the Contracting Authority.

**Chapter XVI - Information on formalities which should be met following the selection of the tender in order to conclude a Public Procurement Contract;**

1. Before signing the Contract, the Contractor should submit:
  - 1.1 a copy of the agreement(s) laying down the grounds and rules for competing jointly for the contract - in case of tenders submitted by entities acting jointly (i.e. consortium);
  - 1.2 a list of subcontractors with the scope of tasks entrusted thereto, if their participation in the contract performance is foreseen;
  - 1.3 a statement on non-exclusion from the tender proceedings - Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving

the protection of national security (Journal of Laws of 2022, item 835) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them.

- 1.4 a statement on non-exclusion from the tender proceedings - Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111, 8.4.2022, p. 1) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them;
- 1.5 In case that the subcontractor or supplier accounts for more than 10% of the contract value, the Contracting Authority shall verify the entity in the absence of grounds for exclusion according to Article 5k of the Sanctions Regulation via statement indicated in sec. 1.4.
2. The selected Contractor is obliged to conclude the Contract at a date and place specified by the Contracting Authority.

#### **Chapter XVII - Requirements concerning security on due performance of the Contract (performance bond);**

The Contracting Authority does not provide for the security on due performance of the Contract..

#### **Chapter XVIII – Contract template – Appendix 2 to the ToR.**

#### **Chapter XIX - Instructions on the legal remedies available to the Contractor during the procurement procedure.**

1. The Contractor shall be entitled to legal remedies if it has or has had an interest in being awarded the contract and has suffered or may suffer damage as a result of breach of the provisions of the PPL by the Contracting Authority.
2. An appeal can be filed against:
  - 2.1 action taken by the Contracting Authority, in breach of the provisions of the Act, in the course of the procurement procedure, including the draft contractual provisions;
  - 2.2 failure to act in the procurement procedure, to which the Contracting Authority was obliged under the PPL.
3. The appeal shall be lodged with the President of the National Appeal Chamber in writing or in an electronic form provided with a trusted signature.
4. The parties and participants of the appeal proceedings shall have the right to lodge a complaint with the court against the ruling of the National Appeal Chamber and the decision of the President of the National Appeal Chamber referred to in Article 519(1) of the PPL. The complaint shall be filed with to the Regional Court in Warsaw - Court of Public Procurement through the President of the National Appeal Chamber.
5. Detailed information on legal remedies is set forth in Title IX "Legal Remedies" of the PPL.

#### **Chapter XX - General provisions.**

1. The Contracting Authority does not allow the submission of partial tenders. The Contracting Authority does not envisage dividing the contract into parts, because the subject of the contract is an innovative device, which is a wiggler. Dividing the order into parts is excluded for technological reasons, i.e. critical elements of the delivered device must be positioned with an accuracy of 1 micrometer relative to the electron axis, which can only be ensured by the Contractor responsible for the entire delivery. it is not possible to implement partial orders.
2. The Contracting Authority does not envisage to conclude a framework contract;
3. The Contracting Authority envisages the possibility to award a contract based on repetition of similar deliveries pursuant to Article 214(1)(8) of the PPL.
4. The Contracting Authority does not permit the submission of variant offers.
5. All settlements between the Contractor and the Contracting Authority shall be carried out in euro (EUR).
6. The Contracting Authority does not envisage an electronic auction.

7. The Contracting Authority does not provide for reimbursement of costs of participation in the proceedings.
8. Neither pre-payments nor advance payments are stipulated for executing the subject of the procurement.
9. The Contracting Authority demands that the Contractor specifies in the tender the part of the contract, pursuant to the provisions of the ToR, the performance of which it intends to entrust to subcontractors.

### **Chapter XXI - Information on personal data processing**

In accordance with Art. 13 and Art. 14 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as the „General Regulation”, the Jagiellonian University in Kraków hereby informs, as follows:

1. The Administrator of your personal data is the Jagiellonian University in Kraków, ul. Gołębia 24, 31-007 Kraków, represented by the Rector of the Jagiellonian University.
2. The following Data Protection Inspector was appointed by Jagiellonian University in Kraków, ul. Gołębia 24, 31-007 Kraków, room no. 31. Contact with the Inspector is possible via e-mail: 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 Regulation with the purpose of participation in the this public procurement proceedings.
4. Providing your personal data is needed under the statutory requirement as specified in the provisions of the PPL Act with regard to the participation in the public procurement procedure.
5. The consequences related to the failure to provide personal data arising out of PPL Act.
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 Act.
7. Your personal data will be stored in accordance with Art. 78 sec. 1 of PPL Act 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:
  - a) access the content of your data According to Article 15 General Data Protection Regulation,
  - b) clarify your data –according to Article 16 General Data Protection Regulation,
  - c) limit your data processing according to Article 18 General Data Protection Regulation.
9. You shall not have the right to:
  - a) remove your personal data in accordance with Article 17 sec. 3 letter b, d or e of General Data Protection Regulation,
  - b) relocate your personal data according to Article 20 of General Data Protection Regulation,
  - c) 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 and the Article 20 of the General Regulation.
10. Your personal data in accordance with Article 10 of the GDPR, may be made available in order to enable the use of legal protection measures referred to in Section IX of the PPL Act, until the deadline for their submission.
11. The Contracting Authority informs that in relation to your personal data, decisions will not be made in an automated manner, according to Article 22 GDPR.
12. If the performance of the obligations according to Article 15 sec. 1 - 3 GDPR, in order to exercise your right indicated in sec. 8 letter a above, would require a disproportionately large effort, the Contracting Authority may request you to indicate additional information aimed at specifying the request, in particular, providing the name or date of the commenced or completed public procurement procedure.
13. Your exercise of the right indicated in section 8 letter b above, to correct or supplement personal data in accordance with Article 16 of the GDPR, may not result in a change in the outcome of

the public procurement proceedings or a change in the provisions of the contract to the extent inconsistent with the PPL Act, nor may it violate the integrity of the protocol of the public procurement proceedings and its attachments.

14. Your exercise of the right indicated in section 8 letter c above, consisting of on the request to limit the processing of data in accordance with Article 18 sec. 1 of the GDPR, does not limit the processing of personal data until the end of the tender proceedings and also after the tender proceeding in the event of the circumstances referred to in Article 18 sec. 2 GDPR (the right to restriction of processing does not apply to storage, to ensure the use of legal remedies or to protect the rights of another natural or legal person, or because of important reasons of public interest of the European Union or a Member State).

