

**Agreement Heads of Terms**

**Agreement No. .../.../...**

concluded on ..... 2018, in Warsaw, by and between:

**Naukowa i Akademicka Sieć Komputerowa - Państwowy Instytut Badawczy**, with its registered office in Warsaw at: Kolska 12, 01-045 Warsaw, Poland, Polish tax number (NIP): 5210417157, business statistics number (REGON): 010464542, entered in the commercial register maintained by the District Court for the Capital City of Warsaw (in Warsaw), 12th Commercial Division of the National Court Register, registration number (KRS): 0000012938, hereinafter "**NASK**" or "**Awarding Entity**", represented by:

\_\_\_\_\_;

and

\_\_\_\_\_;

hereinafter "**Contractor**",

represented by:

\_\_\_\_\_;

both hereinafter referred to jointly as "**Parties**" or each one individually as "**Party**".

WHEREAS the contracting procedure (ref. .... )  
has been finalised based on ..... and concerning the  
following contract: ....., with  
the subject matter of the contract being the *lease of Hardware with Software, necessary for providing security services for OSE*; the Parties concluded this agreement ("**Agreement**") worded as follows:

**Article 1. General**

**1. Definitions**

Whenever this Agreement uses terms and expressions starting with a capital letter, their meaning is defined in the Detailed Contract Specification enclosed in Appendix 2 to this Agreement.

**2. Interpretation**

1. The provisions of this Agreement will be interpreted according to the laws of Poland.
2. Whenever a singular form is used it will include the plural as well, and vice versa, unless the provision states otherwise.

3. The appendices constitute an integral part of this Agreement.
4. For interpretation purposes, documents will be treated with the following order of priority:
  - a) DCS, including explanations provided by the Awarding Entity and any DCS changes;
  - b) This Agreement;
  - c) The Contractor's tender constituting Appendix 3 hereto.
5. In order to eliminate any discrepancies identified in the documents specified in section 4, the Awarding Entity will immediately provide written notification to the party requesting explanations that such discrepancies occurred, subject to the order of priority referred to in section 4.
6. Sub-headings will not impact the interpretation of the provisions hereof.
7. Any period expressed herein in days, weeks or months shall refer to calendar days, calendar weeks and calendar months. The course and expiry of time limits will be interpreted according to the Polish Civil Code.
8. This Agreement enters force on the day of its signing by both Parties.
9. Any matters not covered herein shall be subject to the relevant provisions of Polish law, in particular the Civil Code Act of 23 April 1964 (Polish Official Journal: Dz. U. 2017. 459 as amended).

### **3. Communication**

1. Whenever this Agreement stipulates an instrument of acknowledgement, a notice, exchange of information, issue of instructions or award of an approval, they will be served in writing either personally (with confirmation) or sent by post/courier (with confirmation), or sent electronically by e-mail or fax, to the addresses specified by the Parties in Appendix 4 to this Agreement, unless the Awarding Entity indicates a different method for communication.
2. In the case of an instrument of acknowledgement, a notice, information, instructions or an approval served via fax or e-mail, the recipient will confirm the receipt in writing to the sender within 3 Business Days.
3. The Parties will deem such faxed or emailed acknowledgement, notice, information, instructions or approval as served at the time of receiving a written confirmation of its receipt.

### **4. Joint Liability of Consortium Members**

1. If the Contractor is a *Consortium*, then its members will be jointly and severally liable before the Awarding Entity for the performance of the Agreement and the establishment of its performance security.
2. The Contractors who are the Consortium members will remain in the consortium throughout the effective term of the Agreement, the period of the quality guarantee and the statutory warranty for defects.
3. The Consortium will provide the Awarding Entity with a copy of the agreement regulating the collaboration of the Consortium members who undertook to jointly perform the Agreement,

including any later changes to the agreement (including the clauses distributing any particular tasks under the Agreement among the respective Consortium members).

4. The Consortium Leader is authorised to make decisions, issue and receive declarations of intent for and on behalf of each member of the Consortium, to the extent permitted in the power-of-attorney documents required for the performance of this Agreement and demonstrated to the Awarding Entity. Such authorisation may be changed only upon the Awarding Entity's consent.
5. In the event of termination of the Consortium agreement prior to expiry of the guarantee/statutory warranty period, the Awarding Entity will be authorised to request all, certain or one of the Consortium members to perform any and all the services under this Agreement.

