


<p>DZIAŁ ZAMÓWIEŃ PUBLICZNYCH UNIwersYTETU JagIELLOŃSKIEGO ul. Straszewskiego 25/3 i 4, 31-113 Kraków tel. +4812-663-39-03 e-mail: bzp@uj.edu.pl https://www.uj.edu.pl ; https://przetargi.uj.edu.pl</p>	
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Krakow, 8th October 2024

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/transakcja/992916>

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 2024, item 1320, 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 2024, item 1061 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 (referring to the part 1 and the part 2)

1. The subject of the contract is the execution of a NAP-XPS system for the beamline at National Synchrotron Radiation Centre SOLARIS (hereinafter NSRC SOLARIS), located in Krakow (30-392), Czerwone Maki 98 in two parts:
 - Part 1:** the execution of the Near Ambient Pressure XPS system (hereinafter referred to as the NAP-XPS system) including a fully equipped UHV analysis chamber, a high-pressure cell as well as pumping for NAP-XPS system and differential pumping system of the electron energy analyser with required electronics and the assembly (installation) of the system;
 - Part 2** the delivery and assembly of Ambient Pressure Electron Energy Analyser (hereinafter referred to as Analyser system) with an electrostatic lens system and digital camera-MCP detector system, capable of recording XPS at ambient pressures.
2. This public contract is financed from MEiN funds granted under contract No. 7428/IA/SP/2023, dated 11th July 2023, for the construction of a research station for near-ambient pressure X-ray photoelectron spectroscopy (NAP-XPS).

3. 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.
4. **General requirements for the entire contract (with regard to the Part 1 and to the Part 2):**
 - 4.1 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 is the Appendix 2 to the ToR (draft provisions of the contract).
 - 4.2 The tender must be explicit and comprehensive, i.e. it must cover the entire scope of the subject of the contract.
 - 4.3 The Contractor must offer the subject of the contract in accordance with the requirements of the Contracting Authority specified in the ToR and its annexes.
 - 4.4 The scope of the order covers the installation and commissioning of the ordered devices at the following address: Czerwone Maki Street 98, 30-392 Krakow, Poland.
 - 4.5 The Contractor shall offer a contractual guarantee (at least 24 months) and support at least at the minimum level and conditions indicated in Annex A to the ToR and in the draft provisions of the contract (in the contract template).
 - 4.6 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.
 - 4.6.1 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".
 - 4.6.2 The term "equivalence" shall be understood as offering devices with:
 - 4.6.2.1 at least the same characteristics (i.e. functional and operational properties) as stated in the Appendix A to the ToR and
 - 4.6.2.2 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).
 - 4.6.3 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, 38433000-9 Spectrometers

Chapter IV – Qualitative evidence (submitted along with the bid) with regard to the Part 1 and the Part 2

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.
 - 1.2 **With regard to the Part 1:** In addition to the technical descriptions mentioned in section 1.1 above, it is required to submit a conceptual design of the transfer line along with a solution that enables the retrieval of a "flag style" holder from PTS type holder (from the UHV radial distribution chamber of the PHELIX end station). The conceptual design must be submitted in .pdf format – and, if the Contractor has the appropriate software, also in .dwg format according to Attachment MECH3, taking into account the floor plan and available space.

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 – regarding the Part 1 and the Part 2

1. The subject of the **basic** contract shall be performed within **12 months** from the date of award of the contract, i.e. from the conclusion of the contract, in accordance with the following time limits:
 - 1.1 Phase I:** the construction design of the system in accordance with the Appendix A to the ToR within **3 months** from the date of awarding the contract, i.e. from the conclusion of the contract,
 - 1.2 Phase II:** manufacturing, conducting proper tests, delivery to the Contracting Authority's unit (NCPS SOLARIS, Czerwone Maki 98, 30-392 Krakow) up to **11 months** from the conclusion of the contract,
 - 1.3 Phase III:** installation, conducting SAT tests, commissioning the system and conducting training in the use of the equipment for employees of the Contracting Authority up to **12 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 regarding the Part 1 and the Part 2, unless otherwise was indicated

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:
 - 4.1 **With regard to the Part 1:** Only those Contractors may apply for awarding the contract, who will demonstrate that: in the last 3 (three) 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 1 (one) executed contract including the design and delivery of a system for near ambient pressure X-ray photoelectron spectroscopy (NAP-XPS) for measurements in ultra-high vacuum (UHV) and under ambient pressure, with a value of no less than PLN 2,000,000.00 net (in words: two million PLN net), and that this contract was performed properly.
 - 4.2 **With regard to the Part 2:** Only those Contractor may apply for awarding the contract, who will demonstrate that: in the last 3 (three) 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 2 (two) executed contracts including the design, delivery, and installation of an ambient pressure electron energy analyser, one of them of a value of no less than PLN 1,200,000.00 net (in words: one million two hundred thousand PLN net), and that these contracts were performed properly.

5. If the value of the contracts indicated in the documents submitted to confirm the fulfilment of the conditions for participation in the tender proceedings is expressed in currencies other than PLN, the Contracting Authority shall use the average exchange rate published by the National Bank of Poland for PLN currency on the date of the announcement of the tender proceeding to compare with other bids.
6. 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.
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 – regarding the Part 1 and the Part 2.

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, the Contracting Authority shall exclude the Contractor:
 - 1) being a natural person that has been finally convicted of a criminal offence:
 - b) involving participation in a criminal organisation or a relationship aimed at committing a criminal offence or a fiscal offence referred to in Article 258 of the Criminal Code,
 - c) involving trafficking in human beings referred to in Article 189a of the Criminal Code,
 - d) referred to in Articles 228 to 230a, 250a of the Criminal Code, in Articles 46 to 48 of the Act of 25 June 2010 on Sports (Journal of Laws of 2023, item 2048) or in Article 54(1) to 54(4) of the Act of 12 May 2011 on Reimbursement of Medications, Foodstuffs Intended for Particular Nutritional Uses, and Medical Devices (Journal of Laws of 2023, items 826),
 - e) involving terrorist financing referred to in Article 165a of the Criminal Code or a criminal offence aimed at preventing or inhibiting the identification of criminal origin of money or concealing its origin referred to in Article 299 of the Criminal Code,
 - f) of a terrorist nature referred to in Article 115 § 20 of the Criminal Code or aimed at committing this offence,
 - g) involving entrusting the performance of work to minors being foreign nationals referred to in Article 9.2 of the Act of 15 June 2012 on the Effects of Entrusting Work to Foreigners Staying Illegally in the Territory of the Republic of Poland (Journal of Laws of 2021, item 1745),
 - h) against business transactions referred to in Articles 296 to 307 of the Criminal Code, of fraud referred to in Article 286 of the Criminal Code, a criminal offence against authenticity of documents referred to in Articles 270 to 277d of the Criminal Code, or a fiscal offence,

- i) referred to in Article 9.1 and Article 9.3 or Article 10 of the Act of 15 June 2012 on the Effects of Entrusting Work to Foreigners Staying Illegally in the Territory of the Republic of Poland
- or of an appropriate prohibited act specified in the provisions of foreign law;
- 2) where an active member of its management or supervisory body, a partner in a registered partnership or a professional partnership or a general partner in a limited partnership or a limited joint-stock partnership, or a proxy has been finally convicted of the criminal offence referred to in subparagraph (1);
- 3) against whom a final judgement or final administrative decision has been issued on arrears in the payment of taxes, charges or social security or health insurance contributions, unless the contractor, as appropriate, has paid the taxes or social security or health insurance contributions due with interest or fines or has entered into a binding agreement concerning the payment of those amounts due before the expiry of the time limit for the submission of requests to participate in the procedure or the time limit for the submission of tenders;
- 4) that has been finally prohibited from tendering for public contracts;
- 5) if the contracting authority has sufficiently plausible indications to conclude that the contractor has entered into an agreement with other contractor aimed at distorting competition, in particular if, by belonging to the same capital group within the meaning of the Competition and Consumer Protection Act of 16 February 2007, they have submitted separate tenders, tenders for lots or requests to participate in the procedure, unless they prove that they have prepared these tenders or requests independently of each other;
- 6) where, in the cases referred to in Article 85(1), a distortion of competition results from the prior involvement of that contractor or entity which belongs together with the contractor to the same capital group within the meaning of the Competition and Consumer Protection Act of 16 February 2007, unless the resulting distortion of competition may be eliminated in a manner other than by excluding the contractor from participation in the contract award procedure.