## **Chapter XXII - Appendices to the ToR**

**Appendix A** – Description of the subject-matter of the contract with appendices,

**Appendix 1** – Tender Form,

**Appendix 2** – Proposed provisions of the Public Procurement Contract (Contract Template).



**Appendix 1 to the ToR**

**BID FORM**

Case no: 80.272.64.2023

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CONTRACTING AUTHORITY – **Jagiellonian University**  
**ul. Gołębia 24, 31 – 007 Kraków;**  
Unit conducting the case – **Public Procurement Department of the JU**  
**ul. Straszewskiego 25/ 3 and 4, 31-113 Kraków**

---

Name (Company) of the Contractor:

.....  
.....

HQ address:

.....  
.....

Address for correspondence:

.....  
.....

Contact:

tel.: .....

fax: .....

e-mail: .....

Other data:

NIP (Tax Identification Number):

.....

REGON (applicable only to Polish Contractors):

.....

**Data enabling access to documents confirming the authorisation of persons acting on behalf of the Contractor can be found in:**

- search engine of National Court Register: <https://ekrs.ms.gov.pl/web/wyszukiwarka-kr/strona-glowna/>,
- search engine of Central Register and Information of Business Activity: <https://aplikacja.ceidg.gov.pl/ceidg/ceidg.public.ui/search.aspx>,
- free and publicly available databases at the following address: <https://.....>**
- in the documents attached to the bid.

Referring to the announced open tender proceeding for the selection of a Contractor for the supply of a wiggler for the needs of the Solcrys beamline in NSRC SOLARIS, we submit the following bid:

- 1) **we offer a total price for the entire subject-matter of the contract** for the net amount of .....\* in accordance with the individual bid calculation in reference with provisions of Chapter XIV of the ToR.  
[\* 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 subject of the contract in accordance with the requirements and conditions specified by the Contracting Authority in the ToR and its appendices;

- 3) we declare that we offer a period and terms of the warranty for the entire subject of the order in accordance with the requirements and conditions specified in the ToR and its appendices
- 4) We offer the time limit for performance of the subject-matter of the Contract in accordance with the stipulations of the Chapter V of the ToR,
- 5) we offer a payment date in accordance with the requirements indicated in the contract template (proposed provisions of the Contract);
- 6) we declare that we have read the contract template attached to the ToR, which we fully approve without raising any objections
- 7) We declare that the selection of our tender:
  - will not lead to the creation of a tax obligation for the Contracting Authority in accordance with the regulations on tax on goods and services\*.
  - will lead to the creation of a tax obligation for the Contracting Authority in accordance with the regulations on tax on goods and services. The above tax obligation will apply to ..... (Insert the name / type of goods or services which will lead to the creation of the tax obligation of the Contracting Authority in accordance with the regulations on tax on goods and services) covered by the subject-matter of the contract.\*
- 8) if the contract is awarded - we undertake to conclude the contract at the place and on the date specified by the Contracting Authority
- 9) We declare that we consider ourselves bound by this tender for the time period indicated in the ToR.
- 10) We declare that we have fulfilled the information obligations provided for in Article 13 or Article 14 of *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC*, with regard to natural persons from whom we have directly or indirectly obtained personal data in order to compete for the award of a public contract in this procedure.
- 11) I declare that I am: **(please mark from the list below)**
  - a micro-enterprise
  - a small enterprise
  - a medium-sized enterprise
  - a sole trader,
  - a natural person not running any business activity,
  - other type (*what kind?*).....,
- 12) the person authorised to contact the Contracting Authority with regard to the submitted tender and in matters concerning the possible performance of the Contract is: .....,  
[\*complete the data, phone: ....., email: ..... ]
- 13) the following are attached to the tender form:
  - Appendix no. 1 – European single document (ESPD)
  - Appendix no. 2 - a statement on non-exclusion from the tender proceedings - Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them.
  - Appendix no. 3- a statement on non-exclusion from the tender proceedings - Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111,

8.4.2022, p. 1) - in the case of Contractors jointly applying for the contract, the statement shall be submitted by each of them;

- Appendix no. 4 – Bid's price calculation,
- Appendix no. 5 – a declaration on entrusting subcontractors with the performance of a part of the subject of the contract (List of subcontractors - if applicable);
- Appendix no. 6 – a declaration regarding the entity providing access to the resources/ (if applicable), i.e.:
  - ✓ ESPD as far as it concerns him;
  - ✓ a statement on making the resources available for the Contractor, along with a relevant commitment or other evidence and statements confirming the lack of grounds for exclusion pursuant to Art. 7 sec. 1 of the Sanctions Act and Art. 5k of the Regulation, quoted above in the ToR;
- Other:
  - a. power of attorney (in accordance with sections 5-7 of Chapter XII) or another document confirming the authorization to represent the Contractor;
  - b. KRS or CEiDG or other information from the relevant register- unless data for publicly available databases are provided in the ESPD;

**Note: The Contractor is obliged to fill in places with dotted lines and/or delete accordingly places marked with "\*".**

**Appendix 1 to the bid form – ESPD**

**Appendix 2 to the bid form**

**CONTRACTOR'S STATEMENT**  
**ON NON-EXCLUSION ON ADDITIONA GROUNDS**

By submitting a tender in the open tender proceeding for the delivery of wiggler for the Solcrys beamline at NSRC SOLARIS, case no. 80.272.64.2023, we declare that we are not subject to exclusion according to Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835) – further as “the Act of 13 April, 2022”, i.e.:

- 1) we are not a contractor listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered into the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the Act of 13 April, 2022;
- 2) we are not a contractor whose real beneficiary according to the definition included in the Act of March 1, 2018 on counteracting money laundering and terrorist financing (Journal of Laws of 2022, items 593 and 655) is a person listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered on the list or being such an actual beneficiary from February 24, 2022, provided that it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the Act of 13 April, 2022;
- 3) we are not a contractor whose parent entity within the meaning of Art. 3 sec. 1 point 37 of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, items 217, 2105 and 2106), is an entity listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered on the list or being such a parent entity from February 24, 2022, provided that it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in art. 1 point 3 of the Act of 13 April, 2022;

At the same time, I declare that all information provided in the above statement is up-to-date and truthful and has been presented with full awareness of the consequences of misleading the Contracting Authority when presenting information.