## **Article 2. Subject Matter of the Agreement**

1. The Awarding Entity orders, and the Contractor provides the following to the Awarding Entity: System intended to facilitate the use and provisioning of the Services in the OSE Network: Instructional, Support and Technical Assistance Services – to be supplied under the terms and in the manner set forth in the Agreement, hereinafter referred to jointly as "Subject Matter".
2. Subject to sections 3 and 4 below, the Subject Matter will be implemented in two stages:
  - a) Stage 1 – the Contractor will Implement the System as necessary to handle 2,400 schools and 20 Gbps of Internet traffic, with full control (SSL decryption and encryption) of the encrypted traffic going through the Hardware; and provide the Instructional service;
  - b) Stage 2 – the Contractor will expand the System as necessary to service 4,400 schools and 36 Gbps of Internet traffic, with full control (SSL decryption and encryption) of the encrypted traffic going through the Hardware;
  - c) The Contractor will provide the Support and the Technical Assistance Services throughout the entire effective term of the Agreement.
3. During the effective term of the Agreement, the Awarding Entity shall request the Contractor in writing to implement Stage 2. After such request, the Contractor will be required to adapt the System to the required level within 24 days of receiving such request. Once the Contractor expands the System in line with the previous sentences, the Parties will engage in System Expansion Acceptance procedure. The provisions of this Agreement applicable to the System Acceptance procedure will be applied to the System Expansion Acceptance accordingly.
- 4.

## **Article 3. Completion Date**

This Agreement is concluded for a definite period of 12 months, counted from the date of the System Acceptance report, whereas:

1. Stage 1 is to be implemented within 24 days of the Agreement conclusion date;
2. Stage 2 is to be implemented within 24 days of the Contractor receiving the System expansion request, according to Article 2. 3 of the Agreement;
3. The Contractor will provide the Support and the Technical Assistance Services throughout the entire effective term of the Agreement;
4. The precise dates for the Contractor's tasks at each Stage are specified in DCS.

#### **Article 4. Contractor's Capacities**

1. The Contractor warrants that it will have the appropriate technical resources and personnel of skills, experience, knowledge and required licences, to the extent necessary to perform the Subject Matter and according to the submitted Tender.
2. The Contractor represents that it has the knowledge and experience required in order to perform the Subject Matter.
3. The Contractor represents that it has the appropriate funding in order to perform the Subject Matter.
4. In the performance of the Agreement, the Contractor will apply due diligence as expected from the professional nature of its business, and the highest degree of technical know-how.

#### **Article 5. Subcontractors**

1. According to the declaration enclosed in Appendix 3 to this Agreement, the Contractor will perform the Subject Matter:
  - a) *without involvement of any subcontractors;*
  - b) *with the help of subcontractors whom the Contractor assigned the tasks specified in Appendix 3 to this Agreement.*
2. The Contractor may assign parts of the performance of this Agreement to a subcontractor, to the extent specified in Appendix 3.
3. The Contractor cannot extend the assigned scope of tasks beyond the extent specified in Appendix 3 to this Agreement, unless with the Awarding Entity's prior consent issued in writing (under the pain of nullity).
4. The Contractor shall bear the risk of all actions and omissions of its subcontractors.
5. In the event of the Contractor violating section 3, the Awarding Entity shall have the right to withdraw from this Agreement with immediate effect based on Article 14. 1.(c), without prejudice to its right to refuse paying remuneration for services provided by the subcontractor beyond the scope specified in Appendix 3 to this Agreement.
6. Assigning any subcontractors to perform any part of the Subject Matter will not waive the Contractor's liability for the due performance of such assigned part of the Subject Matter.

#### **Article 6. Force Majeure**

1. If either Party decides that the Agreement cannot be performed due to Force Majeure or its

consequences, then that Party will immediately notify the other party in writing.

2. If Force Majeure circumstances or their consequences fully prevent the Services from being provided in accordance with the Agreement, the Contractor will promptly discontinue the Services and the Awarding Entity will be required to pay the Contractor the remuneration corresponding to the scope of the Services completed by such time.

