



## Annex 2 to the ToR

### Major contractual clauses

#### § 1

1. The contract pertains to the delivery of training services (hereinafter: Service) involving development and delivery of an IdeaLab workshop in the frames of the Basic Research Programme within the EEA Financial Mechanism and Norwegian Financial Mechanism 2014-2021 (hereinafter: workshop or IdeaLab workshop) by the Contractor to the Contracting Authority in compliance with the Precise Description of the Subject of the Contract (hereinafter: PDSC) laid out in Annex 1 and 1a and the Contractor's bid enclosed as Annex 2 (hereinafter: the Bid).
2. The IdeaLab workshop is addressed to approx. 30 persons selected within the IdeaLab call (hereinafter: Participants), who are researchers from Poland, Iceland, Liechtenstein and Norway. Furthermore, the following persons shall participate in the workshop: the Expert Team consisting of the director and 5-7 mentors, stakeholders, in so far as their participation is provided for in the workshop concept, and representatives of the institutions participating in the Basic Research Programme, within which the research projects are funded.
3. The aim of the workshop is to prepare workshop Participants to develop ground-breaking research and innovation projects and gain or upgrade their knowledge for professional purposes in this area. Creative and innovative techniques shall be used during the workshop to enhance the potential of the group and to encourage the Participants to think outside the box about the challenges outlined in the call. The workshop will provide an unconventional arena for Participants, which shall increase their effectiveness in the development of research ideas. Research project ideas developed during the workshop will be evaluated by the Expert Team.
4. The workshop will take place between 21-25 October 2019 in a location indicated by the Contracting Authority, on the territory of Poland. The Contracting Authority shall provide the precise address of the IdeaLab workshop within 30 days before its delivery.

#### § 2

1. The Contractor will deliver the Service in compliance with the following schedule:
  - a. the meeting of the Contracting Authority and the Contractor to discuss the initial concept and work out the details of the IdeaLab workshop development process; the meeting will take place in Krakow (30-312) in the registered office of the



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- Contracting Authority at ul. Twardowskiego 16, 30-312, Krakow, Poland, on a date agreed upon by the parties, not later than 30 days of signing the contract,
- b. development of the IdeaLab workshop initial concept in collaboration with the Contracting Authority, including the development of the final, detailed programme of the IdeaLab workshop at least 30 days before the scheduled workshop beginning date and its submission to the Contracting Authority together with the draft workshop materials (presentations, exercise materials), whereas the Contracting Authority reserves the right to submit any comments binding upon the Contractor within 7 days,
  - c. facilitators shall deliver a briefing of the representatives of the Contracting Authority and the director and mentors to discuss the plan of the workshop, tasks of the people involved etc. a day before the planned date of the workshop i.e. 20th October. The meeting shall be held in the location of the workshop in Poland indicated by the Contracting Authority.
  - d. delivering the IdeaLab workshop between 21 and 25 October 2019 and issuing certificates for the Participants following its completion,
  - e. preparing and submitting electronically the IdeaLab workshop evaluation within 30 days from its final day.

### § 3

1. The total remuneration for the delivery of Service under the contract is PLN ..... gross (in words: .....).

The foregoing remuneration is inclusive of any and all costs incurred by the Contractor for the purpose of proper performance of the contract. The foregoing remuneration shall also include potential value added tax and potential income tax at source imposed by the Contracting Authority under Art. 26(1) of Corporate Income Tax Act dated February 15, 1992 (consolidated text Journal of Laws 2018.1036, as amended) or pursuant to the provisions of Art. 41(4) of the Personal Income Tax Act dated July 26, 1991 (consolidated text Journal of Laws 2018.1509, as amended).

2. **The Contracting Authority informs that, the contract is financed entirely from public funds and may be exempt from the Value Added Tax (VAT) under Article 43(1)(29)(c) of the Tax on Goods and Services Act of 11 March 2004 (Journal of Laws 2018.2174 as amended).**
3. The remuneration is payable on the basis of an invoice correctly issued by the Contractor in Polish currency and approved by the Contracting Authority on the basis of certificates of acceptance made pursuant to clause 4.
4. The remuneration payable to the Contractor will be paid within 21 days from the receipt of a correctly issued invoice by the Contracting Authority.



