

## AGREEMENT No. \_\_\_\_/2017 (draft)

concluded on ....., 2017 in Sopot, Poland

between:

**Institute of Oceanology, Polish Academy of Sciences in Sopot, ul. Powstancow Warszawy 55, 81-712 Sopot**, NIP (tax identification number) 5851004839, hereinafter referred to as the CONTRACTING AUTHORITY, represented by:

..... - .....

and

business entity .....with its registered office in ....., ....., hereinafter referred to as the CONTRACTOR represented by:

..... - .....

as follows:

## § 1

1. The basis for the conclusion of this agreement is procedure No. IO/ZN/3/2017 under art. 30a of the Act of 30 April 2010 on the Principles of Financing Science (Journal of Laws of 2016 item 2045, as amended) and art. 4d paragraph 1 point 1 of the Act of 29 January 2004 the Public Procurement Law (Journal of Laws of 2015, item 2164, as amended).
2. The Contract is funded from project "Integrated carbon and trace gas monitoring for the Baltic sea" (INTEGRAL) from the program BONUS call 2015: Blue Baltic

## § 2

1. The subject of the agreement is the **design and delivery of Automated system for continuous measurements of pCO<sub>2</sub> in the surface seawater (ferrybox type) for the Contracting Authority – the Institute of Oceanology, Polish Academy of Sciences in Sopot ul. Powstancow Warszawy 55, 81-712 Sopot** in accordance with the submitted bid of ..... (date) and the Contract awarding notice of ..... (date), constituted an integral part of the Agreement.
2. The Appendix no 1 to the Agreement contains the required elements of the system.
3. The system should be designed for operating on the passenger ferry m/s AGAT in the place indicated by IO PAN.
4. The Contractor will take into account the place on the ferry, where the system will be installed. The Contractor is obligated to verify on site the place of installation of the system before beginning designing the system. The Contractor should agree on with the Contracting Authority the date of verification.
5. Within the declared bid price (net value) the Contractor will provide all elements of the system, except of the pH analyzer (which will be provided by the Contracting Authority).
6. The Contractor shall execute the subject of the Contract in a way that does not limit full usage of equipment installed and/or integrated within the system.
7. The Contractor shall deliver and install the system on board of m/s AGAT mooring in Gdynia, Poland, at ul. Nabrze Pomorskie within the declared bid price (net value).
8. The Contractor shall provide the Contracting Authority with the installation version of the software described in chapter II paragraph 4 letter b of the Contract awarding notice, on data carrier (e.g. USB stick, CD) within the declared bid price (net value).
9. The Contractor shall perform tests of the system and 3 day training of the users in the place of installation of the system (board of m/s AGAT) within the declared bid price (net value).
10. All elements of the system must be new, free from defects or damage, not used, free of third-party rights.
11. The system must meet all the functional and technical requirements specified by the Contracting Authority, must be free from defects or damage, not used, free of third-party rights.
12. The system must be open for integration additional sensors.
13. Within the declared bid price (net value) the Contractor will provide minimum 12 month online support, counted from the date of final acceptance of the subject of the agreement without reservations.
14. The Contractor shall provide the Contracting Authority with:
  - a) complete documentation of the system and its elements (including at least one copy of the operating manual) in Polish and/or in English,
  - b) all licenses for software delivered within execution of the Agreement (including operating system installed on control unit), if required for usage,
  - c) warranty or other documents, if required for the exercise of rights by the Contracting Authority,

- d) the installation version of the software described in chapter II paragraph 4 letter b of the Contract awarding notice on data carrier (e.g. USB stick, CD).

### § 3

1. The execution of the subject of the agreement referred to in § 2 will take place not later than within **16 weeks** from the date of signing the agreement.
2. The place of execution of the agreement (place of installation of the system): **on board of m/s AGAT mooring at ul. Nabrzeze Pomorskie, 81-001 Gdynia, Poland.**

