Appendix No.4 to ToR

**Agreement No. ..../DE/Z/2015**

Concluded on ...................................... in Warsaw between:

**The Institute of Aviation – Research Institute**

With the registered office in Warszawa( 02-256), Al. Krakowska 110/114

NIP\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, REGON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Registered in the District Court, XIII Economic Division of the National Court Register**,** under no. KRS 0000044166 and on signing this agreement

represented by:

.............................................................................................

(hereinafter only ‘The Awarding Entity)

And

………………………………………………………………………………………………………………………………………..

Represented by:

……………………………………………………………………………………………………………………….

(hereinafter only ‘The Economic Operator’)

hereinafter jointly “Parties” or “Party”.

The Economic Operator was selected in the proceedings related to open public procurement under Article 39 of January 29, 2005 – the Public Procurement Law (Journal of Laws of 2013, (907), as amended).

**AGREED FORMULA**

1. **The subject of the Agreement –** supply of the automated fibre placement system.
2. **Remuneration –** for appropriate completion of the order the Economic Operator shall receive the total remuneration of ............................... Polish zloty net and VAT in the amount of ..................., total of .....................................Polish zloty gross.
3. **Execution of the subject of Agreement will take place within 12 months from the date of signing the Agreement.**
4. **The subject of the Agreement.**

**§ 1**

The Awarding Entity orders and the Economic Operator undertakes the supply and assembly in the place appointed by the Awarding Entity of the automatic fibre placement system further only ‘system’ and training in the system operation the persons appointed by the Awarding Entity. A detailed description of the subject of the offer is presented in Appendix No.1 to these ToR – The description of the Agreement subject is Appendix No.2 to the Agreement.

**II. Statements and general obligations of the Economic Operator**

**§ 2**

1. The Economic Operator declares that they have all the necessary qualifications, experience and financial means, equipment and human resources in the form of specialised staff necessary to complete the order and undertakes fulfilling it with the highest professional diligence generally accepted for this kind of relation.
2. The Economic Operator declares that the system is new and complies with all the regulations imposed by the law and the contents of Appendix 1 to the ToR requirements and norms within the scope for such systems. The system shall be appropriately calibrated and the calibration protocol shall be delivered with the system.
3. The Economic Operator is responsible for tasks entrusted to third parties like for his own activities or acts of omission.
4. The Economic Operator is obliged to provide the Awarding Entity, at their request, any information related to the activities connected with the subject of the Agreement and enable them to verify the correctness of its performance at any stage.
5. The Economic Operator is obliged to inform the Awarding Entity immediately, in written, about all circumstances which may have an influence on fulfilling the provisions of the agreement.
6. In the case when a situation occurs preventing or hampering temporarily or permanently the completion of the object of the agreement, the Economic Operator is obliged to immediately inform the Awarding Entity in written about the fact, under pain of being declared null and void, to the address shown in the Agreement within 3 business days after the situation occurs.
7. The Economic Operator undertakes to preserve the confidentiality of all information obtained in the process of entering into the contract while it is valid and after it is completed.
8. The Economic Operator shall bear full responsibility to preserve the confidentiality of the information by the entities who were entrusted with fulfilling the duties related to the Agreement.
9. **Completing the Agreement.**