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5. Where the Contractor's registered office is located outside of Poland, the Contractor shall deliver the original certificate of fiscal residence (CoR) to the Contracting Authority's registered office no later than on the submission date of the invoice. If the certificate of fiscal residence is not submitted or is submitted in undue form, the remuneration referred to in point 1 above shall be reduced by income tax deducted by the Contracting Authority pursuant to Article 26 (1) of the Act on Corporate Income Tax of 15 February 1992 (consolidated text Journal of Laws 2018.1036, as amended) or pursuant to Article 41 (4) of the Act on Personal Income Tax of 26 July 1991 (consolidated text Journal of Laws 2018. 1509, as amended).
6. The Contractor's remuneration is payable in Polish currency, by a bank transfer to the Contractor's bank account no..... The Contractor will inform the Contracting Authority in writing of any changes in the banking account.
7. The payment is deemed complete on the date of debiting the Contracting Authority's bank account.
8. The Contracting Authority makes a reservation that any and all settlements between the Contractor and a potential subcontractor will take place without the Contracting Authority's involvement. Subcontractors have no claims against the Contracting Authority in this respect.

### § 4

1. Service performed by the Contractor is subject to the Contracting Authority's acceptance.
2. The fact of acceptance will be confirmed by an acceptance certificate, which confirms that the Service has been correctly delivered.
3. The acceptance certificate shall include in particular:
  - a. the date of the certificate;
  - b. a declaration of persons referred to in clause 12(1.a) concerning the correctness of Service delivery;
  - c. information on the basis for contractual penalties under clause 10.

### § 5

1. The Contractor undertakes to deliver Services under the contract in compliance with PDSC enclosed hereto as Annex 1 and 1a, exercising due care typical of the professional nature of the Contractor's activity and to ensure correct execution of the contract in line with effective laws and Contracting Authority's guidelines.
2. The workshop shall be conducted by persons with appropriate qualifications, expertise and experience identified by the Contracting Authority in PDSC. The



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Contractor represents that it has sufficient personnel to perform this contract, namely the facilitators specified in the list enclosed to the Bid and hereto as Annex 3, assigned to perform this contract.

3. In duly justified cases (e.g. force majeure), the Contractor may extend the list by additional facilitators or replace original facilitators with new ones, who must always meet all criteria specified in point 2. Such changes can only be introduced during the contract term and must each time be approved by the person specified in clause 12 (2) (a) on behalf of the Contracting Authority in an electronic form.

### § 6

1. The Contractor shall evaluate the IdeaLab workshop, i.e. draw up a written summary specifying what goals have been achieved and to what extent and providing for the conclusions of the workshop (pursuant to point IV of the PDSC).
2. The Contractor shall deliver the evaluation to the Contracting Authority in an electronic form within 30 calendar days of the end of the IdeaLab workshop, however no later than by 24 November. The Contracting Authority shall approve the evaluation and notify the Contractor thereof in an electronic form within 14 calendar days of its delivery or provide its objections thereto. Should any objections be raised to the evaluation, the Contractor shall amend it within 5 calendar days of being requested to amend it for no additional remuneration and sent its final version back to the Contracting Authority. The Contracting Authority shall approve the amended evaluation or claim liquidated damaged and notify the Contractor thereof in an electronic form within 5 calendar days of its delivery.
3. A delivery protocol for the Service shall be drawn up pursuant to clause 4 to confirm proper performance of the Service within 14 calendar days of the Contracting Authority's approval of the evaluation. The protocol signed without Contracting Party's objections shall mean that the Service has been performed without any reservations and provides basis for payment.

### § 7

1. The Contracting Authority reserves the right to audit the performance of the contract, including the right to observe the workshop.
2. On the basis of the Contracting Authority's auditing rights, the Contractor is required to:
  - a. provide the Contracting Authority, at its request and in a form specified by the Contracting Authority, with all information and clarifications necessary to assess the course of contract performance immediately, but in any case not later than within 2 days from the date of receipt of the relevant request and immediately during the workshop,
  - b. grant to the Contracting Authority, at its request, access to the Contractor's documents related to the execution of the contract,



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- c. keep the Contracting Authority informed of any difficulties in the Contractor's execution of the contract,
  - d. remove any irregularities discovered by the Contracting Authority during the course of inspection of due performance of the contract.
3. The Contractor is fully liable for the general and technical control of the contract execution.