#### **Article 7. Contractor's Insurance**

1. By the day preceding System Acceptance the Contractor will conclude an insurance agreement(s) against all risks and liability related to the performance of the Agreement and covering the effective period of the Agreement, as well as timely pay all insurance premiums, for an insured sum not lower than PLN 800,000.00.
2. The insurance agreement(s) referred to in section 1 will warrant damages payable in PLN and without limitations.
3. The cost of making such agreement(s) as referred to in section 1, in particular the insurance premiums, will be fully borne by the Contractor.
4. The Contractor will submit documents to the Awarding Entity to demonstrate the concluded insurance agreement, including a copy of the agreement and the policy, by the System Acceptance date.
5. The Contractor is not authorized to change the terms of the insurance, unless with the Awarding Entity's prior consent issued in writing.

#### **Article 8. Performance of the Agreement**

1. The Parties agree that on the date of signing the Agreement they will appoint their respective project managers who will be authorised to solve ongoing issues as may arise during the performance of the Agreement from time to time, and to carry acceptance procedures within the framework of the Agreement on behalf of the Party appointing the given manager.
2. Either Party can change their respective project managers referred to in section 1 above by serving a written notice to the other Party. Such change will not require amending the Agreement and will become effective for the other Party at the time of serving the notice, unless a later effective date is specified in the notice.
3. On the date of signing the Agreement, the Awarding Entity will provide the Contractor with data, information and documents necessary to prepare the technical concept of System Implementation. The Awarding Entity will be responsible before the Contractor for the contents and specialist details of all documents and specifications prepared by the designated personnel as may be delivered to the Contractor.
4. The Contractor will provide the Awarding Entity with the System Implementation technical concept within 5 Business Days of the date of signing of the agreement. The precise scope of the technical concept is specified in DCS Chapter V.5.4. Within 2 Business Days, the Awarding Entity will either approve the System Implementation technical concept or provide comments. If there are any comments, the Contractor will implement them to the technical

concept within 1 Business Day and re-submit the adjusted concept of System Implementation for the Awarding Entity's approval. Once the approval is obtained for the System Implementation technical concept from the Awarding Entity, the Contractor will commence System Implementation. The Awarding Entity's approval for the System Implementation technical concept will not exempt the Contractor from the obligation to meet all requirements under DCS.

5. The Contractor will supervise and coordinate all actions of its personnel in connection with the Subject Matter in order to ensure the required quality and timely completion of the work. Furthermore, the Contractor will be obliged to monitor the proper execution of the Implementation and inform the Awarding Entity's project manager on an ongoing basis about any circumstances known to the Contractor that could threaten the timely and due completion of the Implementation, including circumstances arising from actions or omissions of the Awarding Entity's personnel or of third parties engaged by the Contractor in the work directly connected with the Subject Matter. Such information will also include the recovery steps recommended by the Contractor.
6. The Awarding Entity will ensure that the Subject Matter is performed by appropriately qualified personnel and that their commitment allows for the completion of their tasks and the fulfilment of duties under the Subject Matter.
7. The detailed scope and terms of the System Implementation are specified in DCS Chapter V.5.
8. The System will be implemented at the data processing centre indicated by the Awarding Entity. The Contractor will notify the Awarding Entity about its readiness to deliver the Hardware to the data processing centre at least 1 Business Day before the planned delivery date. The delivery of the Hardware to the data processing centre indicated by the Awarding Entity will be confirmed by a delivery report which will specify at least the Hardware details mentioned in the technical concept of the System Implementation.
9. The Awarding Entity is required to insure the Hardware against incidental loss or damage, and ensure conditions appropriate for the Hardware at the data processing centre indicated by the Awarding Entity, according to the Contractor's specification provided in the System Implementation technical concept and the scope specified in DCS Chapter VII.
10. Before System Acceptance, the Contractor will provide Instructional Service for the Awarding Entity. The scope and the terms of the Instructional Service are specified in DCS Chapter V.9.
11. The Contractor will notify the Awarding Entity about its readiness for the System Acceptance procedure, including at least two proposed dates for System testing according to the test scenarios described in the System Implementation technical concept.
12. The System Acceptance procedure involves tests of the System to be carried out by the Parties based on test scenarios described in the System Implementation technical concept and a verification of the System's compliance with System Acceptance criteria, especially the criteria specified in DCS Chapter VI. In the course of System Acceptance, the Awarding Entity will assess the completion of Stage 1 and either sign the acceptance report or provide

comments.