1.1.1 Subject to the Article 110(2) which reads as follows:

A contractor shall not be subject to exclusion in the circumstances specified in Article 108.1 (1), (2) and (5) or Article 109.1 (2) to (5) and (7) to (10) if it proves to the contracting authority that it has met all of the following requirements:

- 1) it has repaired or undertaken to repair the damage caused by a criminal offence, delinquency or its improper conduct, including by cash compensation;
 - 2) it has exhaustively explained the facts and circumstances related to a criminal offence, delinquency or its improper conduct and the resulting damage, actively cooperating with competent authorities, including law enforcement agencies, or the contracting authority;
 - 3) it has undertaken specific technical, organisational, and personnel measures relevant to prevent further criminal offences, delinquencies or improper conduct from taking place, and in particular:
 - a) it has terminated any and all ties with the persons or entities responsible for improper conduct of the economic operator,
 - b) it reorganised its personnel,
 - c) it implemented a reporting and control system,
 - d) it established an internal audit structure for the purpose of monitoring of compliance with laws, internal regulations or standards,
 - e) it introduced internal regulations concerning liability and compensation for non-compliance with laws, internal regulations or standards.
- 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 2024, item 507);
- 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 – regarding the Part 1 and the Part 2

1. Mandatory statements submitted with the offer:
- 1.1 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.
- 1.2 The Contractor relying on the technical or professional capacity of the other entities, shall submit along with the bid:

- 1.2.1 a declaration from the entity providing resources, confirming the absence of grounds for exclusion of this entity and the fulfilment of the participation requirements to the extent that the Contractor relies on its resources, in accordance with the template provided in Annex No. 1 to the offer form;
- 1.2.2 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, 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,
 - b) the manner and period of the availability to the contractor of the resources of the entity providing the resources while performing 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.
- 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 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 2024, item 507);
- 1.4 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. Pursuant to the provisions of Article 139 of the Public Procurement Law, the Contracting Authority will first examine and evaluate the offers, and then will conduct the qualification of the Contractor whose offer received the highest evaluation, in terms of the absence of exclusion grounds and fulfillment of the participation requirements.
 - 2.1 The Contracting Authority calls the Contractor whose offer received the highest evaluation to submit, within the designated timeframe, **the documents/declarations confirming the absence of the grounds for exclusion from the procedure:**
 - 2.1.1 a single document (ESPD), the template of which is attached as Appendix no 3 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, 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/baza-wiedzy/prawo-zamowien-publicznych-regulacje/prawo-krajowe/jednolity-europejski-dokument-zamowienia> 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.
 - 2.1.2 In the case of joint bidding by contractors the European Single Procurement Document (ESPD) mentioned in sec. 2.1.1 above and the statements indicated in sec. 1.3 and 1.4 above shall be submitted by each of the contractors jointly applying for the contract.

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.

- 2.1.3 the European Single Procurement Document (ESPD) of the other entity in order to demonstrate the lack of grounds for exclusion in relations to such entities and fulfilment - as far as it refers to the resources thereof – of terms & conditions for participation in the proceedings,
- 2.2 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:
- 2.2.1 a list itemizing contracts confirming the fulfilment of the condition of participation in the proceedings referring to the each Part indicated in chapter VI sec. 4 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;
- 2.2.2 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 – the declaration of the Contractor;
- 2.2.3 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;
- 2.2.4 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 2023 item 1689 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;
- 2.2.5 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;
- 2.2.6 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,
- 2.2.7 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,
- 2.2.8 the Contractor's statement on the validity of the information contained in the ESPD statement, with regard to the grounds for exclusion from the tender proceedings indicated by the Contracting Authority, referred to in Article 108 sec. 1 point 3 of the PPL, Article 108 sec. 1 point 4 of the PPL, Article 108 sec. 1 point 5 of the PPL, Article 108 sec. 1 point 6 of the PPL, Article 109 sec. 1 point 1 of the PPL, Article 109 sec. 1 point 5 and from 7 to 10 of the PPL.
- 2.3 If the Contractor has its registered seat or place of residence outside the territory of the Republic of Poland, instead of:
- 2.3.1 the information from the National Criminal Register (referred to in chapter VIII sec. 2.2.3 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 or the place of residence of the person to whom the information or document relates - issued no earlier than 6 months before the deadline for submission of bids;
- 2.3.2 a certificate referred to in chapter VIII in sec. 2.2.5, certificate or other document confirming the Contractor is not in arrears with the payment of social security or health insurance contributions referred to in the chapter VIII sec. 2.2.6 above or a copy or information referred from the National Court Register or the Central Register and Information on Economic Activity referred to in sec. 2.2.7 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.
- 2.3.3 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. 2.3.1-2.3.2 of the ToR, or when these documents do not refer to all cases under Art. 108 section 1 point 1, 2 and 4, and in Art. 109 section 1 point 1 of the Act, 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 or the place of residence of the person to whom the information or document relates 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. 2.3.1 and sec. 2.3.2 of the ToR shall apply as appropriate.
- 3 If during the tender proceedings the Contractor fails to submit the ESPD, 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.

- 4 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 – regarding the Part 1 and the Part 2.

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/transakcja/892792>
- 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/1Kd1DttbBeiNWt4q4sIS4t76lZVKPbkyD/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
- 1.5.1 To shorten the time needed to answer questions, communication between the Contracting Authority and Contractors regarding:
- questions to the Contracting Authority on the content of the ToR;
 - answers sent to Contracting Authority's request for qualitative evidence;
 - 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;
 - 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;
 - answers sent to Contracting Authority's request for explanations regarding the content of qualitative evidence;
 - answers sent to other Contracting Authority's requests resulting from the Act – Public Procurement Law;
 - requests, information and statements sent by the Contractor;
 - 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 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, 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:
 - 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, 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. *Ms Katarzyna Jasińska, tel. +4812-663-39-52* is authorised to communicate with Contractors in formal and substantial matters.

Chapter X – Requirements for the bid security – regarding the Part 1 and the Part 2.

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

Chapter XI– Bid validity period - regarding the Part 1 and the Part 2.

1. The Contractor shall be bound by its tender for 3 months from the bid submission time limit, i.e. until **3rd February 2025 inclusive (90 days)**.
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 – regarding the Part 1 and the Part 2

1. Each Contractor shall submit only one bid covering the implementation of the entire subject of the contract. The Contractor may submit a bid for the selected Part or both Parts.
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 2022, item 1799, 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 declaration regarding the entity providing resources to the Contractor /if applicable/, i.e.:
 - ✓ a declaration on the provision of resources to the Contractor along with a relevant commitment or other means of proof /if applicable/;
 - ✓ a declaration of no grounds for exclusion;
 - ✓ a declaration of meeting the participation requirements to the extent applicable.
 - 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 2024, item 507) - 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, **referring to the Part 1: also conceptual design of the transfer line**

- 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 bid form.
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 – referring to the Part 1 and the Part 2.

1. Tenders (bids) shall be submitted by **6th November 2024 until 11:00:00 a.m. (hh:mm:ss)**, 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 **6th November at 11:30:00 a.m. hh:mm:ss**, 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, 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, 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 – referring to the Part 1 and the Part 2.

1. The price of the bid, which is the total price for the entire subject of the contract, shall 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 (bid) 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. all license fees for third parties, packaging costs, safe transport, insurance, documentation (design of the system), tests of the manufactured devices at the Contractor (Factory Acceptance Tests – FAT), installation, SAT tests, commissioning, training, quality and statutory warranty 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 EUR.
 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.

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 – referring to the Part 1 and the Part 2 unless otherwise stipulated.

1. Tender evaluation criterions:
 - 1.1. **The Part 1:**
 - Gross price for the entire subject-matter of the contract – 80%*
 - Quality guarantee period – 10%*
 - Technical parameters – 10%*
 - 1.2. **The Part 2:**
 - Gross price for the entire subject-matter of the contract – 84%*
 - Quality guarantee period – 10%*
 - Technical parameters – 6%*
2. Points awarded for the above-mentioned criteria referring to **the Part 1:**
 - 2.1 **Gross price for the entire subject-matter of the contract – weight of the criterion: 80%**

“Gross price for the entire subject-matter of the contract” shall be calculated according to the following formula:

$$C = (C_{naj} : C_o) \times 80$$

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 in the criterion “Gross price for the entire subject-matter of the contract” is 80.