### § 8

1. The Contractor represents that its copyright to the workshop concept and workshop materials is unlimited and not subject to third party rights.
2. The Contractor is liable towards the Contracting Authority for any and all legal defects of the contracted Services, in particular for any potential third party claims arising from the infringement of intellectual property rights, including the failure to comply with the Copyright and Related Rights Act of 4 February 1994 (Journal of Laws 2018.1191 as amended).
3. The Contractor retains the copyright to workshop concept and workshop materials developed for the IdeaLab workshop delivery, which are the subject of the contract, and materials generated over the course of delivering the subject of the contract.
4. The Contractor acknowledges that the concept of the workshop and draft workshop materials shall be kept and archived by the Contractor and may be made entirely or partially available to the institutions superior to the Contracting Authority, including in particular the authorities authorised to inspect the Contracting Authority under the EEA Financial Mechanism and Norwegian Financial Mechanism 2014-2021.

### § 9

1. The Contractor is fully liable for the supervision of its personnel and *subcontractors cooperating with the Contractor\** and for meeting all obligations related to personnel engagement and *signing contracts with subcontractors\**.
2. The Contractor is liable for *personnel* and *subcontractor\** acts or omissions as for its own acts or omissions.

### § 10

1. The Contracting Authority shall claim liquidated damages from the Contractor in the case of:



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- a. the Contractor's delay in carrying out the meeting with the representatives of the Contracting Authority by the date laid down in clause 2(1)(a) – in the amount of PLN 500 per each day of delay;
  - b. the Contractor's delay in presenting the programme and draft workshop materials by the date laid down in clause 2(1)(b) – in the amount of PLN 1000 per each day of delay;
  - c. the Contractor's failure to carry out the briefing by the date laid down in clause 2(1)(c) – in the amount of 10% of the total gross remuneration referred to in clause 3(1);
  - d. the Contractor's delays in the delivery of whichever day of the workshop (understood as failure to start the Service by 10:00 a.m. of the workshop day) on the date specified in clause 2(1)(d) - ) in the amount of 10% of the total gross remuneration referred to in clause 3(1);
  - e. other than described in item a-d above improper performance of the contract – in the amount of 3% of the total gross remuneration referred to in clause 3(1), per each case of improper performance of the contract.
2. Liquidated damages can be aggregated. The Contractor agrees that the Contracting Authority can set off liquidated damages against the Contractor's remuneration.
  3. The Contracting Authority can pursue damages in excess of liquidated damages in line with general laws.

### § 11

1. Without prejudice to its right to claim liquidated damages, the Contracting Authority can terminate the contract due to reasons attributable to the Contractor if:
  - a. the Contractor fails to commence the provision of Services on terms and conditions laid down herein or interrupts the provision,
  - b. the Contractor discontinues its operations or a liquidation procedure is instituted against it.
  - c. the total amount of contractual penalty the Contracting Authority may impose is 20% or more of the total gross remuneration referred to in clause 3 (1),
  - d. the Contractor improperly performs the contract and continues to perform it improperly regardless of being requested to do otherwise within the deadline provided.
2. If the contract is terminated due to reasons attributable to the Contractor, the Contractor shall not be entitled to any remuneration.
3. The Contracting Authority may withdraw from this contract by the date of IdeaLab announcement namely on 17 June 2019, if the funds the Contracting Authority



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intended to allocate to finance the entire contract or its part, have not been awarded to it, in which case the Contractor has no claims against the Contracting Authority.

**§ 12**

1. The Contractor undertakes to cooperate with the Contracting Authority and the person responsible for the IdeaLab call implementation at every stage of delivery of Services under the Contract.
2. The following persons shall be responsible for the cooperation and day-to-day arrangements concerning the subject-matter of the contract, including approving the amendment referred to in clause 5 (3) and execution of the delivery protocol:
  - a. for the Contracting Authority:
    - ..... Tel.....e-mail.....
    - .....Tel.....e-mail.....
  - b. for the Contractor:
    - .....Tel.....e-mail.....
3. Amendments to the foregoing details must be made in writing electronically, with the reservation that the actions executed to date be deemed effective.
4. The Parties undertake that personal details of persons specified in point 2 of this clause disclosed to one another shall be processed for the purposes of this contract only. Furthermore, the Contractor undertakes to perform the information obligation on behalf of the Contracting Authority vis-à-vis the person specified in point 2 (b) arising under 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 (General Data Protection Regulation “GDPR”) by providing such person with information provided for in Annex 4 hereto.

**§ 13**

1. The Contractor shall keep the confidentiality of any information acquired in the course of implementation of the contract.
2. In connection with the provision of Services pursuant hereto, the Contracting Authority entrusts to the Contractor the processing of personal data of the Participants, director, mentors and stockholders as well as guests and the Contractor undertakes to process such data pursuant to the applicable laws, including GDPR.