13. If the Contractor fails to incorporate the Awarding Entity's comments within an agreed time or the incorporated changes do not follow the comments provided by the Awarding Entity, or if the Contractor fails to provide a statement of reasons why the Awarding Entity's comments have not been incorporated, then the Awarding Entity will be authorised to refuse System Acceptance and withdraw from the Agreement based on Article 14. 1.(a), and to claim contractual penalty.
14. The second acceptance procedure will not withhold or postpone any time limits specified in the Agreement for the respective Stages or obligations under this Agreement and it will not make the Contractor exempt from the liability for their failure.
15. The Contractor represents that the supplied Hardware and Software (the System) are free of legal and physical defects, and that the System possesses all legally required permits, decisions and certificates, declarations of conformity and marks confirming compliance with the statutory requirements applicable to the given type of device and legal compliance with the related provisions of the law.
16. Within 3 Business Days after the System Acceptance, the Contractor will provide the Awarding Entity with post-implementation documentation. The precise scope of the documentation is specified in DCS Chapter V.5.5.
17. In order to properly perform the following Services: Support, including Planned Works, and Technical Assistance, the Awarding Entity will make available remote and physical access to the System for the Contractor's personnel. The precise terms of the Services are specified in DCS Chapter V points 7 and 8, respectively.
18. The remote access means setting up (creation) and use of a link between the System and the Contractor's infrastructure – the link will facilitate the Services and appropriately secure the transmitted data against loss, change, interference and against unauthorised third-party use of the link. The remote access will be set up based on the parameters specified in the Agreement and the IT security rules of the Awarding Entity.
19. The previous clauses will be applied accordingly to the execution and acceptance of Stage 2, in accordance with Article 2. 3. of the Agreement, and in particular the Contractor will conduct the System tests based on the test scenarios described in the System Implementation technical concept and deliver the post-implementation documentation concerning System expansion.
20. Upon request from the Awarding Entity, the Contractor may be required to Relocate the System once during the effective term of the Agreement. The Awarding Entity will serve such request at least within 14 days before the arranged System Relocation date. The Contractor will confirm the receipt of such request and start its implementation within a time agreed with the Awarding Entity. The Relocation will be assisted by the Awarding Entity, pursuant to DCS Chapter V.6.
21. Any replacement of Hardware parts or the Hardware itself will require a dedicated report to be signed by the representatives of the Contractor and the Awarding Entity.

22. The Parties' obligations surviving the Agreement are specified in DCS Chapter VII.
23. Once the Agreement expires, the Awarding Entity will return the Hardware to the Contractor, in a condition not worse than original. The Awarding Entity is not liable for wear and tear of the Hardware resulting from normal use thereof. The Parties will arrange a date for System removal from the data processing centre indicated by the Awarding Entity and for the collection of the Hardware by the Contractor. Before releasing the Hardware to the Contractor, the Parties will conduct a data erasure procedure with regard to the Hardware disks, according to the details specified in the System Implementation technical concept.

#### **Article 9. Data Protection**

1. The Parties guarantee that physical and remote access to the Hardware will be available only to the authorised representatives of the Contractor and the Awarding Entity.
2. The Contractor is authorised to process the data accessible to it under this Agreement, however only to the extent necessary to provide the Services: Support, including Planned Works, and Technical Assistance. The Contractor is not authorised to attempt to access data which the Awarding Entity collects and processes using the provided Hardware, in particular personal data.
3. The Parties declare that during the performance of the Subject Matter no personal data will be outsourced for processing as defined in 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, OJ L 119/1, hereinafter "GDPR").

#### **Article 10. Remuneration and Payment Conditions**

1. Subject to sections 2 and 3 below, the Parties set the following remuneration for the Contractor in exchange for the completion of the Subject Matter in accordance with its Tender: PLN..... (in words: ..... Polish zlotys) net of VAT, plus ....% of VAT: PLN ..... (in words: ..... Polish zlotys), total with VAT: PLN..... (in words: ..... Polish zlotys).
2. The sum of PLN \_\_\_\_\_, namely 65% of the remuneration referred to in section 1, will be paid within 30 days of from the date of the Contractor serving a VAT invoice to the Awarding Entity after System Acceptance.
3. The remaining part of the remuneration: \_\_\_\_\_, namely 35% of the sum referred to in section 1, shall become due not earlier than within 30 days from the execution of Stage 2 by the Contractor, based on a VAT invoice to be issued by the Contractor after signing the System Expansion Acceptance report.
4. The remuneration will be paid based on VAT invoices to be issued by the Contractor.
5. The Awarding Entity will pay the remuneration and make all other payments under the Agreement in PLN.