### § 4

1. According to the submitted bid, the Contractor's remuneration for the performance of the agreement amounts to total (gross) of..... PLN/EURO (say: ..... PLN/EURO 00/100), net value: ..... PLN/EURO (say: ..... PLN/EURO 00/100).
2. The costs of customs duties and VAT will be settled and paid by the Contracting Authority, provided that the Contractor is an entity with its registered office outside the territory of the Republic of Poland and if it is required pursuant to the relevant tax and customs provisions.
3. The amount referred to in section 1 includes all costs associated with the execution of the agreement, including cost of designing and constructing of the system, cost of all elements of the system (except of the pH analyzer), cost of integration of the pH analyzer, cost of documentation and software, cost of packaging and transport to the place of destination, cost of insurance during delivery to the place of destination, cost of installation, tests and training, cost of warranty and warranty service, cost of online support as well as cost of travel of the Contractors representatives/employees connected with on-site verification, installation, tests and training.
4. The Parties agreed that the payment for the execution of the agreement will take place on the basis of the invoices delivered to the Institute of Oceanology, Polish Academy of Sciences in Sopot in two parts:
  - a) First installment: 90% of remuneration – after delivery of the system and its equipment to the place of installation following the signing the acceptance protocol of the delivery by the Contracting Authority without reservations,
  - b) Second installment: 10% of remuneration - after successful installation of the system, successful tests of the system and training of the users following the signing the final acceptance protocol of the subject of the procedure by the Contracting Authority without reservations.
1. Payment will be transferred from the account of the Contracting Authority to the Contractor's account in (Bank name).....; (Account Number).....; Swift: ..... within 14 days from the date of signing of the respective acceptance protocol without reservations and after receipt of the invoice properly issued by the Contractor.
2. The Contractor is entitled to statutory interest for the delay in payment.
3. The advance payment, not higher than 20% of remuneration, can be made on the Contractor's request. The advance payment will be deducted from the first installment. Advance payment will be transferred from the account of the Contracting Authority to the Contractor's account specified in section 5 above within 14 days from the date of receipt of written request for advance payment and the pro forma invoice properly issued by the Contractor.

### § 5

1. Warranty period of the subject of the procedure is ..... months counted from the date of final acceptance of the subject of the agreement without reservations. For installed or/and integrated elements of the system (equipment) – warranty not shorter than offered by the producer. The Contractor shall present the Contracting Authority with warranties of devices - elements of the system.
2. The Contractor shall install and/or integrate devices in a way that will not void the producers warranty of the devices.
3. The Contractor shall be liable to the Contracting Authority for any physical and legal defects of the delivered system as well as its elements (equipment) (particularly involving any non-compliance with the description of the Subject of the agreement), as well as damage suffered during transport.
4. In the case of non-compliance of system or its elements (equipment), in particular in the case of lack of required and offered technical performance or functionality, and in the case of delivery of damaged system and/or equipment, the Contracting Authority may refuse to accept it. In such a situation the Contracting Authority shall inform the Contractor by mail, by fax or electronic mail, on the observations of the Contracting Authority as to the irregularities sending a protocol and call the Contractor to remedy the defects within the specified time or to provide defect-free system and/or equipment.
5. In the case of irregularities found in the delivered system and/or its elements (equipment), in particular lack of required and offered technical performance or functionality after the commencement of individual analysis, the Contracting Authority shall notify the Contractor of the irregularities within 7 days from the date of

disclosure in writing, by fax or electronically. The notification should be accompanied by: a complaint report including the request detailing the method of the removal of the irregularities and relevant acceptance protocol.

6. Irregularities indicated by the Contracting Authority and referred to in the sections 4 and 5 above shall be removed by the Contractor at its own expense, in the manner specified by the Contracting Authority, not later than 21 days from the date, on which the irregularities were claimed, subject to longer period for removal of defects upon agreement with the Contracting Authority.
7. Shall the Contractor fail to respond to the notice of the irregularities within 7 days of its receipt, it will be tantamount to recognition of the complaint and Contractor's commitment to immediately remove the irregularities.
8. If the irregularities cannot be removed, the Contractor shall deliver the defect-free system or/and equipment within 21 days of filing the complaint for the remuneration provided for hereto.
9. In case of cumulation of rights under warranty service with warranties of the elements of the system (especially providing warranty by the producer), the Contracting Authority will be entitled to choose which right will be exercised.
10. Regardless of the warranty given by the Contractor, the Contractor is liable to the Contracting Authority on bases of implied warranty for defects under the Polish Civil Code – provisions regarding the contract of specific work.
11. In case of delivery of the defect-free system or device referred to in section 8 above, the Contractor is obligated to its installation and/or integration at his own expense.