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3. The Contracting Authority shall entrust to the Contractor the processing of personal data pursuant to an agreement on the processing of personal data provided in Annex 4 hereto.

**§ 14**

1. This contract can be amended in particular with regard to:
  - a. the workshop date and other dates referred to in clause 2 in duly justified cases, for reasons that cannot be attributed to the Contracting Authority and.
  - b. the Facilitators, to the extent other than laid down in clause 5 (3) and (4).
2. Any amendments and supplementations hereto must be made in writing to be valid.

**§ 15**

1. Any and all matters not provided for in this Contract are governed by the Polish Civil Code and the Copyright and Related Rights Act.
2. The Contractor's transfer of claims against the Contracting Authority under the contract requires the Contracting Authority's prior written consent to be valid.
3. Any disputes that may arise from this contract shall be settled by a court competent for the registered office of the Contracting Authority. The contract shall be governed by Polish law.
4. The contract with annex has been drawn up in 2 identical counterparts, one for the Contracting Authority and one for the Contractor.
5. All Annexes to this contract are incorporated hereto.
  - a. Annex 1 – Precise Description of the Subject of the Contract
  - b. Annex 1a – Detailed description of the IdeaLab call under the EEA Financial Mechanism
  - c. Annex 2 – Contractor's Bid
  - d. Annex 3 – List of facilitators
  - e. Annex 4 – Information obligation of the Contracting Authority
  - f. Annex 5 – Personal data processing agreement

\* delete inapplicable depending on the content of the selected bid

For the Contracting Authority:

For the Contractor:

.....

.....





#### **Annex 4 to the contract**

Pursuant to Article 14 (1), (2) and (3) of the General Data Protection Regulation of 27 April 2016 (OJ L 2016, No 119, p.1), please be informed that:

- 1) the National Science Centre (the NCN) with its registered office in Krakow at ul. Twardowskiego 16, 30-312 Kraków is the controller of personal data collected in connection with contract [contract no] (contact person);
- 2) you can contact the Data Protection Officer by e-mail at [iod@ncn.gov.pl](mailto:iod@ncn.gov.pl) or telephone at +48 12 341 9113 or directly at the registered office of the data controller;
- 3) the NCN shall process personal data pursuant to Article 6 (1) (f) of the General Data Protection Regulation. Legitimate interest shall be understood as performance of the contract, i.e. binding the contact person/ data subject by a contract with the data controller justifying data controller's legitimate interest in processing such data;
- 4) personal data concerning business details shall be processed for the purposes of the contract, i.e. contact for the purposes of activities related to the performance of the contact and for archiving purposes;
- 5) personal data shall be processed for as long as it is necessary to achieve the purposes indicated in point 4 and to pursue related claims and for the period of storage as defined by the NCN's records management procedures and the Uniform File Classification System;
- 6) personal data shall be processed for the purposes indicated in point 4 by NCN officers responsible for the implementation thereof or persons acting on behalf of the NCN;
- 7) personal data disclosed to the NCN may only be accessed by persons authorised by the data controller. Such persons will keep such data confidential during and after the term of the contract they execute with the NCN;
- 8) personal data may be transferred for processing to third parties commissioned to provide services pursuant to personal data transfer contracts. Such third parties are also obliged to keep the data being processed confidential;
- 9) the data subject has the right to access their personal data, correct their personal data and restrict the processing of their personal data;
- 10) the data subject has the right to lodge a complaint pursuant to Article 21 (4) of the General Data Protection Regulation and
- 11) the data subject has the right to lodge a complaint with the President of the Office of Personal Data Protection if they consider that the processing of their personal data does not comply with the General Data Protection Regulation.



## Annex 5 to the contract

### Agreement for Entrusting Personal Data Processing to the Agreement No.... dated ... .

concluded on ..... in Kraków, by and between:

the **National Science Centre (NCN)** with its registered office in Kraków (30-312) at ul. Twardowskiego 16, with NIP (tax identification number): 676-242-96-38, REGON (statistical identification number) 121361537, represented by:

**Zbigniew Błocki, the NCN Director**

hereinafter referred to as the “Controller”

and

.....,

hereinafter referred to as the “Processor”

hereinafter individually referred to as a “Party” and jointly as the “Parties”.