6. The Contractor's remuneration includes all taxes applicable in Poland, including VAT, customs and other charges.
7. The Awarding Entity will pay the Contractor's remuneration to its bank account which the Contractor will indicate in a VAT invoice.
8. The Consultant's remuneration will be calculated using the VAT rate applicable as at the time when the related tax liabilities arise.
9. The Awarding Entity will make payments within 30 days of receiving a correct VAT invoice from the Contractor, subject to any deductions in accordance with the Agreement.
10. The Contractor will not pledge or transfer (especially by assignment or sale) any amount due to it under the Agreement (or any part thereof) or any benefits arising from the Agreement (or any interest therein) in favour of third parties without the Awarding Entity's prior consent issued in writing.
11. Such assignment, transfer or a transaction of similar effects made without such written consent of the Awarding Entity will be without effect for the Awarding Entity.

#### **Article 11. Copyright**

1. When the Awarding Entity receives a work made in connection with the performance of this Agreement (or its part being accepted by the Awarding Entity), specifically Documentation, the Contractor unconditionally and without additional charges will transfer all economic copyrights to the work as referred to in the Polish Act of 4 February 1994 on copyright and related rights (consolidated text in Polish Journal of Laws: Dz. U. 2016. 666 as amended), as such work may have been made for the purposes of the Subject Matter, or (as applicable) all unlimited-in-territory/time non-exclusive licences as may be necessary to use the transferred work, in particular: reports, charts, drawings, plans, statistics, expert opinions, calculations, device/system control software and other documents/folders provided to the Awarding Entity during the performance of the Agreement (hereinafter "Work") – without any dedicated statements required from the Parties in that regard, including the exclusive right to exercise (and permit exercising) the derivative copyrights, on the fields of use referred to in section 2. Furthermore, the Contractor transfers the title to all copies or media containing the recorded Work referred to above, to the Awarding Entity, according to this Agreement.
2. At the time of transfer of the economic copyrights and the derivative rights to the Work incorporated in the above documentation (or any part thereof), the Awarding Entity will be authorised to use the documentation (entirely or partially) in the following fields of use:
  - a) recording and multiplication of the Work using any technique, including printing, reprinting, reprography, IT, digital techniques, also by making photocopies, slides, computer or manual reproductions, and any variation of those techniques;
  - b) multiple uses of the Work for the purposes, tasks and investments of the Awarding Entity;
  - c) use of the Work to prepare an EU funding application;
  - d) uploading the Work to computer memory;

- e) use necessary for the proper use of the Work in the Awarding Entity's business, at any place and time as well as in any number of copies;
  - f) making the Work available to contractors, including copies made;
  - g) rental/lease of the Work;
  - h) multiple uses of the Work for the purposes of preparing and implementing technical designs featuring preliminary measurements and cost estimates for investment purposes;
  - i) dissemination of the Work in any other way, including by marketing, exposition, publishing of the Work as a whole or in parts, and its elaborations;
  - j) processing of the Work, changing , rectification and modification of the Work.
3. The provisions of sections 1 and 2 will be applied accordingly to changes to Works incorporated in the above documentation as such changes may result from author's supervision and be implemented during works covered by such documentation.
  4. The Parties agree that the dissemination of the Work in the fields of use referred to in section 2 may involve the entire Work, its parts or fragments, independently or in combination with third-party works, including as a part of a collective work, after archiving in electronic or printed formats, after elaboration, adaptation, supplementation or other modification, etc.
  5. In the event of a third party claim sought against the Awarding Entity for a copyright violation (moral or economic), the Contractor will (insofar as such violation was caused by the Contractor's improper performance of the Agreement):
    - a) assume full responsibility for the occurrence of such events and all consequences thereof;
    - b) if the claim is to be settled in court: join the Awarding Entity in the proceedings and indemnify it for all costs of the Awarding Entity's participation in such court proceedings or later (if any) collection procedures, including legal counsel expenses;
    - c) pay all expenses for property and non-property claims related to violation of copyrights (moral or economic) of the claiming party or parties.
  6. If the economic copyrights referred to in section 1 above are not transferred to the Awarding Entity by the time the Contractor or the Awarding Entity withdraws from the Agreement, such transfer will occur at the time of such withdrawal.