**§ 3**

1. The parties mutually agree that completing the agreement shall take place within 12 months from the date of signing it.
2. The Economic Party is obliged to secure properly the system for the time of transport in the way protecting it from damage especially mechanical and other factors that may influence its usability or performance.
3. The Awarding Entity shall inform the Economic Operator within 7 days from signing the Agreement about the mounting site of the system and shall enable them to make an on-site verification with a view to prepare the scope of the preparatory work and their schedule.
4. After completing the assembly work the Parties shall proceed to its acceptance. The technical acceptance will cover checking the system parameters in terms of compliance with the requirements described in Appendix 1 to the ToR.
5. The Parties mutually agree that during the process of acceptance the Economic Operator shall be obliged to perform a practical test (making a sample of a composite part).
6. The Awarding Entity shall evaluate the practical attempt on the basis: adequate/inadequate.
7. A handover protocol of the system shall be made and signed by all the persons authorised for it.
8. If the result of the practical test, mentioned in item 5 and 6 shows that the system does not meet the requirements described by the Awarding Entity, the subject of the agreement (system) loses the meaning for the Awarding Entity and the Economic Operator is obliged to dismantle the system and receive it at their own expense.
9. If the result of the practical test, referred to in item 5 and 6 reveals that the system fulfills the expectations presented by the Awarding Entity, the Awarding Entity shall accept the system. Fulfilling expectations is understood as obtaining the parameters described by the Awarding Entity during a practical test.
10. The penalty referred to in item 8 does not apply to minor cases, unimportant system faults or faults connected with its assembly.
11. Small, minor faults are to be eliminated within 7 days after revealing them in a protocol referred to in item 7. After eliminating defects mentioned in the previous sentence the Parties proceed to accepting the system by conducting a practical test, as mentioned in item 5 and 6 to accept the system. The regulations of item 7-9 are applied respectively.

**§ 4**

1. After acceptance of the system in the way and under the conditions described in § 3 the Economic Operator shall train persons appointed by the Awarding Entity within the scope necessary for a full operation of the system.
2. The dates of training sessions shall be chosen in consultation with the Awarding Entity provided that they do not start later than 7 days after accepting the system and finish after the date referred to in § 3 item 1 of the Agreement.
3. Completing the training as mentioned in § 4 should be confirmed by a certificate.
4. **Software and licence**

**§ 5.**

1. Together with the system, the Economic Operator shall deliver to the Awarding Entity dedicated software for its operation and a control system, as provided for the submitted offer. The technological software shall enable application of composite materials according to a definition of layers. The software shall be updated during the guarantee under remuneration specified in § 6.
2. The Economic Operator states that they are entitled to grant to the Awarding Entity a licence to use the software specified in item 1, that performance of the Agreement does not or shall not infringe any intellectual property of any third parties (in particular patents, copyrights, trademarks), and that the software is not and shall not be encumbered with any rights of any third party.
3. As of the day of the system acceptance, the Economic Operator shall grant to the Awarding Entity a non-exclusive licence to use the software for the system operation (control), and to use the said software the extent necessary to use the system in accordance with its designated use, including, in particular, the following fields of exploitation: software duplication by saving it in PCs memory and installation on 1 workstation – Licensee shall be authorized for multiple installation of the device operating software, provided, however, that at one time the software shall be installed only on 1 workstation(PC).
4. The licence granted to the Awarding Entity shall be limited to the territory of the Republic of Poland, for an indefinite time. The Economic Operator undertakes not to exercise their rights to cancel the licence throughout the period the system is used by the Awarding Entity, their legal successors or entities to which the system has been contributed as an asset, in particular, as a contribution in kind.
5. Disposal of the system or its contribution to an entity to which the system was contributed as an asset, in particular, as a contribution in kind, shall be done together with the software licence granted.
6. When any action related to the system and software use is brought against the Awarding Entity by third parties claiming that their intellectual property has been infringed (especially patents, copyrights, trademarks), The Awarding Entity undertakes to join the proceedings on the side of the customer and undertake all actions to release the Awarding Entity form participation in the proceedings, as well as to reimburse the Awarding Entity all costs of the proceedings incurred by the Awarding Entity, to dismiss or compensate the said claims, and to release the Customer from any liability for relevant compensation.

