

Cracow, 2<sup>nd</sup> of December 2022

(Handling mark: CZ-272-9/22)

**Dear Contractors  
Participants in the proceedings**

**concerns: clarification of the content of the description of the subject of the contract (hereinafter: "OPZ") and changes to the content of the OPZ in the proceedings conducted as an open tender for the supply of specialized software under the project entitled: "Center for Sustainable Raw Materials and Energy Management" - divided into parts**

#### **1. Ordering Party**

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### **CLARIFICATION OF THE CONTENT OF THE TERMS OF CONTRACT AND AMENDMENT OF THE TERMS OF CONTRACT**

- I. In connection with the contractor's request for clarification of the content of the Terms and conditions of the contract (hereinafter: „SWZ”) regarding the proceedings in question, acting pursuant to Article 135 (2) of the Act of September 11, 2019. Public Procurement Law (Journal of Laws of 2022, item 1710, as amended - hereinafter referred to as the "PPL Act"), I communicate the content of the inquiries, together with the clarifications:

#### **Question No. 1 dated 26/10/2022. - concerns SWZ**

"With reference to the provision in subsection 2 of section VII of the SWZ, please clarify whether this provision means that the license should have a 60-month upgrade subscription? That is, during this time, should the user be able to upgrade the software to current versions?"

#### **Response**

This provision means that the Ordering Party has the possibility to update the purchased license free of charge for the period indicated in the SWZ. In connection with numerous questions from contractors, the Ordering Party shall amend Ch. VII par. 2 of the SWZ in such a way that access to updates must cover a minimum period of 12 months, calculated from the date of the first installation of the software. If the update of the software for subsequent years does not involve an additional cost or the cost can be incurred by the Contractor of the update then please include this in your offer as well.

#### **Question No. 2 dated 10.11.2022.**

Regarding Appendix No. 1 to the SWZ - Detailed description of the subject of the contract (for all parts). The requirements presented by the Ordering Party in the detailed description of the subject of the contract (Annex No. 1) for each part of the proceedings say that the license is to be valid for 5 years from the time of supply, but perpetual, lifetime licenses are allowed. Important in this regard is the requirement to ensure that patches and updates issued for the supplied software by the software producer can be downloaded, installed and used free of charge during the period of the purchased license.

Please clarify or confirm that in the event that the producer of the software in question does not offer time-based licenses only perpetual licenses, providing

The possibility of downloading, installing and using patches and updates should be offered for a period of at least 5 years (60 months) in accordance with the provisions of Section VII, item 2 of the SWZ in the form of a so-called service contract, and the Ordering Party does not expect unlimited access to such a possibility.

#### **Response**

In connection with numerous inquiries from contractors, the Ordering Party is amending the SWZ and Appendix No. 1 to the SWZ - Description of the subject of the contract (hereinafter: "OPZ") in such a way that the possibility of free download, installation and use of patches and updates issued for the supplied software by the software producer must be for a minimum of 12 months from the date of installation by the user. The change made does not affect the minimum duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software. Bearing the above in mind, in the case of a perpetual license, software updates should be provided to the Ordering Party for a minimum of 12 months from the date of installation by the user. This change applies to all parts of the proceedings. If upgrading the software for subsequent years does not incur an additional upgrade cost then please include this in your bid as well.

#### **Question No. 3 dated 10/11/2022. - concerns the license for VOXLER software**

In the month of October 2022, our company as an authorized exclusive distributor of the Voxler software was informed by the producer of the aforementioned software that it withdraws this

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product completely from sale as of January 1, 2023. The program is sold in the form of a perpetual license until 31.12.2022. This product also during the period of regular sales was never and still is not covered by the so-called Maintenance i.e. service contract guaranteeing free updates during its validity period. Upgrading this program has always been possible only by acquiring a paid update, the so-called upgrade. The above results in the impossibility of meeting the condition specified in the SWZ Section VII, point 2.

In view of the above, if the Ordering Party foresees a real possibility of purchasing the aforementioned

software by 31.12.2022 under the conditions described above, such purchase will be possible. Otherwise, it is up to the decision of the Ordering Party whether the product will be withdrawn from the specifications of the proceedings by amending the provisions of the Detailed Description of the Subject of the Order (appendix no. 1 to the SWZ).

## Response

The Ordering Party accepts these facts and aims to complete purchases by the end of 2022.

### **Question No. 4 dated 10/11/2022. - concerns the template contract (Appendix No. 6 to the SWZ)**

"a/ Paragraph 3 paragraph 1 - Delivery date.

The provision covered by the aforementioned paragraph 1 in terms of:

"...or if the Purchaser decides to do so at a later date, but no later than the end of 2023."