**Appendix 3 to the bid form**

**CONTRACTOR'S STATEMENT**  
**ON NON-EXCLUSION ON ADDITIONA GROUNDS**

By submitting a tender in the open tender proceeding for the delivery of wiggler for the Solcrys beamline at NSRC SOLARIS, case no. 80.272.64.2023, we declare that we are not subject to exclusion pursuant to art. 5k of the Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (Official Journal EU No. L 229 of 31 July 2014, p. 1), as amended Council Regulation (EU) 2022/576 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (Official Journal EU No. L 111 of 8 April 2022, p. 1), which prohibits the award or further performance of any public contract or concession falling within the scope of the Public Procurement Directives, as well as within the scope of Art. 10 sec. 1, 3, sec. 6 lit. a)-e), sec. 8, 9 and 10, Art. 11, 12, 13 and 14 of Directive 2014/23/EU, Art. 7 and 8, Art. 10 lit. b)-f) and point. h) to j) of Directive 2014/24/EU, Art. 18, art. 21 lit. b)-e) and lit. g)-i), Art. 29 and 30 of Directive 2014/25/EU and Art. 13 lit. (a) to (d), point (a) f)-h) and point (j) Directive 2009/81/EC for or involving:

- a) Russian citizens or natural or legal persons, entities or bodies based in Russia;
- b) legal persons, entities or bodies whose ownership rights directly or indirectly belong to the entity referred to in point (a) in more than 50%; a) of this paragraph; or
- c) natural or legal persons, entities or bodies acting on behalf or at the direction of the entity referred to in point (a). a) or b) of this paragraph,

including subcontractors, suppliers or entities reliant on capacities within the meaning of the Public Procurement Directives where they account for more than 10% of the contract value

At the same time, I declare that all information provided in the above statement is up-to-date and truthful and has been presented with full awareness of the consequences of misleading the Contracting Authority when presenting information.

**Appendix 4 to the bid form**

**PRICE CALCULATION**

Lp	Description	Specific unit price	Total net price
1	Wiggler		
2	Training according to contract template		
3	Technical (remote) support according to the contract template		
	<b>Sum</b>		

**Appendix 5 to the bid form**

**STATEMENT**  
(list of subcontractors)

We declare that:

- **we entrust\*** the following subcontractors with the performance of the following parts (scope) of the contract

1) Subcontractor .....

*[\*provide full name/company name, address, and depending on the entity: Tax identification number/PESEL, KRS/CEiDG or other relevant register]-*

scope of the contract:

.....

*[\*fulfil]*

The above mentioned subcontractor is entitled to .....% of the contract value.

*[\*complete; in the event that the subcontractor or supplier is entitled to more than 10% of the contract value, it is subject to mandatory verification in terms of the lack of grounds for exclusion pursuant to art. 5k of the Sanction Regulation mentioned in the ToR]*

2) .....

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

*\*delete/fullfil as appropriate*

**[if the Contractor does not cross out any of the above options, the Contracting Authority shall assume that it does not entrust any works covered by this contract to subcontractors]**

*Appendix 6 to the bid form*

**A STATEMENT OF THE ENTITY TO MAKE AVAILABLE TO THE CONTRACTOR THE NECESSARY RESOURCES**

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

I (We), who signed  
.....

Acting on behalf:  
.....

In reference that the Contractor:  
.....  
[full name of the Contractor and address /registered office of the Contractor]

**I (We) declare that**

**1. I (we) undertake to make available my (our) resources to the Contractor.**

In order to assess whether the 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:  
.....  
.....
- 4) the scope and the duration of my participation in the performance of the contract:  
.....  
.....

**2. I (We) meet the conditions for participation in the open tender proceeding to the extent they concern me - in accordance with the ESPD;**

**3. I (We) declare that we are not subject to exclusion according to Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835) – further as “the Act of 13 April, 2022”, i.e.:**

- 1) we are not a contractor listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered into the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the Act of 13 April, 2022;
- 2) we are not a contractor whose real beneficiary according to the definition included in the Act of March 1, 2018 on counteracting money laundering and terrorist financing (Journal of



Laws of 2022, items 593 and 655) is a person listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered on the list or being such an actual beneficiary from February 24, 2022, provided that it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the Act of 13 April, 2022;

3) we are not a contractor whose parent entity within the meaning of Art. 3 sec. 1 point 37 of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, items 217, 2105 and 2106), is an entity listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered on the list or being such a parent entity from February 24, 2022, provided that it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in art. 1 point 3 of the Act of 13 April, 2022;

I declare that there are grounds for my exclusion from the proceedings pursuant to Art. .... the Act of 13 April 2022 on special solutions for counteracting the support of aggression against Ukraine and for the protection of national security (Journal of Laws of 2022, item 835) [*specify the applicable grounds for exclusion from those indicated above or delete it*];

4. **I (We) declare that we are not subject to exclusion according to Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by the Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 111, 8.4.2022, p. 1)**

**Appendix 2 to the ToR**



**THE AGREEMENT 80.272.64.2023**  
**– contract template/ draft of contract provisions**

**Concluded in Kraków on the .... of ..... 2023, by and between:**  
**Jagiellonian University with its seat at ul. Gołębia 24, 31-007 Kraków, Poland (PL),**  
**hereinafter referred to as the “Contracting Authority”, represented by:**  
..... – ..... **acting in the basis of power attorney**  
**no ..... dated ..... with the financial countersignature**  
**of the Jagiellonian University Bursar,**  
**and**  
..... **with its registered seat ....., Tax Identification**  
**Number ..... Business register number.....,**  
**hereinafter referred to as the “Contractor”, represented by:**  
..... - .....

*As a result of a procedure of the direct-award contract according to the Public Procurement Law (i.e. Journal of Law of 2022, item ..... as amended), hereinafter referred to as „PPL” 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 the three-pole-wiggler (1 item) for the needs of the Solcrys beamline at National Synchrotron Radiation Centre SOLARIS JU in Kraków.
2. The subject of the Agreement includes in particular:
  - 2.1 preparation by the Contractor in cooperation with the Contracting Authority, appropriate design of the subject of the Agreement. The wiggler design must be submitted for Contracting Authority’s acceptance in due time, so that maintaining the term referred to in § 4 sec. 1 point 1.1 shall be feasible, taking into account possible Contracting Authority’s remarks;
  - 2.2 after producing the subject of the Agreement, conducting the FAT tests;
  - 2.3 delivery, installation of the subject of the Agreement, conducting SAT tests and training of NCPS SOLARIS employees in the use of the delivered device (maximum 5 people) in necessary scope on the occasion of SAT tests
3. A detailed description of the subject of the Agreement is included in the documentation to the ToR, negotiation proposals, in negotiation protocol (in case there were conducted) as well as in project documentation constituting an integral part of the Agreement. In case of any discrepancies between the Agreement and its attachments (i.e. ToR and the appendices), provisions of the Agreement shall prevail.
4. The Contracting Authority orders and the Contractor accepts to perform all necessary actions to making the best possible performance of the subject of the Agreement referred above.
5. The Contractor declares that it shall perform the subject hereof using the highest quality materials and the highest standards of performance, on agreed dates and with due diligence, taking into account the professional nature of its business activity and specific technical characteristics of the Subject hereof described in the ToR and its appendices.
6. The Contractor declares that it has adequate knowledge, experience and qualifications as well as

technical resources and staff necessary to perform the Subject hereof.