**V. Remuneration**

**§ 6**

1. The Parties mutually agree that the Awarding Entity shall pay the Economic Operator for appropriate and complete performance of the agreement a remuneration in the amount not exceeding …………………………………… PLN gross (in words: …………………………), (hereinafter “remuneration”). The remuneration, as mentioned in the previous sentence, includes remuneration for giving a license as mentioned in § 5.
2. The Economic Operator shall cover the cost of transportation and assembly of the system.
3. Remuneration shall not increase.
4. Remuneration shall be made in five tranches of 20% each with a reservation to § 5.On the day of signing the agreement at the latest, The Economic Operator shall present the Economic Operator the payment schedule.
5. Regarding the payment of an advance, the Awarding Entity permits a possibility of granting an advances of 30% of the value described in § 6.1 of the Agreement. A condition for granting advances is lodging a security of the advances by the Economic Operator for the period of completing the order or settlement of advances. The Awarding Entity allows for securing the advances in the following way: an in blanco bill of exchange with a promissory note declaration, as agreed between parties, a bank guarantee, an insurance guarantee covering at least the amount of the granted advances which the Awarding Entity requests and which includes clauses of payment of the amount of cover payable to the Awarding Entity unconditionally and at their first request.
6. The payment of the advances will be made on the basis of a pre-invoice paid by a bank transfer within 30 days from receiving the pre-invoice together with the in blanco bill and signed by a person authorized for representing the Awarding Entity and the agreed contents of a promissory note declaration or the original of the insurance guarantee or the bank guarantee issued within the scope described in item 5.
7. The basis for the payment in the way described in 4 shall be, in each case, an appropriately issued VAT invoice.
8. The Economic Operator is entitled to issue a VAT invoice, as referred to in 7 not earlier than after signing the certificate of acceptance referred to in § 3 of the agreement.
9. The payment shall take place within 30 days after delivering an appropriately issued VAT invoice to the Awarding Entity.
10. The payment shall be made by a bank transfer to the bank account of the Economic Operator in the bank: ……………………….. Account No. ………………………………………………..

The change of the bank account shall not be considered as a change of the Agreement and requires giving a written notice to the Awarding Entity, under pain of being declared null and void. The change of the bank account shall not be considered as a change of the Agreement and requires giving a written notice to the Awarding Entity, under pain of being declared null and void.

1. The transfer of liabilities resulting from the Agreement can be made only with the consent of the Awarding Authority.

**VI. Responsibility**

**§ 7**

1. In the case of an infringement of the date of delivery or assembly by the Economic Operator, as referred in the agreement, the Awarding Entity can charge a contractual penalty amounting to 0.05% of the payment for every day of the delay. In that case the Awarding Entity shall be entitled to terminate the Agreement within 14 days with no obligation of appointing an additional date for performing the contract. The regulations of § 3 item 7 and 8 shall apply respectively (the delivered equipment loses its importance for the Awarding Entity).
2. In the case of an infringement of the date of training the persons appointed by the Awarding Entity, as referred in the Agreement, the Awarding Entity can charge a contractual penalty amounting to 0.01% of the payment for every day of the delay.
3. In the case of the non-performance of the obligation referred to in § 3 item 8, the Awarding Entity shall be entitled to disassemble the system and deliver it to the Economic Operator at their risk and expense. The application of the resolution referred to in the previous sentence shall be proceeded by calling the Economic Operator to perform the contract within the scope of § 3 (8) on the appointed date. The period of time appointed by the Awarding Entity in the contents of the call cannot be shorter than 7 days.
4. In the case referred to in 3 item 8 or exercising the right of withdrawal referred to in item 1 and §10 items 1-2 (if withdrawal or termination of the agreement is the Economic Operator’s fault) the Awarding Entity is entitled to charge a contractual penalty amounting to 10% of the remuneration.
5. Contractual penalties shall be paid within 7 days after delivering a call for their payment.
6. The charged penalty can be deducted from the due payment to which the Economic Operator gives an irrevocable consent.
7. The Awarding Entity is entitled to demand form the Economic Operator compensation transferring the amount of the reserved contractual penalty in accordance with the general rules in the case when the scope of the damage exceeds the amount of the reserved contractual penalty.
8. The Economic Operator places on signing the agreement provides the safe-end security for the proper performance of the contract in the form of ……………………………
9. The security shall secure the claims for non-performance or undue performance of the agreement.
10. The parties shall not be responsible for non-performance or undue performance of the agreement for reasons beinga consequence of force majeure. For the purposes of the agreement a force of majeure is an extraordinary external occurrence towards the entity relating to it, which was unpredictable (the likelihood of its occurrence in a given situation was little) and its consequences unpreventable.