#### **§ 6**

1. The Contractor shall pay to the Contracting Authority stipulated penalties in the amount of:
  - a) 0.2% of the net value of the agreement for each day of default in execution of the subject of the agreement beyond the deadline set in §3 section 1 of the agreement;
  - b) 0.2% of the net value of the agreement for each day of default in removal of defects found during or after the acceptance of the object hereof;
  - c) 10% of the net value of remuneration for non-performance by the Contractor of the whole agreement or the improper performance of the agreement, other than that referred to in section 1 points a) and b);
  - d) 20% of the net value of the remuneration for the withdrawal by the Contractor or by the Contracting Authority from the agreement for reasons attributable to the Contractor.
2. The Contracting Authority reserves the right to claim compensation in excess of the above penalties under the general rules of the Polish Civil Code.
3. The Contracting Authority shall be entitled to deduct stipulated penalties from the remuneration payable to the Contractor.
4. If deduction of stipulated penalties from the remuneration payable to the Contractor is not possible, the penalties and/or other dues arisen from the agreement shall be paid not later than within 7 days from the date of receiving by the Contractor request for payment.

#### **§ 7**

1. In the event of a substantial change in circumstances resulting in a situation, where the execution of the agreement is no longer in the public interest, which could not have been foreseen at the time of the conclusion of this Agreement, the Contracting Authority may cancel the agreement within 30 days of becoming aware of those circumstances. In such a case the Contractor may only claim the remuneration for the actually executed part of the agreement.
2. In case of non-performance of the whole agreement or the improper performance of the agreement by the Contractor, the Contracting Authority has the right to withdraw from the agreement after a prior ineffectual formal notice to the Contractor to fulfil the obligations in accordance to the agreement within set deadline – within 30 days after expiry of the deadline.

#### **§ 8**

1. Any changes or additions to this agreement shall be in writing under pain of nullity.
2. The Contracting Authority anticipates possibility of changes in the Contract, especially in occurrence of following circumstances:
  - a) changes will be advantageous to the Contracting Authority in terms of Agreement realisation, especially they will advance date of delivery of the object of the Agreement, lower the cost incurred by the Contracting Authority of execution, maintenance or usage of the object of the agreement or increase its usefulness;
  - b) changes in the deadline for completion of the agreement - in the case where it is impossible for the Contractor to meet the deadline for execution of the agreement for reasons beyond the control of the Contractor;

- c) in the event of force majeure, such as occurrence of a random event caused by external factors, which could not have been predicted with certainty, in particular, a direct threat to life or health of people or risk of significant damage;
- d) changes to the agreement are necessary due to the changes in the relevant legislation;
- e) changes to the agreement are necessary due to actions taken by the administrative bodies or institutions authorized to issue decisions or other commanding or supervisory acts related to the delivery of the object of agreement.

**§ 9**

The Contractor may not assign claims arising from this agreement to a third party without the written consent of the Contracting Authority.

**§ 10**

Any disputes arising in connection with the execution of this agreement shall be settled by negotiation and in the case of failure to reach an agreement, disputes shall be settled in court by the court having jurisdiction over the Contracting Authority's registered office.

**§ 11**

- 1. The Parties agree that Polish law shall apply to the execution of this Agreement.
- 2. In matters not covered by the provisions of this Agreement the Polish Civil Code shall apply.

**§ 12**

- 1. The agreement was drawn up in three counterparts, 2 copies for the Contracting Authority and one copy for the Contractor.
- 2. In the case of the preparation and signing of the English version of the agreement, the Polish version is the basis for the interpretation of the agreement.

THE CONTRACTING AUTHORITY

THE CONTRACTOR

.....

.....

**Appendices to the Agreement:**

- Appendix No. 1 – Required elements of the system
- Appendix No. 2 – the Bid form
- Appendix No. 3 – the Technical Description of offered system
- Appendix No. 4 – the Technical Specifications of offered devices (elements of the system)

**REQUIRED ELEMENTS OF THE SYSTEM**

The system must be equipped with:

1. basic flow system, including supply water pump
2. the software and hardware controlling the entire system, allowing data integration and management and operating the system automatically including start/stop option programmable against coordinates and/or time, as well as allowing data migration (export),
3. antifouling and cleaning mechanisms run automatically
4. seawater carbon dioxide partial pressure sensor (measurement range: 0 to 3000 ppm; accuracy 1%)
5. thermosalinograph measuring temperature (range: -3 to 35°C), conductivity (range: 0 to 70 mS/cm), computed salinity (range: 2 to 42 PSU) and sound velocity;
6. GPS receiver
7. additional sensor for in situ temperature
8. the automated pH analyzer HydroFIA developed by KM Kongsberg (the pH analyzer will be provided by IO PAN)