In view of the fact that the subject of the tender are licenses of specialized software, which is often subject to significant modifications through the introduction of subsequent versions and the consequent changes in prices, the adoption of such a provision and the maintenance of price terms in the tender agreed in advance of the deadline specified in the above provision is not possible. At the same time, Paragraph 13 of the template contract allows the possibility of extending the deadline by a maximum of 14 days, but in view of the provision of Par. 3 paragraph 1 of the contract is not clear whether it will be the target deadline of 14 + 14 or, for example, 31.12.20223 + 14 days.

Does the Ordering Party agree to delete the above-mentioned paragraph or to introduce an additional clause taking into account changes in prices and versions of software under an additional written annex allowing changes in the terms of purchase with such a change in the deadline for implementation and leaving as an obligatory deadline of 14 days?"

## Response

The Ordering Party agrees to amend §3 item 1 of Appendix No. 6 to the SWZ - template contract in such a way that the supply of software listed in the Detailed Description of the Subject of Purchase will take place within 14 working days from the conclusion of the Contract,

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or if the Ordering Party decides to do so at a later date, but no later than by the end of February 2023, subject to §13 item 3 point 3 of the Contract. The Ordering Party declares that, due to the fact that the subject contract is co-financed from European Union funds, the nature of the subject contract does not allow the acceptance of additional written annexes changing the terms of purchase.

**Question No. 5 dated 10/11/2022. - refers to Appendix No. 1 to the SWZ - Detailed description of the subject of the contract (applies to all parts).**

"The ordering party has not clearly indicated in all parts along with the acceptable version of the software in question also the possibility of offering or supplying a newer version. In view of the long bidding period, wherever he has not done so, will the Ordering Party allow offering or supplying the latest solutions and versions offered by the respective manufacturers as of the date of signing the contract? Of course, assuming that the new versions will meet the technical requirements set forth in the detailed description of the subject of the contract."

**Response**

The Ordering Party allows the possibility of offering or supplying the latest versions of the software in question as of the date of signing the contract. The limitation for the Ordering Party will be the price limit / budget for the given software.

**Question No. 6 dated 15/11/2022. - concerns 21 Oracle DB**

"Please let us know if the Ordering Party requires the supply of a perpetual Oracle Database Standard Edition 2 license with a 5-year producer's technical assistance allowing free download, installation and use of patches and updates issued by the producer for the duration of the assistance?"

If so, we would like to inform you that Oracle producer licenses including Oracle Database Standard Edition 2 license is sold with up to 3 years of technical assistance as a standard, therefore, will the Ordering Party change the required duration of technical assistance from 5 years to 3 years?"

**Response**

In connection with numerous inquiries from contractors, the Ordering Party is amending the SWZ and Appendix No. 1 to the SWZ - Description of the subject of the contract (hereinafter: "OPZ") in such a way that the possibility of free download, installation and use of patches and updates issued for the supplied software by the software producer must be a minimum of 12 months from the date of installation by the user. The change made does not affect the minimum

duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software. This amendment applies to all parts of the proceedings.

#### **Question No. 7 dated 15/11/2022. - concerns 27 Oracle Crystal Ball**

"Please let us know if the Ordering Party requires the supply of a perpetual Oracle Crystal Ball Classroom Faculty Edition - Faculty User license with a 5-year producer's technical assistance allowing free download, installation and use of patches and updates issued by the producer for the duration of the assistance?

If so, we would like to inform you that Oracle producer licenses including Oracle Crystal Ball Classroom Faculty Edition - Faculty User are sold with up to 3 years of technical assistance as standard, therefore, will the Ordering Party change the required duration of technical assistance from 5 years to 3 years?"

#### **Response**

In connection with numerous inquiries from contractors, the Ordering Party is amending the SWZ and Appendix No. 1 to the SWZ - Description of the subject of the contract (hereinafter: "OPZ") in such a way that the possibility of free download, installation and use of patches and updates issued for the supplied software by the software producer must be a minimum of 12 months from the date of installation by the user. The change made does not affect the minimum duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software. If the update of the software for subsequent years does not involve an additional cost or the cost can be incurred by the Contractor of the update then please include this in your offer as well. This amendment applies to all parts of the proceedings.

#### **Question No. 8 dated 21/11/2022.**

"Dear Sirs,

In connection with your proceeding No. CZ-272-9/22 for the supply of specialized software under the project entitled: "Center for Sustainable Raw Materials and Energy Management" - divided into parts, I kindly ask you to answer the questions below.

"In the description of the subject of the contract in parts 3,4,5,8,9,10,11,12,13,15,16,20,23,25

The ordering party indicated:

- A license authorizing the use of the software on an unlimited number of devices in one institution within the defined license type and the defined number of workstations, valid for 5 years from the moment of supply/installation by the user (in the case of perpetual/lifetime licenses - valid indefinitely).