## § 2

### DECLARATION OF INTENT

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

## § 3

### VALUE OF THE AGREEMENT

1. The Contracting Authority shall pay a total remuneration in the amount of ..... **net** (say: .....**net**), i.e. excluding VAT tax, 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\* 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 section (1) covers all payments due to the Contractor, including all license fees for third parties, packaging costs, safe transport, insurance, documentation, Factory Acceptance Tests – FAT), installation, SAT tests as well as NSRC SOLARIS' employees training, quality and statutory warranty 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 Contracting Authority, including for granting the license to the Contracting Authority as stipulated in §16 in each of the fields of exploitation stipulated herein. The Contractor shall also be remunerated for transferring to the Contracting Authority the ownership of the media carriers, on which the works to which the license is granted, have been recorded.

## § 4

### AGREEMENT EXECUTION TERMS AND DEADLINES

1. The execution of the Agreement shall be completed in foregoing stages:
  - 1.1 Development of a construction project (design) of the wiggler in accordance with appendix A within **2 months** from the date of conclusion of the Agreement;
  - 1.2. Manufacturing of the device, FAT tests and delivery to SOLARIS headquarters within **15 months** counting from the date of conclusion of this Agreement;
  - 1.3. Installation, SAT tests, commissioning and training in the subject of the Agreement within **17 months** counting from the date of conclusion of this Agreement.
2. Delivery of the subject of the agreement will be made in the DDP Kraków formula to ul. Czerwone Maki 98, 30-392 Kraków in accordance with the regulations of Incoterms 2020. Not later than 7 days before the planned delivery date, the Contractor shall provide documentation and/or guidelines describing safety procedures for unloading, internal transport and assembly and disassembly of each component of the subject of the Agreement.
3. The Contractor shall deliver the Subject of the Agreement in an appropriate packaging, protecting content from damage during transport along with shock and tilt indicators.
4. Along with delivery, the Contractor shall provide the Contracting Authority with the following documents:
  - a) A list – by quantity and by type of transferred devices, including in particular: the invented name of the device, manufacturer, year of manufacture, serial number, and characteristic operational parameters,
  - b) Device warranty cards, operation and maintenance manuals for all key elements of the Subject of the contract in Polish and/or English, including those whose manufacturers were Contractor's subcontractors **or** the data to electronical access to those documents.

- c) Other documents indicated in sec. 7.2 of the Appendix A to the ToR – “Description of the subject-matter of the contract” after agreeing it with the Contracting Authority.
5. If applicable the Contractor shall ensure the proper organization of works in accordance with applicable laws and standards, including but not limited to health and safety and fire protection regulations, and shall be solely liable for the violation of health and safety and fire protection regulations, including:
  - a) conducting works in such way that they do not pose a direct threat to the persons performing them, users of the facility or third parties,
  - b) organizing the proper arrangement and protection of the area of the works, including its fencing and marking, protection against entry of unauthorized persons, and ensures supervision in justified cases,
  - c) ensuring that particularly dangerous works, including works carried out at heights or in excavations, are carried out in a manner consistent with the regulations and under the supervision of a person with qualifications and authorizations required by regulations, and that works dangerous in terms of fire shall obtain an appropriate permission, as referred to in the Fire Safety Instruction,
  - d) maintains order in the area of work being carried out,
  - e) declares that it has read the "Fire Safety Instructions" available from the administrator of the facility, developed for the facility where the works under the contract are planned, and knows the location and rules for the use of fire extinguishers, fire blankets and internal hydrants that are part of the facility's equipment, as well as the rules behavior in the event of a fire or noticing, and the rules for evacuating people from the facility. The contractor is obliged to familiarize its employees or subcontractors which shall be staying on the premises of the facility with the Fire Safety Instruction, to submit to the facility administrator a list containing written confirmation of having read the instruction of the above-mentioned persons and to update the list in the course of the work.
6. Works will be carried out in an active facility, therefore onerous works (limiting the possibility of using the facility) should be agreed each time with the administration and user of the facility at least 3 days in advance. When determining a possible nuisance, one should take into account the nature and requirements of the working conditions of people operating in the vicinity of the work performed, for whom even lower values (e.g. noise) may be a significant impediment or even an element preventing the conduct of certain professional activities (e.g. precise research or educational activities).
7. The Contractor is obliged to immediately inform the Contracting Authority about any circumstances that may prevent the proper, timely and safe performance of the subject of the Agreement.
8. The supervision inspector or other authorized representative of the Contracting Authority, including the health and safety coordinator if appointed, suspends the works if they are carried out by the Contractor contrary to the Agreement, documentation provided, legal regulations and standards or principles of up-to-date technical knowledge. The hereinabove persons may also request the Contractor to remove from the work site any person who does not comply with health and safety or fire protection regulations and rules.

## **§ 5**

### **THE PROCEDURE FOR ACCEPTANCE AND COLLECTION**

1. Subject to the provisions of section 6(b), confirmation of completion of each stage of the Agreement implementation referred to in §4(1.1) – (1.3) shall be signing by the Contracting Authority an appropriate unconditional acceptance protocol. The Parties agree that the moment of delivery of the subject of the Agreement (devices) shall be signing by the Contracting Authority an unconditional acceptance protocol, subject to the provisions of section 6(b) below; The Parties however expressly state that the quality warranty and the statutory warranty (§9) commence from the date stipulated in §9 below, not from the moment of delivery. Terms referred to in § 4(1) shall be deemed to have been fulfilled, provided that the Contractor delivers thereunder the subject of the Agreement, which will be unconditionally accepted by the Contracting Authority, subject to the

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

**§ 6  
CONTACT PERSONS**

1. The 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 Contracting Authority shall be: ..... e-mail: .....mobile: .....
3. The Parties hereby authorize the hereinabove persons to make current arrangements on their behalf under the Agreement which shall not constitute its change and to handle the receipts stages of the

Agreement (§4 sec.1), including the signing of the handing over the protocols. The hereinabove persons are also authorized to accept individual elements that forms a given stage.

## § 7

### TERMS & CONDITIONS OF PAYMENT

1. The remuneration referred to in § 3(1) shall be paid in parts, in the following manner:
  - 1.1 The **first payment of 15%** of the remuneration referred to in § 3(1) shall be paid after completion of the stage stipulated in §4(1) 1.1;
  - 1.2 The **second payment of 75 %** of the remuneration referred to in § 3(1) shall be paid after completion of the stage stipulated in §4(1) 1.2;
  - 1.3 The **third payment of 10 %** of the remuneration referred to in § 3(1) shall be paid after completion of the stage stipulated in §4(1) 1.3.
2. Payments for each stage of the Agreement shall be fulfilled within 30 days from the date of delivery to the Contracting Authority a correctly issued invoice and signing by the Contracting Authority an appropriate acceptance protocol, i.e. without reservations, subject to the provisions of §5(6)(b). If the date of receipt of the invoice is unknown, the payment time limit commences to run from the date of signing by the Contracting Authority of the relevant acceptance protocol. In case that an invoice is delivered to the Contracting Authority before the Parties sign the acceptance report without comments, the payment deadline begins on the date of signing such a protocol.
3. The Contracting Authority shall have the right to withhold disbursement of all or part of the payment, in the event that the delivered subject of the agreement does not meet the required technical parameters, has been damaged in transport, or has not been delivered in a timely manner.
4. 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: [synchrotron@uj.edu.pl](mailto:synchrotron@uj.edu.pl).
5. The remuneration payable to the Contractor shall be paid by bank transfer from the Contracting Authority's account to the account of the Contractor indicated in the invoice.