#### Whereas:

- A. on ..... the Controller and the Processor signed Agreement No. ...., the subject of which is provision of the service by the Processor for the Controller involving developing and delivery the IdeaLab workshop for the purposes of the National Science Centre, addressed to around 30 persons selected under the IdeaLab call (hereinafter referred to as the “Participants”);
- B. the objective of the Agreement is to determine the conditions under which the Processor shall perform the data processing operations on behalf of the Controller;
- C. by concluding the Agreement, the Parties seek to regulate the terms of processing of the Personal Data in such a way that it meets the provisions 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 (General Data Protection Regulation);
- D. the Controller represents that as regards the data the processing of which it entrusts to the Processor, it is the Controller within the meaning of Article 24 and ff. of the Regulation referred to in point C, and it is entitled to entrust the processing of personal data to the Processor;

the Parties decided to enter into the following Agreement:

#### Article 1. Definitions

For the purposes of this Agreement, the Parties agree that the following terms shall have the following meaning:

1. “**Personal Data**” means any information relating to an identified or identifiable natural person (“data subject”);
2. “**Confidential Information**” means the information referred to in Article 8(1) of the Agreement;



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3. **“Third Country”** means any country that is not a member of the European Union or the European Economic Area or any international organisation;
4. **“Subcontractors”** means further third parties the Processor intends to entrust with the processing of Personal Data obtained from the Controller;
5. **“Data Protection Law”** means GDPR, as well as other provisions of EU Member States’ national laws applicable to either Party, passed in relation to personal data protection, including in particular the provisions of Polish law;
6. **“Processing”** means any operation or a set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
7. **“General Data Protection Regulation”, “GDPR”** means 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.
8. **“Information System”** means a group of cooperating devices, programs, information processing procedures and utility software used for the purpose of data processing;
9. **“Framework Agreement”** means the agreement of ....., referred to in point A of the Recitals.
10. **“Agreement”** means this Agreement for Entrusting Personal Data Processing.
11. **“Set of Data”** means a set of personal data processed under the Agreement;

### Article 2.

#### Purpose, nature and duration of entrusting

1. Pursuant to Article 28(3) of GDPR the Controller entrusts the Processor with the activities concerning the processing of Personal Data provided to the Processor in order for the Processor to fulfil its obligations under the Framework Agreement, in particular to ensure the correctness of developing and delivery the IdeaLab workshop and to perform the evaluation of the provided service constituting the subject of the Framework Agreement (purpose of the processing).
2. The processing activities shall be performed by the Processor in the form of hard copies and with the use of information technology systems, and shall involve activities, such as collecting, recording, storing, modifying, altering (nature of the processing).
3. The Processor shall process the Personal Data during the period required to fulfil its obligations under the Framework Agreement and, following the expiry or termination of the Framework Agreement, for the time required for the Processor to fulfil its obligations relating to the expiry or termination of the Framework Agreement (duration of the processing).



### Article 3.

#### Type of personal data. Categories of persons.

1. Personal Data entrusted to the Processor under the Agreement shall cover Personal Data collected for the Set of Data of the Controller's employees and co-employees, the Participants and stakeholders taking part in the IdeaLab workshop and experts evaluation the project idea.
  - a) name and family name,
  - b) date of birth,
  - c) sex,
  - d) name and address of the employing entity,
  - e) place of employment,
  - f) position;
  - g) e-mail address.
2. Personal Data entrusted to the Controller under the Agreement concerns the following categories of persons:
  - a) Experts from different research and economy fields who are reviewers of the proposals,
  - b) Participants and stakeholders, who shall take part in the IdeaLab workshop at the Controller's invitation,
  - c) the Controller's employees and co-employees whom the Controller authorised to coordinate and supervise the correct performance of the Agreement and the Framework Agreement.

### Article 4.

#### Right to control

1. The Controller is entitled to inspect the correctness of protection and processing of the data entrusted to the Processor throughout the entire term of the Agreement, in particular whether Personal Data processing is performed according to the Agreement, GDPR, and other provisions of the Data Protection Law. The inspection may be carried out, *inter alia*, in the form of a direct inspection involving provision of access to the Controller's representatives to all areas of personal data processing hereunder in all sites of the Processor, in a way that does not cause a disruption to the Processor's current operations.
2. Following the Controller's written request, the Processor shall:
  - a) be obliged to submit relevant documents for inspection within 3 working days from the date of receipt of the request,
  - b) immediately (not later than within 3 working days) answer each of the Controller's questions concerning Personal Data processing, with due diligence.
3. If the inspection has revealed some inconsistencies, the Controller is entitled to demand that the Processor should implement forthwith the Controller's recommendations based on the post-inspection findings and to improve the security of the Personal Data processing, as well as answer each of the Controller's questions concerning the