- Ability to download, install and use, free of charge, patches and updates issued for the supplied software by the software producer during the period of the purchased license, from the date of installation by the user (the moment of installation according to the date of supply). Software producers offer perpetual licenses with a one-year service contract giving the ability to download, install and use, free of charge, patches and updates issued for the supplied software by the software producers for a period of 12 months from the date of supply. In contrast, the Ordering Party's requirements require that access to the above facilities be valid for the entire period of the purchased license, i.e. in the case of a perpetual license this would mean that the license should be updated perpetually. Unfortunately, such an option is not offered by software producers.

Does the Ordering Party agree to amend the provision of the description of the subject of the contract in accordance with the above provisions, i.e..

"The ability to download, install and use, free of charge, patches and updates issued for the supplied software by the software producer for a minimum period of 12 months from the date of supply of the software."

If you have any additional questions, please contact me."

## Response

In connection with numerous inquiries from contractors, the Ordering Party is amending the SWZ and Appendix No. 1 to the SWZ - Description of the subject of the contract (hereinafter: "OPZ") in such a way that the possibility of free download, installation and use of patches and updates issued for the supplied software by the software producer must be for a minimum of 12 months from the date of installation by the user. The amendment made does not affect the minimum duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software. If the update of the software for subsequent years does not involve an additional cost or the cost can be incurred by the Contractor of the update then please include this in your offer as well. This change applies to all parts of the proceedings.

## Question No. 9 dated 21/11/2022.

"Dear Sirs,

Below I am submitting a question for the procedure CZ-272-9/22.

It concerns parts 8, 9, 10, 11

Can the Contracting Authority confirm that the provision "The possibility of free download, installation and use of patches and updates issued for the supplied software by the software manufacturer during the period of the purchased license, from the date of installation by the user (the moment of installation corresponding to

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the date of supply)." for the supply of perpetual licenses refers to the ability to download, install and use patches and updates within the purchased version of the software?

The producer offers updates only within the purchased license version, that is, for example, within the supply of Itasca 3DEC version 7.0 the Ordering Party has the right to updates and patches of version 7.0 but the license does not include updates to the higher version Itasca 3DEC version 8.0."

### **Response**

The Ordering Party informs that as part of the purchased license version, it does not require the contractor to upgrade to a higher version. If the update of the software for subsequent years does not involve an additional cost or the cost can be incurred by the Contractor of the update then please include this in your offer as well.

### **Question No. 10 dated 23/11/2022. - concerns SWZ**

"We ask that in the SWZ Section VII. Order completion date sub-paragraph 2. include changing the number of months from 60 to at least 36. 60 months is a very long period from the point of view of software development."

### **Response**

In connection with numerous inquiries from contractors, the Ordering Party is amending the SWZ and Appendix No. 1 to the SWZ - Description of the subject of the contract (hereinafter: "OPZ") in such a way that the possibility of free download, installation and use of patches and updates issued for the supplied software by the software producer must be a minimum of 12 months from the date of installation by the user. The amendment made does not affect the minimum duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software. If the update of the software for subsequent years does not involve an additional cost or the cost can be incurred by the Contractor of the update then please include this in your offer as well. This amendment applies to all parts of the proceedings.

### **Question No. 11 dated 23/11/2022. - refers to Appendix No. 6 Template of the Contract**

"§2 refers to granting or providing the Ordering Party with updates throughout the period for which the license will be granted. Please remove this provision or limit this period to a minimum of 3 years from the date of supply of the software."

### **Response**

In connection with numerous inquiries from contractors, the Ordering Party is amending Annex 6 - the template contract by limiting the provision of updates to the Ordering Party to a minimum of 12 months from the date of installation by the user. The amendment does not affect the minimum duration of the license, i.e. 5 years, for which the Ordering Party intends to use the software.

**Question No. 12 dated 23/11/2022. - concerns Appendix No. 6 Template of the Contract**

"In § 8 item 3 of the Contract it is mentioned that the Contractor may issue an invoice not earlier than after the Parties have signed the Protocol of acceptance without reservations. We kindly request you to add a provision to the Model Agreement that in the absence of confirmation of acceptance of the subject matter of the agreement by the Ordering Party by means of a Protocol and the absence of objections to the quality or completeness of the software within 14 days of receipt of the subject matter of the agreement, the Contractor will be entitled to make a unilateral acceptance of the subject matter of the agreement without objections. The unilateral acceptance protocol signed by the contractor shall be the basis for issuing a VAT invoice. In the current wording, it is permissible that the date of signing the Protocol will be delayed unreasonably, which may affect the fact that payment will not be made."

**Response**

The Ordering Party agrees to amend § 8 paragraph 3 of Appendix No. 6 to the SWZ – template contract with regard to the subject question.

**Question No. 13 dated 23/11/2022. - concerns Appendix No. 6 Template of the Contract.**

"We kindly ask you to add a clause 9 in §8, which will state that in case of non-payment by the Ordering Party, the program will be suspended until payment is received. The contract in its current wording allows delaying the payment without a final deadline."