2.2 Quality warranty period – weight of the criterion: 10%

- Points awarded for the “Quality warranty period” shall be calculated as follows:
- 24 months guarantee offered – 0 points (it’s a minimum requirement)

- 36 months guarantee offered – 10 points

The maximum number of points to be awarded to the Contractor in the criterion “Quality warranty period” is 10.

If a quality warranty of less than 24 months is offered, the bid will be rejected as inconsistent with the ToR.

2.3 Technical parameters – weight of the criterion: 10%

Points awarded for the “Technical parameters” shall be calculated as follows:

no.	Technical parameters	Maximum points	Punctuation
1	Heating the sample in the high pressure cell (HP cell) – 950°C and above (minimum requirement according to the ToR: 800°C)	5 points	If a technical parameter is offered , the bid shall receive 5 points If a technical parameter is not offered , the bid shall receive 0 points
2	Performing static strength tests of the windows (for X-ray radiation) in the high pressure cell at a pressure of 80 mbar (minimum requirement according to the ToR: 60 mbar)	5 points	If a technical parameter is offered , the bid shall receive 5 points If a technical parameter is not offered , the bid shall receive 0 points

The maximum number of points to be awarded to the Contractor in the criterion “Technical parameters” is 10.

3. Points awarded for the above-mentioned criteria referring to **the Part 2:**

3.1 Gross price for the entire subject-matter of the contract – weight of the criterion: 84%

“Gross price for the entire subject-matter of the contract” shall be calculated according to the following formula:

$$C = (C_{naj} : C_o) \times 80$$

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 in the criterion “Gross price for the entire subject-matter of the contract” is 84.

3.2 Quality warranty period – weight of the criterion: 10%

Points awarded for the “Quality warranty period” shall be calculated as follows:

- 24 months guarantee offered – 0 points (it’s a minimum requirement)
- 36 months guarantee offered – 10 points

The maximum number of points to be awarded to the Contractor in the criterion “Quality warranty period” is 10.

If a quality warranty of less than 24 months is offered, the bid will be rejected as inconsistent with the ToR.

3.3 Technical parameters – weight of the criterion: 6%

Points awarded for the “Technical parameters” shall be calculated as follows:

no.	Technical parameters	Maximum points	Punctuation
1	Additional pass energy values in relation to the requirements specified in the Appendix A to the Terms of Reference (the description of the subject-matter of the contract)	3 points	In the case of offering 1-2 additional pass energy values, the offer will receive – 2 points. In the case of offering 3 or more additional pass energy values, the offer will receive – 3 points. If the technical parameter is not offered , the offer will receive – 0 points.
2	An additional cone with a different opening diameter (aperture) compared to the requirements specified in the Appendix A to the Terms of Reference (the description of the subject-matter of the contract)	3 points	In the case of offering 1 additional cone with a different opening diameter, the offer will receive – 2 points. In the case of offering 2 or more additional cones with a different opening diameter, the offer will receive – 3 points. If the technical parameter is not offered , the offer will receive – 0 points.

The maximum number of points to be awarded to the Contractor in the criterion “Technical parameters” is 6.

4. If the criteria from section 2.2 and/or 2.3 and/or 3.2. and/or 3.3 are not supplemented/indicated in the bid form the Contracting Authority shall award 0 points in the uncompleted criterion, respectively.
5. The bid which receives the highest number of points will be considered the most advantageous.
6. Where the most advantageous bid cannot be selected due to the fact that two or more bids present the same balance of price or cost and other bids evaluation criteria, the Contracting Authority selects the bid that received the highest score in the criterion with the highest weight, i.e. with the lowest price.
7. Where the selection of bid indicated in sec. 5 is not possible, the Contracting Authority shall call on the contractors who submitted those bids to submit additional ones containing a new price within the deadline set by the Contracting Authority.
8. All calculations will be made to two decimal places (without rounding)

Chapter XVI - Information on formalities which should be met following the selection of the tender in order to conclude a Public Procurement Contract - referring to the Part 1 and the Part 2.

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 2024, item 507) -

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) - referring to the Part 1 and the Part 2.

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

Chapter XVIII – Contract template – Appendix 2 to the ToR - referring to the Part 1 and the Part 2.

Chapter XIX - Instructions on the legal remedies available to the Contractor during the procurement procedure - referring to the Part 1 and the Part 2.

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 - referring to the Part 1 and the Part 2.

1. The Contracting Authority does allow the submission of partial tenders (bids).
 - 1.1 Information for the Contractor on the number of parts for which the offer can be submitted: the Contracting Authority does not limit the number of parts for which the Contractor can submit an offer.
 - 1.2 Information for the Contractor on the number of parts of the order for which the contract can be awarded: the Contracting Authority does not limit the number of parts for which an order can be awarded to one Contractor.
2. The Contracting Authority does not envisage to conclude a framework contract;
3. The Contracting Authority does not provide for granting pursuant to Article 214(1)(8) of the PPL to the Contractor selected as a result of the proceedings the repetition of similar supplies.
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 euros (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. The advance payments are not 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 - referring to the Part 1 and the Part 2

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.
 - d) the right to lodge of a complaint with the President of the Personal Data Protection Office if you believe that the processing of your personal data violates the provisions of the General Data Protection Regulation.

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 (Bid form),

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

Appendix 3 – ESDP submitted at the request of the Contracting Authority).

Appendix 1 to the ToR

BID FORM
Case no: 80.272.367.2024

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:

.....
.....

HO 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 execution of NAP-XPS system for the beamline at National Synchrotron Radiation Centre SOLARIS, we submit the following bid:

- 1) We offer the execution of the subject of the public procurement in the scope of the:
 - 1.1) **Part 1:** for the total net amount of* (in words.....), plus applicable VAT tax, which gives the gross amount of.....* (in words.....*) [* In the case of contractors who are not VAT payers in Poland the amount of net remuneration shall be increased by an appropriate amount of VAT to compare the bids];
 - 1.2) **Part 2:** for the total net amount of* (in words.....), plus applicable VAT tax, which gives the gross amount of.....* (in words.....*) [* In the case of contractors who are not VAT payers in Poland

the amount of net remuneration shall be increased by an appropriate amount of VAT co compare the bids];

- 2) in order to receive additional points in criterion No. 2 of the bid evaluation - "Technical parameters" - in accordance with Chapter XV of the ToR, the offered subject of the contract has the following parameters:

2.1) **Part 1**

no.	Technical parameters	The declaration of meeting/not meeting of the technical parameters
1	Heating the sample in the high pressure cell (HP cell) – 950°C and above (minimum requirement according to the ToR: 800°C)	YES*/NOT*
2	Performing static strength tests of the windows (for X-ray radiation) in the high pressure cell at a pressure of 80 mbar (minimum requirement according to the ToR: 60 mbar)	YES*/NOT*

2.2) **Part 2**

no.	Technical parameters	The declaration of meeting/not meeting of the technical parameters
1	Additional pass energy values in relation to the requirements specified in the Appendix A to the Terms of Reference (the description of the subject-matter of the contract)	1 or 2 additional pass energy values – YES*/NOT* 3 or more additional pass energy values – YES*/NOT*
2	An additional cone with a different opening diameter (aperture) compared to the requirements specified in the Appendix A to the Terms of Reference (the description of the subject-matter of the contract))	1 additional cone with a different opening diameter – YES*/NOT* 2 or more cones with different opening diameters – YES*/NOT*

- 3) we declare that we offer quality guaranty on terms which meet the conditions and requirements resulting from the terms of reference, in particular in relation to their period, scope and form of realization. However, taking into consideration the provisions of chapter XV of the ToR, in order to obtain additional points in the evaluation criteria No. 2 in this regard, we hereby declare that the quality warranty period is:

3.1) **Part 1:**

24 months*

36 months*

*** Please select the warranty period offered**

****If the contractor declares a warranty shorter than 24 months, the bid shall be rejected***

3.2) **Part 2:**

24 months*

36 months*

*** Please select the warranty period offered**

****If the contractor declares a warranty shorter than 24 months, the bid shall be rejected***

- 4) 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;
- 5) 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,
- 6) we offer a payment date in accordance with the requirements indicated in the contract template (proposed provisions of the Contract);
- 7) we declare that we have read the contract template attached to the ToR, which we fully approve without raising any objections
- 8) 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.*
- 9) if the contract is awarded - we undertake to conclude the contract at the place and on the date specified by the Contracting Authority
- 10) We declare that we consider ourselves bound by this tender for the time period indicated in the ToR.
- 11) 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.
- 12) 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?).....,
- 13) 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:]
- 14) the following are attached to the bid form:
 - the appendix No. 1 – Statement concerning the entity providing the resources of the Contractor /if applicable/, i.e.:
 - ✓ Statement regarding the provision of resources to the Contractor along with the relevant commitment or other evidence /if applicable/;
 - ✓ Statement of non-exclusion;
 - ✓ Statement of compliance with the participation conditions to the extent that they apply;

- The Appendix No. 2 and 3 – Individual price calculation of the offer referring to Part 1 and Part 2 – depending on which part the offer is submitted for;
- The Appendix No. 4 – Statement on subcontracting part of the contract (List of subcontractors – if applicable);
- The Appendix No. 5 a and b –
 - a. Statement of non-exclusion – Article 7(1) of the Act of 13 April 2022 on special solutions for counteracting support for aggression against Ukraine and for protecting national security (Journal of Laws 2024, item 507, as amended) – in the case of Contractors jointly applying for the contract, each of them submits the statement;
 - b. Statement of non-exclusion – Article 5k of 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 of the EU No. L 229 of 31 July 2014, p. 1), as amended by Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (Official Journal of the EU No. L 111 of 8 April 2022, p. 1) – in the case of Contractors jointly applying for the contract, each of them submits the statement.
- Other:
 - a. Power of attorney (in accordance with Section 5-7 of Chapter XII) or other document confirming authorization to represent the Contractor;
 - b. KRS or CEiDG – if not provided in the offer form, data for publicly accessible databases;
 - c. Evidences related to the subject matter, in accordance with Chapter IV of the ToR, including the conceptual design for Part 1;

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

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

[To be presented separately for each entity providing resources to the Contractor – statement submitted by the entity providing the 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]

(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 – for the confirmation I shall submit 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 2024, item 507) – further as “the Act of 13 April, 2022”, i.e.:

- 1) I/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 2024, item 507) [*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)**

The appendix 2 to the bid form

PRICE CALCULATION
PART 1

No	Description	Quantity	Unit cost net (EUR)
1	Design of the system	1 pcs	
2	Analysis chamber for X-ray photoelectron spectroscopy with equipment, frame for entire system and required electronics	1 set	
3	Cryogenic 4-axes UHV manipulator	1 set	
4	Mass Spectrometer Chamber	1 set	
5	High pressure cell module (HP cell)	1 set	
6	Differential pumping system for the ambient pressure electron energy analyser with required electronics	1 set	
7	Set of manuals, installation, connection of the UHV system infrastructure, and training	1 set	
		All	

NOTICE:

The price calculation must be accompanied by appropriate documents indicated in Chapter IV of the SWZ (subject evidence):

- 1./ Technical descriptions enabling the assessment of compliance of the offered devices and their parameters with the ToR requirements;***
- 2./ The conceptual design of the transfer line***

The above mentioned documents must be signed using electronic qualified signature, in accordance with the provisions of this ToR.

The appendix 3 to the bid form

**PRICE CALCULATION
PART 2**

No	Description	Quantity	Unit cost net (EUR)
1	Design of the system	1 set	
2	Hemispherical ambient pressure electron energy analyser, along with a lens system and detector, including a stationary computer set with monitors	1 set	
3	Electronics for the ambient pressure electron energy analyser	1 set	
4	Set of manuals, installation, and training	1 set	
	All		

Including:

Subject of order	Model/manufacturer	Total net price	Total gross price
Stationary computer set (1 set) – according to ToR			
Monitors (2 pieces) – according to ToR			

NOTICE:

1/ The breakdown of computer set costs is mandatory (due to the VAT exemption that the Contracting Authority benefits from), unless the computer equipment is an integral part of the system, cannot be separated, and is sold to the contracting authority by the contractor under a single catalog number.

2/ The price calculation must be accompanied by appropriate documents indicated in Chapter IV of the ToR (subject evidence). The above mentioned documents must be signed using electronic qualified signature, in accordance with the provisions of this ToR.

Appendix 4 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]

- **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]

The appendices No. 5a and 5b to the SWZ

CONTRACTOR'S STATEMENT
ON NON-EXCLUSION ON ADDITIONAL GROUNDS

By submitting a tender in the open tender proceeding for the execution of the NAP-XPS system for the beamline at the National Synchrotron Radiation Centre SOLARIS in Kraków in two parts, case no. 80.272.367.2024 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 2024, item 507) – 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 2023, items 124) 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 2023, items 120), 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 5b to the bid form

CONTRACTOR'S STATEMENT
ON NON-EXCLUSION ON ADDITIONAL GROUNDS

By submitting a tender in the open tender for the execution of the NAP-XPS system for the beamline at the National Synchrotron Radiation Centre SOLARIS in Kraków in two parts, case no. 80.272.367.2024, 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 2 to the ToR



THE AGREEMENT 80.272.295.2024
– contract template/ draft of contract provisions
PART I*/PART II*

Concluded in Kraków on the of, 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 datedwith 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 2024, item 1320 as amended), hereinafter referred to as „PPL” the Agreement was concluded, whereas:

§ 1*

SUBJECT OF THE AGREEMENT AND OBLIGATIONS – The Part 1*

1. The subject of the contract (hereinafter referred to as “Contract” or “Agreement”) is the designing, delivery, installation, and commissioning of a system for near-ambient pressure X-ray photoelectron spectroscopy (NAP-XPS). The Contractor ensures full compatibility of both components of the end station, i.e., Part I, performed by the Contractor, and the Ambient Pressure Electron Energy Analyser (the Part II), in such way that the analyser maintains its performance parameters during operation, after being connected to the equipment made and delivered under the Part 1. The Contractor is responsible for ensuring the functionality of its part of the subject of the contract (i.e., the Part 1), with the provision that the Contractor for the Part I shall provide substantive oversight and support (*via* delegated personnel) regarding the Part I of the Contract during the installation of the ambient pressure electron energy analyser (the Part II) in the analytical chamber, and after the installation work is completed by the contractor of the Part II, shall connect the differential pumping system to the analyser to verify the correct operation of the entire NAP-XPS system.
2. The subject of the Contract includes, in particular:
 - 2.1. The preparation by the Contractor, in cooperation with the Contracting Authority, the appropriate design for the subject of the Contract. The system design must be submitted for the Contracting Authority’s approval in advance, allowing sufficient time to meet the deadline referred to in § 4 sec. 1 (1.1), taking into account any comments from the Contracting Authority on the design, for which the Contracting Authority has two weeks counting from the receipt of the complete design from the Contractor *via* email, in accordance with the provisions of the Appendix A to the Terms of Reference (ToR). The Contractor confirms that he will implement all reasonable expectations of the Contracting Authority in the design, and