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- Personal Data processing, including submission of written explanations, and to comply with the Controller's recommendations/directions.
4. In any agreement signed with its Subcontractor, the Processor shall ensure that the Controller may directly control the Personal Data processing by the Subcontractor (including a possibility of performing inspections referred to in point 1 at the Subcontractor's premises).
  5. The right to inspect may be, in particular, exercised by the employees, auditors, attorneys, or other third parties authorised by the Controller.

### Article 5.

#### Processor's rights and obligations

1. The Processor represents that:
  - a) It has the means enabling it to correctly process and protect Personal Data, including an IT system meeting the requirements of the appropriate level of security, defined in accordance with the GDPR;
  - b) it shall process the Personal Data exclusively within the territory of the European Union or the European Economic Area, in particular, if the Personal Data is processed in an electronic form on the Processor's servers and data media, the said servers and data media shall not be located outside the territory of the European Union or the European Economic Area;
  - c) it shall neither transmit the Personal Data to any Third Country, nor make use of Subcontractors who transmit the Personal Data to Third Countries without the Controller's prior consent.
2. The Processor undertakes to:
  - a) exercise due diligence in processing the Personal Data and process the Personal Data pursuant to the Agreement, GDPR, and other provisions of Data Protection Law;
  - b) process Personal Data only on the Controller's instructions, whereas the Parties acknowledge that such request involves the fact of signing an agreement, within the meaning of Article 28(3)(a) of GDPR;
  - c) restrict access to the Personal Data only to persons who need access to the Personal Data for the purposes of the Agreement and the Framework Agreement, provide those persons with relevant authorisations, offer relevant training on personal data protection and ensure confidentiality of the Personal Data processed thereby, both during and after their employment or other cooperation with the Processor (Article 28(3)(b) of GDPR);
  - d) secure the processing of the Personal Data by implementing appropriate technical and organisational measures referred to in Article 32 of GDPR, ensuring a level of security appropriate to the risk related to the processing of the Personal Data (Article 28(3)(c) of GDPR);
  - e) comply with the conditions for using the Subcontractor's services referred to in Article 6 below and in the content of binding legal provisions (Article 28(3)(d) of GDPR);



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- f) assist the Controller in meeting its (i) obligation to respond to requests from the data subject and (ii) its obligations laid down in Articles 32 through 36 of GDPR (Article 28(3)(e) and (f) of GDPR);
  - g) delete or return all Personal Data to the Controller following the end of the provision of services relating to processing, against a relevant report, and delete all existing copies, and to submit one copy of the report to the Controller, unless the law of the European Union or a Member State requires storage of the Personal Data (Article 28(3)(g) of GDPR);
  - h) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Article and binding legal regulations and allow inspections to be conducted on the basis of rules provided for in Article 5(4) below (Article 28(3)(h) of GDPR);
  - i) keep a record of all processing activities referred to in Article 30(2) of GDPR, unless this obligation does not apply to the Processor on the grounds of Article 30(5) of GDPR;
  - j) comply with the requirement of privacy by design, referred to in Article 25(1) of GDPR, and inform the Controller in advance of intended changes in a manner and time that shall truly allow the Controller to respond if (according to the Controller) the changes intended by the Processor constitute a threat to the agreed level of data security or increase the risk of the rights and freedoms of natural persons being breached.
3. The Processor undertakes to immediately notify the Controller (not later than within 24 hours of the moment it has become aware about the following circumstances) about each and any:
    - a) demand of the Data Subject whose Personal Data it processes on behalf of the Controller;
    - b) demand to make the Personal Data available to a competent authority or institution; proceedings, in particular, court or administrative proceedings, concerning the processing of the Personal Data by the Processor, any administrative decision, ruling, or any other decision concerning Personal Data processing, submitted to the Processor, as well as any planned, if known, or conducted controls and inspections concerning Personal Data processing at the Processor's premises;
    - c) suspected or actual infringement of Personal Data protection and enable the Controller to participate in the explanatory procedures and immediately notify the Controller about their findings.
  4. The notification referred to in point 3 shall be effected in writing or electronically and shall contain (i) a description of the circumstances of a Personal Data breach and (ii) a description of the measures to be taken by the Processor, including the measures taken to prevent such incidents from occurring in the future.