**VII. Guarantee, servicing and technical support.**

**§ 8**

1. The Economic Operator shall provide the Awarding Entity a guarantee for the period of …………….. months.
2. The economic Operator shall provide the guarantee card including the serial number of the delivered system, name, address, e-mail address, phone numbers and fax number of the Economic Operator, names of persons to whom faults in functioning the system should be reported. The guarantee must not limit the rights of the Economic Operator to use the purchased system; in the case of selling or transferring it the guarantee of the system is transferrable to a new owner.
3. The Economic Operator shall deliver the Awarding Entity guarantee documents issued by the producer of the system provided the producer issues such documents. The issued documents must not include limitations concerning the entity eligible to seek the guarantee obligations of the system’s producer.
4. The Economic operator shall guarantee warranty repairs made by the producer or an authorized representative of the producer within the guarantee period including its calibration in the periods resulting from the principles of its use and allowing for using the system according to the producer’s recommendations.
5. Servicing the system shall take place in the first place at the installation site but if that is not possible servicing shall be provided on the territory of the Republic of Poland. In the case when the system’s producer shall not be able to offer servicing on the territory of the Republic of Poland or will not have an authorized representative offering such services the Economic operator shall be obliged to provide servicing in a place and on terms appointed by the Parties with a reservation that the Economic Operator shall indicate the place and entity they intend to entrust servicing the system to and the Awarding Entity shall be entitled to make an objection as to the place and entity (the object of the agreement is a dual-use item) to which the Economic Operator gives an irrevocable consent. The procedure described in the previous sentence applies respectively till mutual agreement between the Parties concerning the place and entity servicing shall be entrusted.
6. Servicing shall be provided on business days (Monday – Friday) from 8.00 a.m. – 4.00 p.m. and when done at the site of using the system servicing shall be performed with the presence of a representative of the Awarding Entity.
7. After the end of the warranty period the Economic operator shall provide paid servicing for the period of at least 5 years after the guarantee expires. Conditions referring to providing it shall be described in a separate agreement between the Parties.
8. Reporting a breakdown or another irregularity in the system functioning shall be made by the Awarding Entity in written, by fax or e-mail.
9. The period of response to a breakdown cannot be longer than 2 business days from the moment of reporting it by the Awarding Entity. In the case of a service request received after 4.00 p.m. the reaction time is counted from 8.00 a.m. of the next business day.
10. Repairs of breakdowns or defects of the system or its calibration will be made immediately but no later than 14 days after reporting them to the service (not counting the time necessary for manufacturing spare parts). The fact of making a repair shall be recorded in the guarantee card.
11. Performing guarantee or servicing duties by the Economic Operator must not result in a loss of the guarantee.
12. During the guarantee period the Economic Operator shall provide the Awarding Entity free technical consultations related to handling and using the system.

**VIII. Contacts**.

**§ 9.**

1. The parties come to a mutual agreement that correspondence and contacts between them shall be held by appointed persons in which case as the basic means of communication is regarded e-mail or fax.
2. For the working contacts, in the understanding of this agreement, are not regarded contacts aiming at:
3. accepting services;
4. transferring information about circumstances which might have an influence on completing the agreement;
5. transferring information about delays and their causes.
6. Correspondence other than working correspondence should be transferred in written to the addresses given in the contents of the Agreement.
7. The parties decide that on behalf of the Awarding Entity the persons entitled to contact the Economic operator are: ………………………………………………………………………….
8. The parties decide that on behalf of the Economic Operator the persons entitled to contact the Awarding Entity are: ……………………………………………………………………………….
9. A change of either of the persons in point 4 and 5 requires sending a written notice to the other party, however, it does not require an annex to the Agreement.
10. All notifications related to this Agreement require a written form and should be sent to the following addresses:
11. The Awarding Entity’s address: ……………………………………………………………………………
12. The Economic Operator’s address: ………………………………………………………………………
13. Each change of address requires notifying the other Party in written. Otherwise, any correspondence forwarded to the previous address shall be considered delivered.