- the final version will be developed between the parties in a collaborative manner. The Contracting Authority emphasizes that the Contractor is liable for achieving the required parameters of the subject of the contract and the Contracting Authority's comments are advisory in nature;
- 2.2. Manufacturing of the subject of the contract and conducting FAT tests after its production;
 - 2.3. Delivery, installation of the subject of the contract, conducting SAT tests, commissioning the system, and training the Contracting Authority's employees in operating the delivered system (up to 8 people, for a total of 32 hours) during the SAT tests as needed;
 - 2.4. Delivery of software enabling the operation of the entire system created under the Part I (interface for controlling and automating the entire system) and granting the Contracting Authority a license to use this software. The software, along with its modules, must enable control and monitoring of the entire system, i.e., the analytical chamber, manipulator, HP cell, sample temperature, pumping system, gas dosing system, valves, heating system. The software must allow for the control and standard operation of all components produced for the Part I.
 - 2.5. Providing support for device servers for a period of 36 months counting from the date of completion of the stage referred to in § 4 sec.1.3;
 - 2.6. Providing remote support (so-called *hotline*, via Internet or phone) regarding the software (point 2.4) for a maximum of 24 hours over the period of the granted quality warranty. A detailed description of the subject of the Contract is included in the description of the subject of the order (the Appendix A to ToR) and the Contractor's offer, as well as in the design documentation, all of which constitute an integral part of this Contract. In case of any discrepancies between the Contract and the public procurement documentation or any other documents, the provisions of the Contract prevail.
3. The Contracting Authority orders, and the Contractor agrees to perform all necessary actions to execute the subject of the Contract referred above at the best possible manner.
 4. The Contractor declares that the subject of the Contract shall be performed using the highest quality materials and the highest standards of execution, within the agreed deadlines, and with due diligence, taking into account the professional nature of its business activity and the special technical properties of the subject of the Contract as described in the ToR with its appendices.
 5. The Contractor declares that it has the appropriate knowledge, experience, and qualifications, as well as the technical and human resources necessary to execute the subject of the Contract.
 6. The Contractor will dimension the NAP-XPS system and commission it. The Contractor declares and confirms complying with the guidelines received from the contractor of the Part 2 regarding the design and production of the analytical chamber and the differential pumping system intended for operation with the electron energy analyser under high pressure (§ 1 sec. 2.2 of the contract for the Part 2).
 7. The scope of the order also includes the differential pumping system for the electron energy analyser system, along with the necessary cabling, connections, safety valves, venting valves, and a microprocessor-controlled pumping system.
 8. The Contractor will prepare the design and submit it to the Contracting Authority in both 2D and 3D versions, incorporating the elements specified in the Appendix A to ToR.
 9. The Contractor will perform all necessary electrical connections for the cooling water and compressed air between the system components and the main framework infrastructure.

§ 1*

SUBJECT OF THE AGREEMENT AND OBLIGATIONS – The Part 2*

1. The subject of the contract (hereinafter referred to as “*Contract*” or “*Agreement*”) is the design, manufacture, and installation of the Ambient Pressure Electron Energy Analyser system. The Contractor is responsible for ensuring the functionality of its subject of the contract (part. 2) and cooperating in its installation with the contractor of the Part 1.
2. The subject of the Contract includes, in particular:
 - 2.1. The preparation by the Contractor, in cooperation with the Contracting Authority, of the appropriate design for the subject of the Contract. The system design must be submitted for the Contracting Authority’s approval in advance, allowing sufficient time to meet the deadline referred to in § 4, sec. 1(1.1), taking into account any comments from the Contracting Authority on the design, for which the Contracting Authority has two weeks counting from the receipt of the complete design from the Contractor *via* email, in accordance with the provisions of the Appendix A to the ToR. The Contractor confirms that he will implement all reasonable expectations of the Contracting Authority in the design, and the final version will be developed between the parties in a collaborative manner. The Contracting Authority emphasizes that the Contractor is liable for achieving the required parameters of the subject of the Contract and the Contracting Authority’s comments are advisory in nature;
 - 2.2. Providing the contractor of the Part I with guidelines for the design and production of the analytical chamber and the differential pumping system intended for use with the ambient pressure electron energy analyser within one month from the date of signing this Contract, and simultaneously informing the Contracting Authority’s representative indicated in § 6;
 - 2.3. Manufacturing the subject of the Contract and conducting FAT tests after its production;
 - 2.4. Delivery of a desktop computer set (1 set) and monitors (2 units);
 - 2.5. Delivery and installation of the subject of the Contract, conducting SAT tests, commissioning the analyser system, and training the Contracting Authority’s staff in operating the delivered system (up to 8 people, for a total of 32 hours) during the SAT tests as needed;
 - 2.6. Delivery of software enabling, among other things, positioning during the search for optimal geometric positions, control, and data acquisition (including fast acquisition mode), live data visualization, integration of additional equipment, and simultaneous recording of external signals such as temperature, current, etc.;
 - 2.7. Providing software updates, as referred to in sec. 2.6, for a period of 60 months from the completion of the stage referred to in § 4sec. 1 (1.3);
 - 2.8. Providing remote support (the so-called *hotline*, via Internet or phone) for a maximum of 24 hours over the period of the granted quality warranty.
3. A detailed description of the subject of the Contract is included in the description of the subject of the order (the Appendix A to the ToR) and the Contractor’s offer, as well as in the design documentation, all of which constitute an integral part of this Contract. In case of any discrepancies between the Contract and the procurement documentation or any other documents, the provisions of the Contract prevails.
4. The Contracting Authority orders, and the Contractor agrees to perform all necessary actions to best execute the subject of the Contract referred to above.
5. The Contractor declares that the subject of the Contract shall be performed using the highest quality materials and the highest standards of execution, within the agreed deadlines, and with due diligence, taking into account the professional nature of its business activity and the special technical properties of the subject of the Contract as described in the ToR with its appendices.
6. The Contractor declares that it has the appropriate knowledge, experience, and qualifications, as well as the technical and human resources necessary to execute the subject of the Contract.
7. The Contractor shall, if necessary, perform all required electrical connections, as well as connections for cooling water and compressed air, between the system components and the main structural infrastructure.

8. The Contractor shall prepare and submit the design to the Contracting Authority in both 2D and 3D versions, taking into account the layout of the components of the Ambient Pressure Electron Energy Analyser.

§ 2

DECLARATION OF INTENT

The Parties acknowledge that the continuous development and changes in synchrotron technologies may create new situations (factual circumstances) not described or explicitly regulated by this Contract, which may affect the performance of it. The Contractor confirms that it is aware of and understands that the execution of the subject of this Contract is closely related to the execution of the subject of the agreement under Part I/Part II*, and the equipment produced under both parts must be compatible and must work together to achieve the objective of both parts of the order (interoperable research equipment that forms the unit - the research station). Consequently, the Contractors of both parts not only declare and confirm that they will exercise the utmost diligence to ensure that the components they produce comply with the requirements and specifications provided by the Contracting Authority, but both the Contractors and the Contracting Authority will strive for mutual agreement during the term of the Contract in the event of unforeseen circumstances or difficulties/problems in the execution, installation, and integration of the equipment produced under both parts, in accordance with the procurement documentation, the knowledge and experience of the Contractors, and the reasonable expectations of the Contracting Authority. This Contract is based on mutual trust between the Contractors and the Contracting Authority.

§ 3

REMUNERATION

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*, which is:... or VAT tax due on the amount of remuneration, will be covered by the Contracting Authority on the account of the relevant Tax Office in case a tax obligation of the Contracting Authority occurs in accordance with the VAT tax regulations* (* depending on the bid).
3. (*applies to the Part 2*)* The Contracting Authority declares that, in accordance with the Act of March 11, 2004 on Goods and Services Tax (hereinafter the VAT Act), they will apply for approval to use a 0% VAT rate on monitors or desktop computer sets within the scope of the exemption – in accordance with Article 83(1)(26) of the aforementioned Act.
4. (*applies to the Part 2*)* Within 14 days of receiving notification from the Contracting Authority sent to the Contractor's email address regarding the issuance of a certificate by the minister responsible for higher education, confirming that the supplied computer equipment is intended for an educational institution as defined by Article 83(1)(26) of the VAT Act, the Contractor shall deliver an issued corrected invoice for the net amount in respect of the equipment covered by the 0% VAT rate or issue an invoice for the net amount for the equipment covered by the 0% VAT rate if the approval is obtained prior to the delivery of the invoice to the Contracting Authority in accordance with §7.
5. (*applies to the Part 2*)* The Contractor undertakes to list the elements specified by the Contracting Authority separately on the invoice or on separate invoices, especially the monitors and desktop computer sets.
6. 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, design, tests of the manufactured devices at the Contractor (Factory Acceptance Tests – FAT), installation, SAT tests, commissioning 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 Contract. The Contractor shall also be remunerated for granting the intellectual property rights to the Contracting Authority, including for granting 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 granting permission to exercise derivative rights and transferring to the Contracting Authority the ownership

of the media carriers, on which the works 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 design of the system in accordance with appendix A within **3 months** from the date of conclusion of the Agreement;
 - 1.2. Manufacturing of the system, FAT tests and delivery to SOLARIS headquarters within **11 months** counting from the date of conclusion of this Agreement;
 - 1.3. Installation, SAT tests, commissioning the system and conducting training of the Contracting Authority employees within **12 months** counting from the date of conclusion of this Agreement.
2. Delivery of the subject of the Contract will be made in the DAP Krakow formula to ul. Czerwone Maki 98, 30-392 Kraków in accordance with the regulations of Incoterms 2020.
 - 2.1. During the performance (production) of the subject of the Agreement, a person authorized by the Contracting Authority shall make a partial protocol acceptance of its individual assemblies along with the transfer of their ownership to the Contracting Authority, however while retaining the sovereignty (control) by the Contractor. In order to avoid any doubts, the Parties confirm that the moment of issue (transfer of possession) of the subject of the Contract itself as the final result of the Contractor's work is specified in § 5 sec. 1 above (signing acceptance protocol by the Contracting Authority). The Contracting Authority may make a partial acceptance of individual assemblies (components) on the basis of photographic documentation or in a different yet sufficient manner not requiring the direct presence of its representative. The Parties also agree that this Agreement is the basis for the Contractor's possession of the assemblies constituting the subject of the Contract which have already been collected by the Contracting Authority; this may be also indicated in the partial acceptance protocol.
3. 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 electronic access to those documents.
 - c) Other documents indicated in Appendix A to the ToR – “Description of the subject-matter of the contract” after agreeing it with the Contracting Authority.
4. 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.