#### **Article 12. Agreement Performance Security**

1. The Awarding Entity represents that prior to the execution of this Agreement the Contractor submitted an Agreement Performance Security to the Awarding Entity according to the rules specified in the Request for Tenders, for a sum of 10% of the remuneration referred to in Article 10.1 of the Agreement.
2. The Agreement Performance Security is intended to secure and, if needed, satisfy the Awarding Entity's claims for the Contractor's non-performance or improper performance of the Agreement, in particular the Awarding Entity's demand for the Contractor to pay

contractual penalties.

3. The Awarding Entity is the beneficiary of the Agreement Performance Security.
4. The costs of the Agreement Performance Security will be borne by the Contractor.
5. The Contractor will ensure that the Agreement Performance Security remains valid throughout the effective term of the Agreement and afterwards until the Awarding Entity's claims are satisfied as may be related to non-performance or improper performance of the Agreement. The Contractor will promptly notify the Awarding Entity about factual or legal circumstances which do or may impact the validity of the Agreement Performance Security as well as the viability and extent of the Awarding Entity's execution of its rights thereunder.
6. During the performance of the Agreement, the Contractor may change the Agreement Performance Security to another format(s) among those referred to in the Request for Tenders, however on such condition that such change will ensure continuity of the security and will not reduce the secured sum.
7. The Agreement Performance Security will be at the Awarding Entity's disposal and valid for the period specified in the Agreement.
8. Unless there are reasons to draw the entire or any part of the security, it will be returned to the Contractor entirely or partially, as applicable, within 30 days of the expiry of the Agreement. The Awarding Entity will return the Agreement Performance Security, including interest accrued under the bank account agreement concerning the account used to store it, less any account charges and bank fees for money transfers to the Contractor's account.
9. The Awarding Entity may draw from the Agreement Performance Security whenever an amount due from the Contractor to the Awarding Entity for non-performance or improper performance of the Agreement remains outstanding beyond 14 days of serving a payment demand notice to the Contractor.
10. If the validity period of the Agreement Performance Security is shorter than the required validity period, the Contractor will establish new Agreement Performance Security within at least 30 days before the expiry of the previous one.
11. If by the time referred to in section 10 the Contractor fails to submit the new Agreement Performance Security to the Awarding Entity, the Awarding Entity will be authorised to draw the full sum of the previous security according to its value at the date of lodging such claim.
12. The Awarding Entity will refund the sum drawn from the Agreement Performance Security to the Contractor, as soon the Contractor submits the new security or on the date prescribed for the return of the given part of the security.

### **Article 13. Amendments**

1. All amendments to the Agreement will be implemented by the authorised representatives of the Awarding Entity and the Contractor, in the form of written annexes (under the pain of nullity).
2. In the event of any doubts, the changes to the following will not be deemed amendments to

the Agreement:

- a) changed data related to administrative/organisational handling of the Agreement;
  - b) changed contact data;
  - c) changed official registry data;
  - d) changes resulting from the entry of a universal legal successor of one Party.
3. Major changes to the contents of this Agreement may result from the following circumstances:
- a) Changes to generally applicable laws, specifically:
    - VAT rates;
    - the minimum statutory wage or the minimum hourly rate, according to the Polish Act of 10 October 2002 on the minimum wage;
    - the eligibility criteria of the state social/health insurance or the value of contributions to such insurance;
  - b) a change will not modify the nature of this Agreement insofar as the following conditions are satisfied jointly:
    - the need to change the Agreement was caused by circumstances unforeseeable for the Awarding Entity (assuming due diligence);
    - the value of the change does not exceed 50% of the original contract value specified in the Agreement;
  - c) the Contractor is to be replaced with a new contractor after a merger, division, reorganisation, bankruptcy, restructuring or acquisition of the previous Contractor (or its business), insofar as the new contractor satisfies the eligibility criteria of the procedure referred to in the recitals and no exclusion grounds apply to the new contractor according to the contract terms of reference mentioned in the recitals, provided no other major changes to the Agreement will be required as a result;
  - d) a change will not modify the nature of this Agreement insofar as the total value of all changes is lower than the amounts specified in regulations published based on Article 11. 8 of the Public Procurement Law and is lower than 10% of the original contract value specified in the Agreement.
4. Only the amendments authorised according to section 1 may lead to changing the value of the remuneration referred to in Article 10. The Awarding Entity allows indexation of the remuneration referred to in Article 10 of the Agreement, but only:
- a) upon written request from the Contractor;
  - b) with regard to an outstanding part of the contract;
  - c) based on a proven (with appropriate documentation and evidence) increase of the contract performance costs but only to the extent of the proven impact on the contractual remuneration referred to in Article 10;
  - d) on or after the date new regulations enter force, if such request together with evidence is submitted to the Awarding Entity at least 30 days before the entry into force of the regulations requiring such change. If this condition is not observed, the remuneration is

to be changed within 30 days of the submission of the request together with the evidence.