**IX. Withdrawal from the agreement/ termination of the agreement**

**§ 10**

1. The awarding Entity is entitled to withdraw from the agreement in situations described in the law about Public Procurement and the Law and the Civil Code.
2. Apart from the right of withdrawal as established item 1 the Awarding Entity can terminate the agreement with immediate effect in the case of:
3. a delay in completing the Agreement longer than 10 business days;
4. when the delivered system will not fulfill the requirements specified in Appendix 1 to the Agreement;
5. The Economic Operator will not fulfill their commitments concerning the guarantee;
6. when the Economic Operator completes the object of the Agreement in a defective manner or in a way contrary to the provisions of the Agreement in a way different than established in § 2, items 1-3 despite being called to perform the agreement properly.
7. A statement concerning a withdrawal or termination of the agreement requires a written form with a justification.
8. A statement concerning a withdrawal can be submitted within the period of 30 days since the day when conditions of withdrawal occur;
9. In the case when the agreement is withdrawn or terminated all claims from the Economic Operator to the Awarding Entity concerning the unused amount of payment within the scope of the payment established in §6 of this agreement expire.

The Economic Operator can demand only the due payment for the completed parts of the agreement.

**X. Alterations of agreement**

**§ 11.**

1. Any amendment to this Agreement shall be made in writing under pain of being declared null and void.
2. The Awarding Entity, in accordance with Article 144 (1), of the Law of the Public Procurement provides for the possibility of amending the public contract agreement when:
3. a change in the mandatory legislation occurs in the scope that influences the completion of the Agreement;
4. the Economic Operator offers a device (system) with technical parameters better that the minimal technical parameters requested in the description of the object of the agreement with a reservation that payment for completing the order will not rise;
5. a necessity of an alteration of the Agreement completion day occurs caused by objective factors due to the needs of the Awarding Entity independent from the Economic Operator with a reservation that the payment of the Economic Operator will not rise.

**XI. Settling disputes**

**§ 12.**

1. The Parties agree that all possible disputes which arise in the process of completing the Agreement shall be solved in the first place by means of negotiations between the Parties.
2. The maximum period of negotiations shall be 21 days.
3. In the case of non-appearance of the other Party the calling Party is entitled to state that an agreement was not reached;
4. The compromises reached require, under pain of being declared null and void, a written form signed by both Parties;
5. In the case when a compromise has not been reached by means of negotiations Parties declare that the dispute shall be resolved by a competent court of law having jurisdiction over the Economic Operator’s registered office.

**XII. Final provisions**

**§ 13.**

1. To all matters not settled herein provisions of the Civil Code, the Law of Public Procurement and the law of February 4, 1994 Act on Copyrights and Related Rights (Journal of Laws of 2006 No. 90, item 631, as amended), shall apply.
2. The Annexes to this Agreement shall form an integral part thereof.
3. An invalidity of any recording in the contract does not invalidate the whole contract. In the case when any provision in the agreement is legally declared invalid thereof a relevant universally binding law of the Republic of Poland shall apply.
4. The Parties agree that all arrangements and establishments made by Parties before signing the agreement and were related to the legal connections resulting from signing the agreement, provided that they were not placed in the contents of the agreement, become ineffective upon singing the agreement.
5. The agreement is prepared in duplicate, one for each party.

The Awarding Entity The Economic Operator

…………………………………………… …………………………………………..