5. 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).
6. 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.
7. 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. This also applies to the acceptance protocol for the stage specified in §4(1)(1.2), with partial protocols also being signed as part of the implementation of this stage in accordance with §4(2)(1). 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 of the stage referred to in §4(1)(1.3), subject to the provisions of section 6(b) below. To avoid any doubt, the Parties confirm that the delivery does not prejudice the provisions of §4(2)(1), meaning that the Purchaser has the right to refuse acceptance of the stage specified in §4(1)(1.3) if the subject of the Agreement has defects, even though the Purchaser will be the owner of the delivered items (equipment). The Parties expressly state that regardless of the time of delivery, the quality warranty and the statutory warranty (§9) commence from the date stipulated in §9 below. Terms referred to in § 4(1) shall be deemed to have been fulfilled, provided that the Contractor delivers or install thereunder the subject of the Agreement, which will be unconditionally accepted by the Contracting Authority, subject to the provisions of section 6(b) below. The Parties unanimously and expressly confirm that the receipt by the Contracting Authority Party of the system's construction design shall not constitute an obstacle to the Contracting Authority's refusal to accept other stages of the implementation of the Agreement, and any defects resulting from the design solutions shall be borne by the Contractor, unless they result from design solutions introduced at the express request of the Contracting Authority, which the Contractor shall prove.
2. In the event of finding upon collection, i.e. on the day of delivery or later but not later than 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 agreed with the Contractor including but not limited to remove defects through repair or replacement with a new devices; due to the complexity and intricacy of the subject of the Contract, this deadline may be extended by the Contracting Authority. 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 i.a. the executed subject of the Agreement complies with the list referred to in §4(3)(a) and has no visible damage or losses and in case of SAT tests – if the tested devices and the whole system will pass all the tests specified in the documentation (§1 sec. 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 deadlines indicated in §4(1) shall have been considered to be 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 (§5 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 sec. 1 above shall be paid in parts, in the following manner:

- 1.1 First payment up to the amount of **20 %** of the remuneration referred to in sec. 1 above shall be paid after Contracting Authority's acceptance of the subject of the Contract' design without remarks. This payment shall be made in the amount provided in the price calculation (appendix to the Contractor's bid);
- 1.2 Second payment up to the amount of **30%** of the remuneration referred to in § 3(1) above for ready subject of the Contract assemblies (§4 sec. 2.1). This payment shall be made in the amounts provided in the price calculation submitted by the Contractor along with delivery of the components (assemblies) in accordance with §4 sec. 2.1.
- 1.3 The third payment of **20 %** of the remuneration referred to in § 3(1) shall be paid after execution of the stage referred to in §4 sec. 1 (1.2).
- 1.4 The fourth payment of **30 %** of the remuneration referred to in § 3(1) shall be paid after execution of the stage referred to in §4 sec. 1 (1.3).
2. The payments shall be handled within 30 days as of the moment of receipt of a correctly issued invoice by the Ordering Party and signing of the applicable handing over protocol of the subject of the Agreement (or its elements) by the Contracting Authority (without remarks as a rule). In the event the invoice is delivered prior to the delivery of the subject hereof or in the event it will be impossible to determine the invoice delivery date, the payment date shall be counted as of the date of signing of the applicable handing over protocol by the Contracting Authority.
3. The Contracting Authority shall have the right to withhold the execution of the payment in total or in part in the event the delivered subject of the Agreement fails to meet the required technical parameters, if it was damaged in transit or failed to be delivered within due time.
4. The payment place shall be the bank of the Contracting Authority. The effective date of payment shall be the date of transfer order submitted by the Contracting Authority.
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,
6. The Contractor confirms that the bank checking account disclosed on the invoice is used by it for the purpose of settlements for its business activity, for which the VAT account is maintained.
7. 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, with the proviso that the Contractor is required to provide the account number that has been disclosed in the register of VAT payers, non-registered entities, entities excluded and reinstated into the VAT register held by the Head of the National Tax Administration (hereinafter: the 'White List' – art. 96b sec. 1 of the Act of 11 March 2004 on the value added tax.). (**depending on the bid*).
8. If the Contractor is registered as a VAT taxable person, the Contracting Authority is entitled to pay the remuneration in accordance with the split payment system, i.e. in accordance with provisions of Art. 108a sec. 2 of the Act of 11 March 2004 on the value added tax. Provisions of the first sentence are not applicable if and when the subject matter of the contract is a service exempt from VAT or subject to a 0% VAT rate. (**depending on the bid*).

§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 invoices shall be sent on the e-mail address: faktury.synchrotron@uj.edu.pl
5. If and when the Contractor issues structured electronic invoices within the meaning of Art. 6 sec. 1 of the Act of 9 November 2018 on electronic invoicing in public procurement,

concessions for construction works or services, and public-private partnership (Journal of Laws of 2020, item 1660, 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.

§ 9

QUALITY WARRANTY AND STATUTORY WARRANTY

1. The Contractor undertakes to deliver the Subject of the Contract free from defects and faults. The quality warranty covers both defects caused by reasons inherent in the Subject of the Agreement at the time of its delivery to the Contracting Authority and any other physical defects caused by reasons for which the manufacturer or Contractor is responsible, provided that these defects become apparent within the warranty period specified below. The Parties agree that a defect also includes the lack of... (*as defined). The Parties agree that the provisions and obligations of the Contractor set forth in this paragraph constitute a modification of the rules of the Civil Code regarding the quality guarantee only in relation to the matters addressed herein (the other provisions of the Civil Code on quality warranty apply).
2. The Contractor guarantees the delivery of the Subject of the Contract under a quality warranty period of ... (*depending on the warranty term offered by the Contractor in the bid) for the Subject of the Contract starting from the day of completion of the stage referred to in §4 sec. 1.3, *subject to sec. 2.1 below*.
 - 2.1. (**applies to Part II**) The Contractor guarantees the delivery of a desktop computer set (1 complete set) and monitors (2 units), covered by at least a 24-month quality warranty under the conditions specified in the Appendix A to the Terms of Reference (ToR).
 - 2.2. The Contractor guarantees support and, additionally, updates of the delivered software in the scope and under the terms described in §1 and the Appendix A to the ToR.
3. The Contracting Authority may request the removal of any defect or fault under the quality guarantee at any time. The Contracting Authority undertakes to comply with the basic operating conditions specified by the Contractor or the manufacturer of the components of the Subject of the Agreement in the warranty cards and/or operating manuals provided by the Contractor, in accordance with §4 sec. 3(b) of the Agreement.
4. The Contracting Authority shall notify the Contractor without undue delay, in one or more of the following forms: in writing, by e-mail, or by phone, of any faults or defects in the Subject of the Contract.
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 sec.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 center at the cost and risk of the Contractor.
6. The Contracting Authority prefers that all warranty repairs be carried out at the installation site of the Subject of the Contract (at SOLARIS). Upon receiving a notification, the Contractor will decide, based on the type and scope of the reported defect, whether the repair can be performed at the SOLARIS headquarters. In the case of repairs outside the installation site, the Contractor shall also cover all associated costs, particularly those related to disassembly, transport to the repair site and back, as well as the reinstallation of the defective component. 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 Parties allow for the possibility of having the Contracting Authority's employees or third parties cooperating with them to carry out the repair of reported defects or faults at the Contractor's cost and risk, and based on instructions provided by the Contractor. This applies particularly to minor and uncomplicated defects where the cost of repair is lower than the cost of dispatching a Contractor's