**Response**

The Ordering Party does not agree to the addition of a provision to Appendix No. 6 - template contract, according to which the software in question will be suspended until payment is received. The Ordering Party declares that, due to the fact that the contract in question is co-financed from European Union funds, the nature of the contract in question does not allow to add to the template contract the content of the provision indicated by the contractor.

**Question No. 14 dated 23.11.2022. - Concerning Appendix No. 6 Template of the Contract.**



"In the Agreement there is two references to the total maximum contractual penalty, i.e. both in §9 point 2 and in §12 point 1c, with different amounts of penalties. We kindly ask you to leave the provision where the total maximum contractual penalty is 20%, and remove the provision indicating a maximum contractual penalty of 100%. At the same time, please change the amount of contractual penalties referred to in §9 point 1.a to 10%."

## Response

The Ordering Party agrees to amend § 9 item 1.a of Appendix No. 6 to the SWZ - template contract by reducing the contractual penalty to 10%. In the remaining scope, the Ordering Party does not agree to amend Appendix No. 6 to SWZ - template contract.

### **II. In connection with the above-mentioned questions to the SWZ, the Ordering Party, acting pursuant to Article 137 (1) of the PPL Act, informs that the following changes have been implemented to the content of the SWZ:**

#### **1. The amendment applies to all parts of the OPZ:**

In the OPZ, all parts in terms of the subject matter of the software supply are amended as follows:

*"The ability to download, install and use, free of charge, patches and updates issued for the supplied software by the software producer for a minimum period of 12 months from the date of installation by the user (the moment of installation corresponding to the date of supply)."*

#### **2. In Chapter VII, paragraph 2 of the SWZ, is replaced by the following:**

*"In the case of licenses, the Ordering Party reserves the right to download, install and use, free of charge, patches and updates issued for the delivered Software by the Software producer for a minimum period of 12 months, calculated from the date of first installation."*

#### **3. In Appendix No. 6 to the SWZ - template contract § 3, paragraph 1 is replaced by the following:**

*"Delivery of the Software listed in the Detailed Order Description will take place within 14 working days from the conclusion of the Agreement, or if the Ordering Party decides to do so at a later date, but no later than the end of February 2023, subject to §13.3.3 of the Contract."*

#### **4. In Appendix No. 6 to the SWZ – template contract § 8, paragraph 3 is replaced by the following:**

*„The Contractor may issue an invoice not earlier than after the Parties have signed the Acceptance Protocol without reservations. In the event that the Ordering Party has not confirmed the acceptance of the subject of the contract by the Protocol and no objections have been raised to the quality or completeness of the software within 14 days of receipt of the subject of the contract, the Contractor shall be entitled to make a unilateral*

*acceptance of the subject of the contract without reservations. The unilateral acceptance Protocol signed by the Contractor shall be the basis for issuing a VAT invoice.”*

**5. In Appendix No. 6 to the SWZ – template contract § 2 is replaced by the following:**

*“The subject matter of the Agreement is the supply by the Contractor to the Ordering Party of the specialized Software listed in the Detailed Description of the Subject of the Order (constituting Attachment No. 1 to the Agreement) and in accordance with the Offer, constituting Attachment No. 3 to the Agreement, together with the grant or provision by the Contractor to the Ordering Party of an appropriate license enabling the uninterrupted use of the Software under the terms of the License Terms for the entire period for which the License will be granted and free updates to the Software for a minimum period of 12 months from the date of the first installation.”*

**6. In Appendix No. 6 to the SWZ – template contract § 9 paragraph 1 letter a) is replaced by the following:**

*„The Ordering Party shall charge the Contractor contractual penalties in the following cases and amounts:*

*a) In the case of termination of the Contract (withdrawal or termination), for reasons attributable to the Contractor - in the amount of 10% of the gross remuneration specified in § 8 paragraph 1 of the Contract; in the case of partial withdrawal from the Contract, the penalty will be calculated in proportion to the part of the remuneration that the Contractor will not receive;”*

**7. In Chapter XIV, paragraph 1 of the SWZ is replaced by the following:**

*„The tender must be submitted using the purchasing platform available at: <https://platformazakupowa.pl/pn/minpankrakow> by 9th December 2022 at 11:00 am.”*

**8. In Chapter XIV, paragraph 4 of the SWZ is replaced by the following:**

*„The tenders will be opened on 9th December 2022, at 12:00.”*

**9. In Chapter XVI, paragraph 3 of the SWZZ is replaced by the following:**

*„Accordingly, tender term expires on 8th March 2023.”*

**III. The Ordering Party informs that all other provisions remain unchanged.**

With best regards  
Prof. Krzysztof Galos, D.Sc.  
Eng. Director of Institute

(electronic signature)