5. Amendments of the provisions referred to in section 3 will not modify the nature of the Agreement.

#### **Article 14. Awarding Entity's Withdrawal**

1. The Awarding Entity is authorised to withdraw from the Agreement within 7 days of identifying the causes of such withdrawal, if the Contractor:
  - a) fails to perform the Agreement or performs it improperly for reasons attributable to the Contractor, and does not satisfy the Awarding Entity's request demanding the Contractor to restore or rectify its performance of the Agreement within an indicated time limit;
  - b) subcontracts the entire Subject Matter or assigns the Agreement (or its part) without the Awarding Entity's consent;
  - c) expands the subcontracted scope of works beyond the scope specified in Appendix 3 to this Agreement, and fails to adjust its performance and does not satisfy the Awarding Entity's request demanding the Contractor to eliminate such irregularities within the indicated time limit – within 7 days of the Awarding Entity identifying the causes for its withdrawal from the Agreement.
2. The Awarding Entity may withdraw from the Agreement in the event of a serious change of circumstances causing the performance of this Agreement to no longer be in the interest of the public, provided it could not have been foreseen at the date of this Agreement – within 30 days of the Awarding Entity finding out about such circumstances; in such case, the Contractor will be entitled to request only the remuneration corresponding to the completed part of the Agreement.
3. The Contractor covers the part of its obligations completed prior to the withdrawal with the statutory warranty for defects and a quality warranty to the extent specified in the Agreement.
4. The notice of withdrawal will be served via registered letter (with confirmation of receipt) or personally to the Contractor's registered office (with confirmation of receipt), and effective at the time of the Contractor receiving such notice.

#### **Article 15. Withdrawal Obligations of the Contractor and the Awarding Entity**

1. In the event of the Awarding Entity's withdrawal from the Agreement, the Contractor will:
  - a) immediately discontinue its performance of the Subject Matter, unless the Awarding Entity decides otherwise;
  - b) transfer documents at its possession at a given time, including the Awarding Entity's devices, materials and other work which the Contractor was paid for, and other

documentation prepared by or for the Contractor – within a time limit to be specified by the Awarding Entity.

2. The Contractor will follow any instructions contained in the Awarding Entity's notice of withdrawal as may pertain to the protection of property and telecommunications and IT security.

#### **Article 16. Withdrawal Settlements**

1. The Awarding Entity will pay the Contractor the remuneration corresponding to the period until the date of withdrawal, less any demands the Awarding Entity may have regarding contractual penalties and other claims for damages.
2. The Contractor will pay additional costs and all other reasonable costs of the withdrawal, if the withdrawal is caused by reasons attributable to the Contractor.

#### **Article 17. Contractual Penalties**

1. Regardless of other events permitted in the Agreement, the Contractor will pay the Awarding Entity contractual penalties in any of the following events:
  - a) delayed delivery of the technical concept – 0.1% of the Contractor's remuneration specified in Article 10. 1 of the Agreement, for each day of such delay;
  - b) delayed submission of the System for the Acceptance – 1% of the Total Price, for each day of such delay;
  - c) delayed Emergency Response Time in the case of:
    - Critical Error – 0.001% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each hour of such delay;
    - Non-Critical Error and Fault – 0.0005% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each hour of such delay;
  - d) delayed Repair Time in the case of:
    - Critical Error – 0.001% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each hour of such delay;
    - Non-Critical Error and Fault – 0.0005% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each hour of such delay;
  - e) delayed Workaround – 0.005% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each hour of such delay;
  - f) Scheduled Works initiated without the Awarding Entity's approval – 0.1% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each event;
  - g) delayed submission of the System Expansion for the Acceptance – 1% of the Total Price, for each day of such delay;
  - h) unauthorised access to the System – 5% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement, for each event;
  - i) delayed Relocation of the System – 3% of the Total Price for each day of such delay;