- employee to the SOLARIS headquarters. The assessment of the significance and complexity of the repair in this case will ultimately belong to the Contracting Authority, and its execution by the Contracting Authority's employees or third parties does not exclude the warranty and statutory warranty liability as specified in this paragraph and in generally applicable regulations. Each instance of assigning repairs to the Contracting Authority's employees or third parties requires the Contractor's written consent, given via e-mail. In the event of repairs performed by the Contracting Authority's employees, the Contracting Authority has the right to include the labor cost (market value of the service) in the repair cost.
8. If the Contractor fails to fulfill their obligations within the timeframe specified in sec. 5 above, including any extended period, the Contracting Authority, while retaining the right to charge the contractual penalty referred to in §13 sec. 2(c), may indicate an additional appropriate deadline for the Contractor to fulfill their obligations, no shorter than 5 business days, in a form that is at least documentary. If the Contractor fails to fulfill their obligations within the additional deadline, the Contracting Authority shall be entitled, at their discretion, to:
 - a) demand an appropriate reduction of the contract price, proportional to the reduced value of the Subject of the Contract, and payment of the reduced sum within 21 days from the date the Contractor receives a request from the Contracting Authority. The reduction amount will be determined based on the Contractor's bid or, if this is not possible, the Parties will jointly determine the amount or appoint an independent expert for this purpose,
 - b) carry out the repair at the Contractor's cost and risk, while retaining other rights available under the Agreement. In such cases, the Purchaser has the right to engage another entity to rectify the defects or carry out the repair themselves, and the Contractor is obliged to cover the related costs within 30 days of receiving the request along with proof of payment. The provisions of sec. 7 above, last sentence, shall apply.
 9. Warranty repairs shall be provided by the Contractor, the manufacturer, or an authorized service provider at the Contractor's cost and risk.
 10. In the event of a defect or fault that renders the Subject of the Contract unusable for the agreed purpose, especially for the conduct of research by the Contracting Authority (NSRC SOLARIS JU), the warranty period referred to in sec. 2 above shall be automatically extended for the entire Subject of the Contract, including all its components, by the repair period, i.e., the time between notification of the defect/fault and its rectification (by repair or replacement of the component).
 11. In the event of a defect or fault that does **not** render the Subject of the Contract unusable or prevent research from being conducted, the warranty period referred to in sec. 2 above shall be automatically extended only for the part of the Subject of the Contract that was repaired, by the repair period, i.e., the time between notification of the defect/fault and its rectification (by repair or replacement of the component).
 12. The warranty terms provided by the Contractor or manufacturer are specified in the warranty cards referred to in §4 sec. 3(b) of the Contract. The maintenance and support conditions for the software are specified in the manufacturer's documents, which will be provided to the Contracting Authority in accordance with the provisions of §4 sec. 3(b). In the absence of warranty cards or operating manuals for the Subject of the Contract, the basis for warranty claims shall be this Contract and the Civil Code. In such a case, the Contractor provides the Contracting Authority with a direct warranty. The Parties agree that in the event of a discrepancy between the provisions of the Contract, including the provisions in the Appendix A, which forms an integral part of this Contract, and the terms of the warranty cards or other documents regarding the execution of the quality warranty provided by the Contractor or the manufacturer, the terms of the Contract shall prevail, unless the provisions of the warranty cards are more favorable to the Contracting Authority. The provisions of the Agreement also apply in the absence of appropriate regulations in the aforementioned documents.
 13. 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, including those resulting from incorrect installation of the system, 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.

14. 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).
15. The Parties agree that at any time the statutory warranty period shall be the same as quality warranty period mentioned in sec. 2 hereby. This does not apply if the statutory warranty period under the Civil Code exceeds the warranty period.
16. 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.
17. (**applies to Part II*) During the warranty period, within the precise timeframe specified by the Contracting Authority after consultation with the Contractor, functionality tests of the Analyser, covering all modes of operation, will be conducted using the photon source provided by the PHELIX beamline. The scope of the tests will be determined during the preparation for the FDR meeting, and this will be recorded in a separate document prepared at least in documentary form.

§ 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 §19 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
 - b)
3. The Parties undertake to inform each other every time by a registered mail on the change of the correspondence address as specified in item 2, within 7 days as of the change, under the pain of acknowledging the correspondence to be effectively delivered to the present address.

§ 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 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 Contract shall not exceed the amount of 30% 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 14 calendar days in completion of execution of the subject of the Agreement in relation to the time limit referred to in §4 sec. 1.3, in the amount of 0,08% of the total net value of the subject of the Agreement as stipulated in §3(1). The penalty shall be calculated for each day of delay, starting from its first day, but not more than 10% of the net value 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, especially the acceptance of the stage referred to in §4 sec. 1 (1.3), in particular during SAT tests, no contractual penalty stipulated in the letter (a) of this section shall be imposed, provided that the (defective) subject of the Contract has been delivered and installed within the deadline, without causing the penalty to be imposed. To avoid any doubt, the Contracting Authority confirms that the penalty stipulated in the letter (a) of this section is not due if the reason for the Contractor's failure to meet the deadline for completing the stage referred to in §4 sec. 1 (1.3) is the failure to meet the deadlines for performing the subject of the Contract part I/part II* **by the contractor responsible for that part** (i.e. there is no delay attributable to the Contractor);
 - b) delay of more than 14 days in removing defects or faults ascertained during the acceptance and collection procedure (§4 sec. 1(1.2)) or during the execution of the stage referred to in §4 sec. 1(1.3) 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 as stipulated in §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 total 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 0,03% 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 total net value of the Agreement (§3(1).
 - d) **(*applies to the Part 2)** A delay of more than 14 calendar days in conducting the functionality tests of the Analyser, amounting to 0,03% of the Contractor's total net remuneration as determined in § 3 sec. 1 of the Contract. The penalty will be calculated for each day of delay, starting from the first day of the delay, in reference to the date agreed in accordance with the provisions of §9 section 17 of the Agreement, but not exceeding 5% of the total net remuneration of the Contractor.
 - e) In the event of a change in the Contractor's remuneration in accordance with §18 section 21 of the Agreement, the Contractor shall pay the Contracting Authority a contractual penalty in the event of non-payment or delay in payment of the subcontractor's remuneration following the change in the amount of their remuneration referred to in Article 439 section 5 of the Public Procurement Law in the amount of EUR 100.00 (one hundred euro and 00/100), for each day of delay in relation to the payment deadline specified in §7(4) but not more than 2000 EUR.
 - f) The Contracting Authority shall be entitled to request payment of a penalty from the Contractor in case of violation of the provisions specified in §17 (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, in the amount of 5% of the remuneration net as set forth in § 3 item 1 of the Agreement. This penalty applies in case of partial withdrawal from the Agreement too.

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 execution of the subject of the Agreement 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 deadline, 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 23rd 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 sec. 1 (1.1).
 - e) The Contractor is delayed for the period of more than 3 weeks in relation to the period specified in §4(1.2) or to the period stipulated in §4 sec. 1.3 or the removal of defects of the subject hereof noticed upon the delivery or during the SAT tests, for the period of more than 3weeks in relation to the period determined by the Contracting Authority,
 - f) 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 or in electronical form 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, without the right to claim compensation in this respect.
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 are valid. The Contracting Authority explicitly emphasizes that in the event of exercising the right to withdraw from the Contract in part, it will, as the owner, demand the release of elements (assemblies) of the subject of the Agreement, ownership of which has been transferred to it in accordance with §4 sec. 2.1. Additionally, the Contracting Authority retains the rights to use the Works (§16 sec. 6), meaning that the licenses granted to it do not expire, and if the withdrawal occurs before the licenses have been granted in accordance with §16 below, the rights to use the Works (licenses) shall be granted at the moment of withdrawal from the Agreement. These rights are included in the compensation owed to the Contractor up to the date of withdrawal.