## §8

### INVOICING

1. The Contracting Authority shall be VAT payer and shall have NIP number (Tax Identification Number):  
PL 675-000-22-36.
2. The Contractor is not a VAT payer within the territory of the Republic of Poland and has the tax identification number .....
3. **The Buyer specified in the invoice shall be:**  
**Uniwersytet Jagielloński**  
**ul. Gołębia 24, 31-007 Kraków**  
**NIP: PL 675-000-22-36**
4. The payment date indicated on the invoice shall be: 30 days in accordance with § 7 section 2 of the contract.

## § 9

### 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 as well as in the design stipulated in §1 sec. 2.1.
3. The Contractor ensures the delivery of the subject hereof is covered by the quality warranty beginning from completion of SAT tests confirmed by the appropriate protocol to the lapse of **12 months**.
4. The Contracting Authority may at any time request the Contractor to remove a fault or defect under the quality warranty. The Contracting Authority shall undertake to meet the basic maintenance terms

- as specified by the Contractor or manufacturer of the elements of the subject hereof in the records of the guarantee card and/or maintenance instructions delivered by the Contractor. The Contracting Authority shall notify the Contractor without any unnecessary delay in one or several out of the following ways: in writing, by e-mail, phone 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 Contracting Authority. Any repairs shall be made as soon as possible, in a term agreed by the Parties. The Contracting Authority may elongate this term in justified cases. In case of elongation, the contractual penalty (§13 section 2 letter c) shall be due to the Contracting Authority if the Contractor exceeds this extended (elongated) deadline. All repairs shall be made 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 Contracting Authority reserves 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 Contracting Authority could not use the delivered subject hereof due to its defect (fault).
  8. Regardless of the entitlements arising out of the quality warranty, specified in the hereinabove clauses, the Contracting Authority may at any time turn to the Contractor for removal of the defect or fault based on the statutory warranty under Art. 556 to Art. 576 of the Civil Code. The statutory warranty shall cover both faults formed due to reasons on the side of the subject of the Agreement as of the moment of its release to the Contracting Authority as well as any other physical faults formed due to reasons on the side of the manufacturer or Contractor, provided the defects are reported within the period of the statutory warranty validity period. The statutory warranty for defect shall also cover legal defect of the subject of the Agreement. The repair deadline indicated in sec. 5 second sentence shall also apply to removing defects/making repairs under the statutory warranty.
  9. In the case of executing entitlements under the quality warranty by the Contracting Authority, the course of the period for the execution of the entitlements under the statutory warranty title shall be subject to suspension as of the day of being noticed by the Contractor on the defect (fault). The same shall pertain to the event of execution of entitlements by the Contracting Authority under the statutory warranty (course of the period for the execution of entitlements under the quality warranty title shall be subject to a suspension as of the day of being noticed by the Contractor on the fault (defect)).
  10. The Parties agree that at any time the statutory warranty period shall amount to 24 months counting from the date of positive completion of SAT tests, confirmed by an appropriate acceptance protocol. In the event that SAT tests are not carried out or completed within the period provided for in §4(1) item 1.4., due to reasons attributable to the Contracting Authority (SOLARIS), the statutory warranty period begins to run after 3 (three) months from the date of delivery of the entire subject of the Agreement stipulated in in the relevant acceptance protocol.
  11. The Contractor declares and acknowledges that it understands that the Contracting Authority 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.
  12. The Contractor provides technical (remote) support for a maximum of 40 clock hours during the warranty period, as well as software updates, if it is delivered with the device that is the subject of the Agreement.

## **§ 10**

### **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.

## § 11

### 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 §6 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 e.g. POA). The provisions of this sec. 1 do not infringe the provisions of §18 sec. 6 - amendments to the Agreement must be made in forms stipulated in therein.
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 Kraków  
and .....
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.

## § 12

### ASSIGNMENT OF RIGHTS AND OBLIGATIONS

1. 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 Contracting Authority in writing under the pain of being null and void. In particular, the Contractor shall not have the right to assign the rights and 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.
2. The Contractor is also obliged to receive written consent of the Contracting Authority y for assigning rights and obligations arising out of this Agreement in case of change of a legal form of the Contractor.

## § 13

### CONTRACTUAL PENALTIES

1. The Parties reserve the right to calculate and seek payment of contractual penalties for inconsistent or improper implementation of obligations hereunder. However the total value of contractual penalties for all causes stipulated in the Agreement shall not exceed the amount of 40% of net remuneration as stipulated in §3(1).
2. The Contractor shall pay contractual penalties to the Contracting Authority in case of the following:
  - a) delay longer than 4 weeks in completion of delivery of the subject herein in relation to the time limit referred to in §4 sec. 1.2, in the amount of 0,04% of the total net value of the subject of the Agreement as stipulated in §3(1) for each day of the delay counting as of the delivery date in accordance with the Agreement (§4(1.2), yet not more than 7% of the total remuneration of the Contractor. In the event of disclosure of any defects/faults during the course of the receipt of the subject hereof, including SAT tests the contractual penalty stipulated in this letter a) shall not apply, provided the subject hereof (faulty) was delivered within the period not contributing to its accrual.
  - b) delay of more than 14 days in removing defects or faults ascertained during the acceptance and collection procedure (§4 sec. 1.2 and §5) or during SAT tests in relation to the time limit determined by the Contracting Authority in accordance with §5 item 2, in the amount of 0,04% of the net value of the Agreement (§3(1). This contractual penalty shall be calculated for each day of the delay commencing the day determined by the Contracting Authority (§5(2), but not more than 5% of the net value of the Agreement.
  - c) delay of more than 14 days in removing defects or faults ascertained during the quality warranty or statutory warranty period, in the amount of 0,01% of the net value of the Agreement (§3(1). This contractual penalty shall be calculated for each day of delay in relation to the time limit (day) determined in accordance with §9(5) hereof, however, not more than 5% of the net value of the Agreement (§3(1).