## **Article 6.**

### **Further entrusting of processing of Personal Data**

1. The Processor may entrust the Personal Data covered by the Agreement (make available, submit for further use) for further processing to any Subcontractors only in order to perform the Agreement or the Framework Agreement and only upon the prior written consent of the Controller towards a given Subcontractor, under pain of nullity. Apart from a relevant inquiry, the Processor shall provide the Controller with any information the Controller may reasonably expect, in particular information about the Subcontractor and its scope of duties. The Controller may refuse its consent, at its own discretion, and shall not be obliged to justify its decision.
2. The Processor shall bind the Subcontractor referred to in point 1 above to comply with the same guarantees and obligations that have been imposed on the Processor under the Agreement. The Processor shall be held fully liable towards the Controller for any non-compliance with an obligation to protect the Personal Data on part of the Subcontractor.
3. The Processor shall not be entitled to assign the Agreement in its entirety to be performed by the Subcontractor.
4. The Processor may transfer the Personal Data to a third country only upon receiving the prior written consent of the Controller for its processing in such third country, under pain of nullity. Apart from a relevant inquiry, the Processor shall provide the Controller with any information concerning the reason and scope of planned Personal Data processing activities within the territory of a third country. The Controller may refuse its consent, at its own discretion, and shall not be obliged to justify its decision.

## **Article 7.**

### **Processor's liability**

1. The Processor shall be held liable for any breach hereof, unless such breach has been caused by the Controller or force majeure. The Processor shall be liable for any acts or omissions of its employees, entities performing work for the Processor on any other grounds, Subcontractors the services of whom the Processor uses with regard to the performance hereof, their employees etc., as for its own, even if the Processor or any other person has not been found guilty for selecting such entity, its acts or omissions have happened only when performing the obligations entrusted to it or following the expiry of a legal relationship binding the entity with the Processor or another entity.
2. The Processor hereby releases the Controller from the obligation of performance in favour of a third party, including the Data Subject or a public authority, if the obligation for such performance occurs with regard to the Processor's infringement of the obligations hereunder, including warranties of the Processor, referred to herein, unless such infringement has been caused through an exclusive fault of the Controller or a force majeure event. Furthermore, if third parties pursue their claims against the Controller in court, the Processor may join the legal proceedings on the side of the Controller and redress the damage suffered by the Controller as a consequence of being ordered to make specific performance in favour of a third party or public authority. The



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obligation to redress the damage shall become effective after an unappealable (final/amicable) completion of the legal proceedings and shall include the reimbursement of justified and documented costs incurred in relation to the defence of the rights, including the costs of legal assistance, and shall be binding upon the Processor during the term of the Agreement and for a period of 10 years following its termination.

### **Article 8.**

#### **Confidentiality**

1. The Processor shall maintain confidentiality of the information received from the Controller, which is not publicly available and has been delivered in connection with this Agreement or Framework Agreement, regardless of the form of its recording or delivery, which the Controller considers confidential (Confidential Information).
2. In view of the above, the Processor shall, without any additional terms, restrictions or reservations other than explicitly stated in the Agreement, without the Controller's prior written consent, on sanction of invalidity:
  - a) not use the Confidential Information in any form or scope other than for the purposes of the Agreement or Framework Agreement;
  - b) not deliver the Confidential Information to third parties in any form or scope other than for the purposes of the Agreement or Framework Agreement;
  - c) not disclose the Confidential Information in any form or scope other than for the purposes of the Agreement or Framework Agreement;
  - d) keep the Confidential Information secure and protect it against theft, damage, loss, or unauthorised access.
3. The Parties agree that the confidentiality obligation referred to above shall not apply to:
  - a) the Confidential Information which may be regarded as Confidential Information, but has become publicly known otherwise than by breach of the confidentiality obligation or breach of law, including information in publicly available registers, books and records, with an exception of sources with restricted access;
  - b) the Confidential Information which the Processor is required to deliver or disclose in performing its obligation arising from the applicable laws, a final court judgment, or a final administrative decision, however, on every occasion before performing these actions it shall notify the Controller thereof in writing, stating the scope of the Confidential Information being delivered or disclosed, the reasons and form of its delivery or disclosure and the precise legal basis (unless such a notification is prohibited by the applicable laws);
  - c) the Confidential Information disclosed to external counsellors, employees, and co-operators who need it for the purposes of correctly performing the Agreement or the Framework Agreement. The external counsellors of the Processor and its employees and co-operators shall use the Confidential Information in line with the requirements laid down in the Agreement; and
  - d) the Confidential Information with regard to which the Controller has obtained a written consent for its disclosure or use for a specified purpose.