§ 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 (including war actions at the Ukrainian territory), 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.
3. The Contractor declares and guarantees that it will have proprietary copyrights as well as the moral rights to the Works (see section 6 below) and to exercise derivative rights to the Works, free from claims of third parties, and that the Works will be free from any legal defects, in particular will not be encumbered with any rights established for the benefit of third parties, and no obligations of any kind related to the Works have been or will be incurred for the benefit of third parties. The provisions of the preceding sentence shall apply accordingly to derivative rights to the Works.
4. The Contractor undertakes to release the Contracting Authority from any claims of third parties related to possible infringement of copyrights to the Works. The Contractor will reimburse the Contracting Authority for all costs incurred by it, including the costs of court proceedings. The Contractor will also take over any third-party claims against the Contracting Authority resulting from the copyright infringement.
5. 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.
6. As part of the remuneration and as of the date of accepting by the Contracting Authority the works created as part of the implementation of the Agreement, in particular the design (§1..., §4 sec. 1(1.1)) (hereinafter "**Works**"), even in case the Works include confidential information, the Contractor grants to the Contracting Authority a non-exclusive license to the Works, along with ensuring their use in all fields of exploitation known at the time of concluding of the Agreement, in particular in the fields of exploitation indicated below:
 - 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.
7. The license is granted world-wide and perpetual, and shall only be terminated by the Contractor after 10 years, and only for valid reasons. If a valid reason is the violation of the license terms by the Contracting Authority, the Contractor is obligated to first request that the Contracting Authority cease the violations, providing an appropriate deadline for it. The notice period is 5 years. The granted license does not include authorization to grant sublicenses.
8. The Parties agree that under the license received, the Contracting Authority shall be able to use the Works, especially to commission third parties to repair devices, make improvements, modifications, etc., either independently or through third parties.
9. The Contracting Authority reserves the right to use the Works in all in all purchasing procedures, including those under public procurement regime.
10. 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.
11. If the delivered Works constitute software (computer program), the Contractor grants the Contracting Authority an irrevocable, unlimited, non-exclusive license, both in terms of time and territory, to use the software as part of the execution of the subject of the Contract, within the scope

and for the purpose indicated in the Contract and procurement documentation (§1 sec. 2 above)¹, on the fields of exploitation specified in Article 74 sec. 4 of the Act of February 4, 1994, on Copyright and Related Rights, namely on the following fields of exploitation:

- a) permanent or temporary fixation and reproduction of the computer program in whole or in part, by any means and in any form; including to the extent that reproduction is necessary for loading, displaying, running, transmitting, and storing the computer program;
 - b) translation, adaptation, arrangement, modification, or any other alteration of the computer program;
 - c) distribution of the computer program or its copies, including lending or renting the computer program or its copies;
 - d) uploading to computer memory, the Internet, and Intranet networks, and making it available in digital form.
12. If the software producer (copyright holder) is a party other than the Contractor, the Contractor agrees to arrange for the software producer (copyright holder) to grant the Contracting Authority a license to use the software, unless the distribution model adopted for the software assumes that the Contractor will grant the sublicense. The terms of the license granted by the software producer will be governed by the software producer's standard contractual provisions, but these must allow the Contracting Authority to use the delivered subject of the Agreement in accordance with its intended purpose, for an indefinite period, without territorial limitations, and within the scope and on the fields of exploitation indicated in those provisions. In the event of a conflict between the terms of the Contract and such provisions, the terms of the Contract shall prevail. The granting of the license by the software producer is included in the compensation under this Contract.
 13. The Contractor declares that the granted licenses will not be terminated by either itself or the software producer. However, termination is permissible only due to a material breach of the license terms by the Contracting Authority, provided that the Contracting Authority has previously been given notice to cease the breach with a reasonable deadline to comply, and after this deadline, the material breach of the license terms continues.
 14. The Parties agree that if the license is terminated, the notice period will be 5 years, with the effect of termination taking place at the end of the calendar year. The Parties agree that the notice period will be extended until the Contracting Authority receives replacement software, including software from another entity, and completes full data migration to the replacement software, unless these actions are completed within the notice period as outlined in the first sentence.
 15. The Contractor grants the license mentioned above upon the signing, without reservation, of the acceptance protocol for the stage specified in §4 sec. 1 (1.3), without the need for the Parties to make any additional declaration.
 16. Upon acceptance, the Contractor is also obligated to provide the Contracting Authority with copies of the software in installable versions or indicate the website from which the software can be downloaded.
 17. In the event that the copyright holder (Contractor or software producer) transfers the proprietary rights to the Works, including the software, the Contractor agrees – without any costs, including license fees, being borne by the Contracting Authority – to ensure the continuity of the Contracting Authority's use of the Works (software), in particular by ensuring that the purchaser of the proprietary rights grants a license to the Works or by providing new (different) Works (software) with parameters no less favorable than those specified in the public procurement documentation, along with a license containing provisions at least equivalent to this Contract.
 18. The Parties agree that the Contracting Authority may entrust the performance of activities within the scope of the granted license to a third party, acting on behalf of the Contracting Authority. The

¹ In particular, for the purpose of analyzing spectra by both the Contracting Authority and external users using the Contracting Authority's research infrastructure, including the subject of this Agreement.

Contractor declares that such entrustment is fully permissible and does not violate the terms of use of the software.

§ 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 (does not apply the letter f) below), by signing an annex hereto, in the following cases:
 - a) Changes in the deadlines for the implementation of the subject of the Agreement referred to in § 4 sec. 1 by extending the limits due to causes attributed to the operation of force majeure referred to in § 15, absence of the employee responsible for the implementation or acceptance of the subject of the Agreement, or reasons attributable to the components' (assemblies') manufacturer or distributor regarding documented problems related to the production or delivery of the components (assemblies) or (*applies to the Part 1*) *in the event that the Contractor of part II fails to provide the Contractor of the Part 1 with guidelines for the design of the analytical chamber within 1 month from the date of concluding the contract with the Contractor of part II or in the event that the Contractor of the Part 1/the Part 2 fails to meet the deadlines for the implementation of the subject contract concluded with this Contractor*, and also for other reasons beyond the control of the Parties, but only in the event of the consent of the Minister of Science and Higher Education to settle the science project after December 31, 2025
 - 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 Contracting Authority changes to the technical parameters of the subject of the Agreement, requiring a change to the time limits for performance of the Agreement. A change of the dates of execution of the Agreement in this respect requires a consent of both Parties and can only occur with the consent of the Minister of Science and Higher Education to settle the science project after December 31, 2025.
 - c) Extending the term of the statutory warranty or guarantee, in the event of extension thereof by the Contractor,
 - d) Improvement of quality or other parameters characteristic of the subject of the Agreement/its part or change of technology to an equivalent or better one, increase of system (its parts) efficiency and security. The changes indicated in the previous sentence may result in increase or decrease in the Contractor's remuneration to a maximum limit of 15% in relation to the net remuneration referred to in §3 sec. 1 of the Agreement based on the appropriate necessity protocol together with accepted by Parties calculation,
 - e) Updating solutions due to technological progress or changes in existing regulations,
 - f) 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 President of the Central Statistical Office, as provided in sec. 16 below.

16. The change in the Contractor's remuneration will take place in relation to the index of changes in the price of materials or costs (average annual price index of total consumer goods and services) announced in the announcement of the President of the Central Statistical Office in the Official Journal of the Republic of Poland "Monitor Polski" by January 31 of the following year for the previous calendar year, pursuant to Art. 94 section 1 point 1 letter and the Act of December 17, 1998 on pensions and annuities from the Social Insurance Fund (Journal of Laws of 2020, item 53, as amended).
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 Agreement by the Contractor.
20. The justification of the Contractor's request to change the amount of the Contractor's remuneration shall be analysed by the person supervising the performance of the Agreement.
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 Poland², 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 2023, item 1610 as further amended) and the Act of 11 September 2019 – Public Procurement Law (consolidated text Journal of Laws of 2024, item 1320, 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

² [www https://sp.prokuratoria.gov.pl/](https://sp.prokuratoria.gov.pl/)

affected by the clause.

5. The Agreement was drawn up on the terms specified in Art. 78 and 78¹ 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/*in two* (4/2) counterparts, one (1) *of each language version* for each of the Parties (*in case of concluding the Agreement with a foreign contractor).
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. 78¹ 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:
 - 1) 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;
 - 2) 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;
 - 3) 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;
 - 4) 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;
 - 5) 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:
 - 1) 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;
 - 2) 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.

The Appendix No. 3 to the Terms of Reference – the ESPD to be completed by the Contractor.