- j) the Awarding Entity's withdrawal from the Agreement caused by reasons attributable to the Contractor – 15% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement;
  - k) failure to meet insurance requirements referred to in Article 7 of the Agreement – 5% of the Contractor's total remuneration specified in Article 10. 1 of the Agreement.
2. If the contractual penalty for any of the events listed in section 1 does not cover the incurred loss, the Awarding Entity may claim supplemental damages based on general legal regulations of the Civil Code.
  3. The contractual penalty will be paid within 14 days of serving an effective payment request notice to the Contractor. In the event of delayed payment of the contractual penalty, the Awarding Entity may demand statutory interest for each day of such delay.
  4. The Contractor's payment of the contractual penalty, or the Awarding Entity's set-off of the penalty against any amounts due to the Contractor, will not make the Contractor exempt from the obligation to provide the Services or any other obligations and liabilities under the Agreement.
  5. The Contractor agrees for the Awarding Entity to set off (Article 498 and 499 of the Civil Code) amounts due from the Contractor, including contractual penalties, against amounts due to the Contractor. Furthermore, the Contractor represents that the above declaration of consent has not been granted erroneously and is not encumbered by any legal defect that would lead to the invalidity of such declaration.

#### **Article 18. Final provisions**

1. The Parties undertake to inform each other about any and all legal events and facts that could impact the proper performance of the Agreement.
2. The entire correspondence delivered to the Parties' addresses specified in the introduction to this Agreement will be deemed served effectively, unless the Parties notify each other in writing of a change of address.
3. Any and all disputes arising from this Agreement will be settled by the common court competent for the registered office of the Awarding Entity.
4. The following appendices to this Agreement constitute the integral part hereof:
  - a) Appendix 1 to Agreement of \_\_\_\_\_ – excerpt from the National Court Register concerning the Awarding Entity and the Contractor / Power of Attorney documents
  - b) Appendix 2 to Agreement of \_\_\_\_\_ – Detailed Contract Specification
  - c) Appendix 3 to Agreement of \_\_\_\_\_ – Contractor's Tender
  - d) Appendix 4 to Agreement of \_\_\_\_\_ – Contact Persons
  - e) Appendix 5 to Agreement of \_\_\_\_\_ – Acceptance Certificate Form
5. This Agreement has been drawn up in two identical counterparts, one for each Party.

**Signed for and on behalf of the Awarding Entity:**

<b>Signature</b>	<b>Signature</b>	
(first and last name, position of the representative of the Awarding Entity)	(first and last name, position of the representative of the Awarding Entity)	

Signed for and on behalf of the Contractor:

<b>Signature</b>	<b>Signature</b>
(first and last name, position of the representative of the Contractor)	first and last name, position of the representative of the Contractor)



Contact persons authorised for the purposes of the Agreement

To ensure the direct performance and supervision over the execution of the Agreement, in particular signing and handling Orders and other documents necessary for the proper performance of the Agreement, the following individuals are appointed:

1) for the Awarding Entity:

Formal issues: ....., e-mail: .....  
tel.: .....;  
Technical issues: ....., e-mail: .....  
tel.: .....

2) for the Contractor:

Formal issues: ....., e-mail: .....  
tel.: .....;  
Technical issues: ....., e-mail: .....  
tel.: .....

**Acceptance Certificate**

**FORM**

drawn up in ....., on .....,  
by and between:

**Awarding Entity: NASK – PIB**, represented by

.....

and

**Contractor:** ..... represented by:

.....

1. NASK – PIB verified the delivered System for its compliance with the Detailed Contract Specification and the Agreement. The Parties conducted tests and confirmed their positive results.
2. When signed by both Parties without reporting any objections, this Certificate will be the basis for the Contractor to issue an invoice for the sum specified in the Agreement ..... of.....
3. This Certificate has been drawn up in two identical counterparts, one for the Contractor and one for NASK – PIB.
4. NASK – PIB confirms that the System is complete and accepts it<sup>1</sup>.
5. NASK – PIB makes the following objections against the quality and therefore refuses to accept it<sup>2</sup>.

**On behalf of the Contractor:**

**On behalf of the Awarding Entity:**

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<sup>1</sup> Delete as appropriate

<sup>2</sup> Delete as appropriate