- d) The Contracting Authority shall be entitled to request payment of a penalty from the Contractor in case of violation of the provisions specified in §13 (Confidentiality) in the amount of 10 000,00 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.
3. The Contracting Authority is entitled to request payment of a contractual penalty from the Contractor in the event of withdrawal from the Agreement by the Contractor or Contracting Authority due to the circumstances attributable to the Contractor 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.
4. The Contractor shall be entitled to request payment of a contractual penalty from the Contracting Authority in the event of withdrawal from the Agreement by the Contractor due to the exclusive fault of the Contracting Authority 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.
5. The Contracting Authority reserves the right to deduct any contractual penalties from the Contractor's remuneration and seek compensation of damages in excess of the contractual penalties on general terms. However stipulated contractual penalties are eligible towards the supplementary compensation claimed by a Party. Contractual penalties reserved above shall be calculated independently of one another (cumulatively), unless expressly stated otherwise.
6. Claim as regards the payment of contractual penalties shall become effective as of the day of occurrence of the circumstances specified in the Agreement.
7. Where the Contractor ascertains that the delivery is not be possible (or such is likely) within the agreed time limit, the Contractor shall immediately notify the Contracting Authority thereof. The Parties will then agree a new delivery date, while the Contracting Authority shall not lose its right to calculate contractual penalties.
8. Payment of contractual penalties shall not release the Contractor from liability of executing the Agreement.

#### **§ 14**

#### **WITHDRAWAL FROM THE AGREEMENT**

1. Apart from the instances specified in the provisions of the Civil Code Act dated 23<sup>rd</sup> April 1964, the Parties 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 development and delivery of the final design of the subject of the Agreement which exceeds 30 days towards the term provided in §4(1.1.).
  - e) The Contractor is delayed in the delivery of the subject hereof for the period of more than 5 weeks in relation to the period specified in §4(1.2) or with the removal of defects of the subject hereof noticed upon the receipt or during the SAT tests, for the period of more than 6 weeks in relation to the period determined by the Contracting Authority,
  - f) The Contractor is delayed of more than 6 weeks in relation to the period specified in §4(1.3)
  - g) The Contractor has executed and presented to the Contracting Authority or supplied it with equipment that does not meet the terms of the Agreement and in an additional period determined by the Contracting Authority, of not less than 14 days did not perform the contract in accordance with its provisions.
  - h) 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,
2. The Contracting Authority may also withdraw from the Agreement:
  - a) within 30 days of the day of becoming aware of a material change in circumstances causing that the performance of the Agreement is not in the public interest, which could not have been

- foreseen at the time of the conclusion of the Agreement, or the continuation of the Agreement may pose a threat to the essential interests of state security or public security (Article 456(1)(1) of the PPL),
- b) the Agreement has been amended in breach of Articles 454 and 455 of the PPL
  - c) the Contractor at the moment of concluding the Agreement was subject to exclusion pursuant to Article 108 of the PPL,
  - d) The Court of Justice of the European Union found, under the procedure provided for in Article 258 of the Treaty on the Functioning of the European Union, that the Republic of Poland has failed to fulfil its obligations under the Treaties, Directive 2014/24/EU, Directive 2014/25/EU and Directive 2009/81/EC, due to the fact that the Contracting Authority awarded the contract in breach of European Union law.
3. The Contractor shall not have the right to the compensation for the withdrawal from Agreement due to reasons on the side of the Contractor.
  4. Withdrawal from the Agreement shall be made in writing else being null and void and shall include the appropriate statement of grounds.
  5. In the event of withdrawal from the Agreement, the Parties shall reserve the right to the enforcement of the contractual penalties and seeking compensation exceeding stipulated contractual penalties.
  6. In cases where the Contracting Authority withdraws from the Agreement on the basis of sec. 2 above, the Contractor may claim only the remuneration due for the performance of a part of the Agreement, until the date of receipt of the notice of withdrawal.
  7. The party that intends to refer to the above-mentioned circumstances is obliged to immediately notify the other Party of this fact in writing.
  8. Except the right to withdraw from the Agreement in full, the Contracting Authority 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 Contracting Authority did not withdraw from the Agreement, the provisions of the Agreement, in particular related to the payment and guarantee shall become effective.

## § 15

### FORCE MAJEURE

1. In the event of impossibility to execute obligations arising out of the subject-matter of the Agreement in relation to circumstances on which the Parties shall not have influence or 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 a force majeure the Parties consider, including but not limited to war actions, state of emergency, floods, fires, announced states of emergency, announced states of epidemic threat, announced states of epidemics or essential change of socio-economic environment.
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. If as a result of the operation of force majeure, the Agreement is not handled for a period of more than 2 months, 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. The termination of the Agreement in this way takes place by mutual agreement of the Parties. However each Party declares hereby that it already agrees to terminate the Agreement in such circumstances and in this manner.
4. Each Party shall immediately inform the second Party on the formation of circumstances being the subject of item 1.
5. The Contracting Authority may request the Contractor to provide appropriate documentation of the circumstances related to the occurrence of force majeure, consisting in particular in indicating how it influenced the Contractor's or the Contractor's subcontractor's ability to perform the Contract.

## § 16

### 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 Contracting Authority 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. As part of the remuneration and as of the date of accepting by the Contracting Authority the works delivered as part of the implementation of the Agreement, in particular the project (§1 section 2.1. and §4 section 1.1.1.), including wiggler construction documentation (hereinafter "Works"), even if it consists of a Confidential information the Contractor, grants to the Contracting Authority a non-exclusive license to the Work along with the provision of its use, 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 – introduction to trade, lending for use or rental of the original 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.
5. The license granted is world-wide and 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 Contracting Authority, the Contractor shall previously request the Contracting Authority 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 Contracting Authority to sublicense.
6. The Parties agree, that the Contracting Authority shall have right to use the Work in fields indicated in sec. 4, including but not limited to fixing the supplied devices, its maintenance, refurbishing or modification etc. by the Contracting Authority or by third parties. For the implementation of the tasks specified in this sec. 6, the Contracting Authority shall have the right to use the Works in all purchasing procedures, including those under public procurement regime.
7. In case the Contractor provides the Contracting Authority with software necessary for the proper use of the microscope, the Contractor shall – as part of its remuneration - grant or transfer to the Contracting Authority a license for such software, which shall be:
  - a. “open source” license, or
  - b. Another type license (ownership license) granting by software producer.In both cases the Contracting Authority shall have the right to use the software for indefinite period of time on the fields of exploitation and under the terms and conditions stipulated in such license. The Contracting Authority shall also be entitled to free of charge software updates for the time period specified by its producer.
8. The Contractor hereby grants its consent to the Contracting Authority’s ability to photograph/record the subject of the Agreement, in particular the devices, and to the use of photos/movies for promotion of the Contracting Authority and the NSRC SOLARIS in the press, radio, and television and on the Internet, especially on the website of the Contracting Authority and the SOLARIS, and in social media of the Contracting Authority and the SOLARIS.