4. If the Processor infringes any of the obligations stipulated in the Agreement, the Controller shall be entitled to demand it to immediately stop such infringement and remove its consequences.
5. The confidentiality obligation concerning the Confidential Information shall be binding upon the Processor during the term of the Agreement and for a period of 10 years following its termination or expiry.

#### **Article 9.**

##### **Cooperation of the Parties**

1. The Parties shall cooperate in supervising the implementation of this Agreement.
2. The Parties agree that at the time of the implementation of the Agreement they shall closely cooperate, informing one another of any circumstances that will or may have effect on the processing of the entrusted Personal Data.
3. The Parties designate the following persons to coordinate the cooperation in connection with the implementation of the Agreement:
  - a) on behalf of the Controller: Tomasz Król, phone: +48 12 341 91 13; e-mail: [iod@ncn.gov.pl](mailto:iod@ncn.gov.pl),
  - b) on behalf of the Processor: \_\_\_\_\_,
4. The Parties shall process the Personal Data of the persons named in point 3, as well as the Personal Data of the persons acting as contact persons under the Cooperation (disclosed to each other), only for the purposes of the Agreement. Furthermore, the Parties undertake to fulfil information obligations towards these persons referred to in Article 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council 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.

#### **Article 10.**

##### **Term and termination of the Agreement**

1. The Agreement shall be concluded for the period of implementation of the Framework Agreement and for a period following its termination necessary to perform the obligations related to the termination of the Framework Agreement.
2. The Controller may terminate the Agreement with an immediate effect, in the event of a serious breach of the Agreement, when the Processor:
  - a) has used the Personal Data in breach of the Agreement, in particular has processed it for its own purposes or goals of other entities;
  - b) performs the Agreement in breach of its provisions or applicable legislation in this respect;
  - c) performs the instructions of the Controller in breach of the applicable laws in this respect
  - d) did not stop the improper processing of personal data, despite a prior request by the Controller to remove breaches and ineffective expiration of the set deadline of 14 days to cease breaches.



3. Depending on the Controller's decision in that respect, within 14 business days from the day of Agreement termination or completion of the Personal Data processing – whichever takes place first, the Processor shall remove permanently or return any Personal Data entrusted to it and delete any existing copies thereof, unless the applicable law requires storage of such Personal Data or any part of it.
4. The Processor is not entitled to use the collected Personal Data for any purpose after the termination of this Agreement.

### **Article 11.**

#### **Final Provisions**

1. Remuneration due to the Processor for Personal Data processing is included in the remuneration (or price) referred to in the Framework Agreement. The Processor shall not demand, on any legal basis, the remuneration to be increased, any costs or expenses incurred in order to duly perform the Agreement hereto to be reimbursed, and shall not demand any exemption from the obligations incurred to this end, or any advances towards such costs or expenses, even if the at the moment of signing the Framework Agreement or this Agreement, despite acting with due diligence, Processor was not able to foresee the circumstances justifying such an increase, such costs, expenses, or obligations.
2. Should any provision hereof become invalid or ineffective, the Parties shall adopt all measures possible to replace it with a valid and effective provision reflecting the goal and meaning of the invalid or ineffective provision to the extent of the applicable law. Should any provision hereof be or become invalid or ineffective at any time, it shall not restrict the validity or effectiveness of the remaining provisions of the Agreement.
3. In the event of any discrepancies between the provisions of the Agreement and the Framework Agreement, the provisions of this Agreement shall prevail.
4. Any amendments hereto must be in writing on sanction of invalidity.
5. Any disputes that may arise out of this Agreement shall be resolved by a common court with jurisdiction over the Controller's registered office.
6. This Agreement shall be governed under Polish Law. Any matters not covered by this Agreement are subject to the provisions of the General Data Protection Regulation and the Civil Code.

The Agreement has been drawn up in two counterparts, one counterpart for each Party.



Processor	Controller
<p>.....</p> <p><i>Signature</i></p> <p>....., dated .....</p> <p><i>Place</i></p>	<p>.....</p> <p><i>Signature</i></p> <p>Kraków, dated</p> <p><i>Place</i></p>