## § 17

### 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 and 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.

## **§18**

### **CHANGES AND SUPPLEMENTS**

1. Changes and supplements to this Agreement may only be made in writing or in electronic form (§19 sec. 5), else being null and void, and must be signed by authorized representatives of both the Contracting Authority and Contractor.
2. The Parties provide for the possibility of changing the Agreement, without changing the amount of the Contractor's remuneration, by signing an annex hereto, in the following cases:
  - a) Changes to the time limits for performance of the subject of the Agreement referred to in § 4(1) through their extension due to causes attributed to the operation of force majeure referred to in § 15.

- b) Changes to the time limits for performance of the Agreement referred to in § 4(1) through their extension due to reasons attributable to the Contracting Authority, in particular in the event of introducing at the request of the Awarding Authority changes to the technical parameters of the subject of the Agreement, requiring a change to the time limit for performance of the Agreement. A change of the date of execution of the Agreement in this respect requires a consent of both Parties.
  - c) Changes to time limits of execution of the Agreement referred to in § 4(1) by means of extension thereof due to reasons attributable to the Awarding Authority concerning no preparation of the site for delivery and installation of the subject of the Agreement.
  - d) Changes to the time limits of performance of the Agreement referred to in § 4(1) by means of extension thereof due to a delay on the part of subcontractors in the performance of their obligations to the Contractor. A change of the date of execution of the Agreement in this respect shall be made at the request of the Contractor and requires acceptance of the Contracting Authority. The Contracting Authority may refuse to accept if the change of the time limit exposes it to inconveniences related to the use of the synchrotron, or exposes it to losses related to, e.g., the risk of losing a subsidy for the construction of the SOLCRYS beamline.
  - e) Extending the term of the statutory warranty or guarantee, in the event of extension thereof by the Contractor,
  - f) Improvement of quality or other parameters characteristic of a given element of the subject of the Agreement or change of technology to an equivalent or better one, increase of equipment efficiency and security, in the event of withdrawal from the market by the manufacturer or cessation of manufacturing of the subject of the Agreement offered by the Contractor,
  - g) Updating solutions due to technological progress or changes in existing regulations,
  - h) Change of the subcontractor due to extraordinary circumstances or other reasons beneficial to the Contracting Authority, if the Contractor has declared the execution of the contract with subcontractors' help,
3. Notwithstanding the provisions of sec. 1 and 2, the Parties may make insignificant changes to the Agreement, which do not constitute a significant change to the Agreement within the meaning of Article 454 sec. 2 of the Public Procurement Law.
  4. Changes not related to the contractual provisions, i.e. as a result of the organizational reasons, resulting in the need to change the contact details specified in the contract (for example the change of the bank account number of one of the Parties) they do not require the conclusion of an annex to the contract, therefore they will be made by submitting a written statement of the Party to whom these changes relate to the other Party.
  5. The Party applying for a change in the provisions of this agreement is obliged to document the occurrence of the circumstances referred to in sec. 2
  6. The Parties allow for the possibility of changing the Agreement in the following cases:
    - a) changes of the rate in value added tax (VAT) and excise duty,
    - b) a change to the amount of minimum wage or minimum hourly wage, determined on the basis of the provisions of the Act of 10 October 2002 on the minimum wage,
    - c) changing the rules of being subject to social insurance or health insurance, or the level of the social security or health insurance premium,
    - d) changing the principles of accumulation and amount of payments to employee capital plans referred to in the Act of 4 October 2018 on Employee Capital Plans (i.e. the Official Journal of Laws of 2023, item 46)- on the terms set out in the below sections, if these changes affect the cost of execution of the Agreement by the Contractor.
  7. A change to the amount of remuneration in the cases referred to in section 6(a)- (d) above shall relate only to part of the subject of the Agreement performed in accordance with the deadlines indicated in the Agreement and cover only part of the remuneration due to the Contractor in respect of which there has been a change to the cost of performance of the Agreement by the Contractor, in connection with the entry into force of the provisions referred to in section 6(a)-(d).

8. In the case of the change referred to in section 6(a) the net value of the Contractor's remuneration will not change, and the gross value of its remuneration will be calculated in the amendment on the basis of new regulations.
9. In the case of the change referred to in section 6(b), the Contractor's remuneration shall change by the value of the Contractor's total cost increase, resulting from the increase of remuneration of persons directly performing the Agreement up to the amount of the changed minimum remuneration or the minimum hourly rate. The Contractor's remuneration shall increase only by that part of the remuneration of employees, which corresponds to the extent to which they perform work directly related to the implementation of the subject of the Agreement.
10. In the case of the change referred to in section (6)(c) the Contractor's remuneration shall change by the amount of the Contractor's total cost increase, which it shall be additionally obliged to bear in order to take into account this change, while maintaining the net amount of remuneration of persons directly performing orders for the Contracting Authority. The Contractor's remuneration shall increase only by that part of the remuneration of employees, which corresponds to the extent to which they perform work directly related to the performance of the Subject of the Agreement.
11. In the event of a change referred to in section (6)(d), the Contractor's remuneration will change by the amount corresponding to the change in the Contractor's cost incurred in connection with the payment of remuneration to employees providing services. The amount corresponding to the change in the Contractor's cost will relate only to the part of the remuneration of employees providing services referred to the previous sentence, corresponding to the extent to which they perform works directly related to the performance of the subject of the Contract.
12. In order to execute the changes referred to in section 6(a)-(d) above, each Party may request the other Party to change the amount of remuneration payable to the Contractor, along with a justification including, in particular, a detailed calculation of the total amount by which the Contractor's remuneration should be changed and indication of the date at which such change to the amount of the costs of execution of the Agreement has occurred or will occur.
13. In the case of changes referred to in section 6(b), (c) or (d), if the application is made by the Contractor, it shall attach to such application the documents setting out the extent to which the changes affect the costs of performance of the Agreement.
14. The Parties may request a change in the amount of the Contractor's remuneration if a change in the price of materials or costs related to the performance of the Agreement occur after 6 months from the date of conclusion of the Agreement, and not more frequently than after another 6 months from the date of conclusion of the annex changing the amount of the Contractor's remuneration. For the avoidance of doubt, the Parties agree that if the reason for the change in the Contractor's remuneration is the premises specified in section 6 lit. a) - d) above, the possibility of changing this remuneration based on the provisions of this paragraph (change in prices of materials or costs) is excluded.
15. The Parties may request a change in the Contractor's remuneration if the change in the price of materials or costs related to the execution of the Agreement shall be higher or lower by at least 0,5% than the total average annual consumer price index announced by the the President of the Central Statistical Office.
16. The Contractor's remuneration will be changed proportionally in relation to the applied price index of materials or costs adjusted to the subject, nature, characteristics (nature) of the public procurement contract covered by this contract.
17. The total maximum value of a change in the Contractor's remuneration cannot exceed 5% of the Contractor's remuneration.
18. The Contractor's remuneration could be changed only if the Party demonstrates in the manner indicated in section 19 below that the change in the price of materials or costs related to the performance of the Agreement has an actual impact on the costs of performing the subject of the Agreement;
19. Within a period of maximum 14 days counting from the change in the prices of materials or costs related to the implementation of the Agreement, the Party may apply for a change in remuneration, if these changes affect the costs of performing the subject of the Agreement by the Contractor. Along with the application, the Party is obliged to present in writing a detailed calculation justifying the

increase or reduction of costs, respectively. If, after the expiry of the 14-day period, the Party does not request a change in remuneration, the other Party will consider that the change in the prices of materials or costs does not have an actual impact on the costs of performing the contract by the Contractor.

20. The justification of the Contractor's request to change the amount of the Contractor's remuneration should be analysed by the person supervising the performance of the contract.
21. A change in the Contractor's remuneration should be sanctioned by the conclusion of an amendment to the Agreement and shall take place from the date of concluding the amendment and relate only to the unrealized part of the Agreement.
22. In addition, it is allowed to replace the current Contractor of this Agreement by another entity that meets the conditions for participation in the tender proceedings and the grounds of exclusion from the tender proceedings does not occur according to Article 108 sec. 1 of PPL Act and Article 109 sec. 1 of the PPL Act to the extent indicated in the tender proceedings documents. This change may take place in the event of a merger, division, transformation, bankruptcy, restructuring, acquisition of the existing Contractor or acquisition of his enterprise by the above-mentioned entity.

### **§19 MISCELLANEOUS**

1. 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.
2. In the event of a dispute between the Parties, arising from the contract or in connection with the contract, the Parties shall attempt to resolve it through mediation conducted by the Permanent Mediators of the Court of Arbitration at the General Counsel to the Republic of Poland, in accordance with the Rules of this Court, and only in the absence of a settlement before the Permanent Mediator of the Court of Arbitration at the General Counsel to the Republic of Poland, the dispute arising hereof shall be examined by the Polish court competent for the seat of the Contracting Authority.
3. In all matters not covered by this Agreement provisions of the Polish law shall apply, in particular the provisions of the Civil Code (i.e. Journal of Laws of 2022, item 1360 as further amended) and the Act of 11 September 2019 – Public Procurement Law (consolidated text Journal of Laws of 2022, item 1710, as amended).
4. The Contracting Authority's information clause regarding the processing of personal data constitutes an appendix to this Agreement. The Contractor undertakes to provide this information to the persons affected by the clause.
5. The Agreement was drawn up on the terms specified in Art. 78 and 78<sup>1</sup> of the Civil Code, i.e. with qualified or handwritten signatures by authorized representatives of both Parties, and if it has been concluded in writing, in four (4) counterparts, one (1) of each language version for each of the Parties.
6. The Parties jointly declare that in the event of concluding this agreement in electronic form with the use of a qualified electronic signature, which is in accordance with art. 78<sup>1</sup> of the Civil Code equivalent to the ordinary written form, the electronic document created in this way is a confirmation that the Parties have jointly made declarations of intent contained therein, and the date of conclusion is the date of submission of the last (later) declaration of will on its conclusion by authorized representatives of each of the Parties .
7. This Agreement has been drawn up in two language versions - Polish and English. In any discrepancies between language versions Polish version prevails.

.....  
*The Contracting Authority*

.....  
*The Contractor*

## Information Clauses

### **INFORMATION CLAUSE BY THE JAGIELLONIAN UNIVERSITY FOR NATURAL-PERSON CONTRACTORS, CONTRACTORS' AUTHORISED REPRESENTATIVES, PROXIES AND CONTRACTORS' EMPLOYEES AND PARTNERS APPOINTED AS CONTACTS AND CHARGED WITH PERFORMANCE OF THE CONTRACT**

Pursuant to Article 13 and 14 of the Regulation of the European Parliament and of the Council (EU) 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 (General Data Protection Regulation) (Official Journal of the EU L.2016.119.1) (hereinafter: GDPR), the Jagiellonian University (JU) informs that:

1. The Controller of your personal data is the Jagiellonian University, with a registered seat at ul. Gołębia 24, 31-033 Kraków, www.uj.edu.pl.
2. The JU has appointed a Data Protection Officer whom you may contact in the case of any queries or remarks concerning the processing of your personal data and your rights pursuant to the regulations on personal data protection. Contact details: email: iod@uj.edu.pl, phone: 12 663 12 25.
3. The JU may process your personal data for the following purposes:
  - (a) conclusion and performance of a contract – as provided by Article 6.1(b) of the GDPR – in the case of a natural-person Contractor, their legal representatives or persons acting based on power of attorney conferred on them by the Contractor;
  - (b) resulting from legitimate interests, which include performance of a contract concluded with the Contractor as provided by Article 6.1(f) of the GDPR in the case of the person appointed by the Contractor in relation to the performance of the Contract;
  - (c) compliance with legal obligations concerning keeping books and accounting documentation – pursuant to Article 6.1(c) of the GDPR with regard to Article 74. 2 of the Act of 29 September 1994 on accounting;
  - (d) resulting from the pursuit of legitimate interests including determination, pursuit or defence of possible claims under the performance of a contract, as provided by Article 6.1(f) of the GDPR;
  - (e) compliance with legal obligations concerning archiving documentation – pursuant to Article 6.1(c) of the GDPR with regard to the Act of 14 July 1983 on the national archival repository and archives.
4. The JU has acquired your personal data:
  - a) in the case of a natural-person Contractor, their legal representatives or persons acting based on power of attorney conferred on them by the Contractor – directly from you. Providing your personal data is a prerequisite for purposes related to the conclusion and performance of the contract;
  - b) in the case of a person appointed by the Contractor in relation to the performance of the Contract - from the Contractor with whom the JU has concluded contract. The scope of your personal data may include: full name, post of employment, employer, contact details and other data necessary in relation and for the performance of the contract.
5. Your personal data may be made available to entities authorised to collect them pursuant to the generally applicable law.
6. Your personal data shall not be transferred outside the EEA or to international organisations.
7. Your personal data will be retained for the period of duration of the contract concluded with the Contractor and subsequently for a period required by relevant provisions of law regarding the archiving of documentation or for a period of limitation of rights specified in the provisions of law.
8. You have the following rights: to obtain information on personal data processing and rights resulting from the GDPR, to access your data and rectify them, as well as to have them deleted from the controller's database (unless further processing is necessary for fulfilling a legal obligation or for the purposes of determining, pursuing, or defending claims), to limit their processing or transfer, and to object to the processing of the data – in the cases and under the conditions specified in the GDPR.
9. You have the right to lodge a complaint with the President of the Office for Personal Data Protection.
10. You will not be subject to automated decision-making (decision-making without human agency). Your personal data will not be used for profiling.