

**DRAFT CONTRACT NO. BA.WZP.26.41.2024**

between:

**State Treasury – Office of Electronic Communications (Office of Electronic Communications)**, with its registered office in Warsaw (01-211) at ul. Giełdowa 7/9, NIP 5272367496, REGON 017510794, hereinafter referred to as **‘Contracting Authority’**, represented by:

.....

and

..... with its registered office in ..... (postcode: .....) at ul. ...., entered in the Commercial Register maintained by the Commercial Court in ....., with number ....., ....., ordinary contribution of EUR ....., hereinafter referred to as **‘Contractor’**, represented by:

.....

hereinafter referred to jointly as **‘Parties’**,

*with the following content:*

**Definitions:**

Whenever the following capitalised terms are used in the Agreement, the Parties assign to them the meaning indicated in the definitions:

**Auction** – an auction for seven frequency reservations in the bands below 1 GHz, conducted by the President of the Office of Electronic Communications;

**Business Day** – every day from Monday to Friday, excluding public holidays in the territory of the Republic of Poland;

**EAS** – the electronic auction system provided by the Contractor for the purposes of conducting the Auction, meeting the functional and non-functional requirements specified in Appendix 1 to the Contract;

**Contractor’s Tender or Tender** – a tender submitted by the Contractor for “Provision of an electronic auction system (EAS) for the purposes of conducting a frequency reservation auction by the President of the Office of Electronic Communications, conducting training on the use of the EAS, consultancy, and dedicated technical assistance” – case number BA.WZP.26.41.2024;

**Contract** – this contract for “Provision of an electronic auction system (EAS) for the purposes of conducting a frequency reservation auction by the President of the Office of Electronic Communications, conducting training on the use of the EAS, consultancy, and dedicated technical assistance”, together with all appendices, entered into between the Contracting Authority and the Contractor.

## **§ 1**

### **General Provisions**

The Contract has been concluded following a basic public procurement procedure – Article 275(1) of the Act of 11 September 2019 – Public Procurement Law (consolidated text: Dz. U. [*Journal of Laws*] of 2024, item 1320), hereinafter referred to as the ‘PPL Act’, as a result of which the Tender of the Contractor was found to be the most advantageous.

## **§ 2**

### **Subject Matter of the Contract**

1. As part of the implementation of the Contract, the Contractor shall provide to the Contracting Authority for remuneration in particular the following services:
  - 1) Customisation and provision of the EAS via the Internet for the purposes of conducting the Auction, meeting the functional and non-functional requirements specified in Appendix 1 to the Contract – The requirements of the Contracting Authority with regard to EAS;
  - 2) Consultancy on the configuration of the EAS and auction mechanisms;
  - 3) Preparation and delivery of user documentation for the EAS to the Contracting Authority;
  - 4) Conducting training on the use of the EAS for a group of up to 20 people – employees of UKE;
  - 5) Assistance during the trial auction conducted using the EAS;
  - 6) Provision of dedicated technical support to the Contracting Authority during the Auction, for a maximum period of 12 months.
2. The Contractor is obliged to provide the following services to the Contracting Authority:
  - 1) Customisation of the EAS to the requirements arising from generally applicable Polish law and auction documentation following consultations preceding the announcement of the Auction and clarifications to the auction documentation, if necessary;
  - 2) Updating the minimum hardware requirements for auction participants’ devices and minimum connectivity requirements, if necessary.

## **§ 3**

### **Schedule and place of implementation of the Subject of the Contract**

1. The Contractor undertakes to develop, consult in a working procedure, and submit to the Contracting Authority a detailed schedule for the implementation of the Subject of the Contract, taking into account the deadlines specified in this Article, within 7 working days as of the date of conclusion of the Contract. The schedule must reflect the completion dates for all activities that the Contractor is required to perform under the Contract.
2. The schedule may only be changed upon written consent of the Contracting Authority. The Contracting Authority may unilaterally change the schedule at any time by notifying the Contractor of the change.
3. The Contractor will make available to the Contracting Authority an ESA that meets the requirements specified in Appendix 1 to the Contract in Table 1 in the ‘preliminary version’ column

and will grant the licence referred to in § 4(5) within .....<sup>1</sup> as of the date of conclusion of the Contract. The Contractor will make available to the Contracting Authority an ESA that meets the requirements specified in Appendix 1 to the Contract in Table 1 in the 'preliminary version' column within 28 days as of the conclusion of the Contract.

4. The periods of technical support referred to in § 8 of the Contract are to be determined by the Contracting Authority. The Contracting Authority will notify the Contractor each time at least two days in advance of the need to commence or end technical support.
5. The place of provision of the services constituting the Subject of the Contract is the headquarters of the Contracting Authority – Warsaw, ul. Giełdowa 7/9 or remotely – depending on the needs of the Contracting Authority.

#### **§ 4**

##### **Making the EAS available**

1. As part of the service referred to in § 2(1) of the Contract, the Contractor is required to provide an EAS that meets the requirements set out in Appendix 1 to the Contract.
2. The Contractor undertakes to make the EAS available to the Contracting Authority together with the necessary ICT infrastructure, in such a way so as to enable the Auction to be conducted, i.e. starting from the date specified in § 3(3) of the Contract for a period of 12 months, subject to § 17 of the Contract.
3. It is the Contracting Authority's requirement that the EAS be adapted to the requirements arising from generally applicable Polish law and the auction documentation, taking into account clarifications of its content.
4. Within the timeframe indicated in the schedule referred to in § 3(1) of the Contract, the Contractor will make appropriate modifications to the EAS if a need to make the corrections necessary is identified as a result of a trial auction.
5. The Contractor grants the Contracting Authority a non-exclusive licence to use the EAS, in particular in the following fields of use:
  - 1) application and use of the EAS in the Contracting Authority's business, i.e. to conduct the Auction;
  - 2) translation, adaptation, rearrangement;
  - 3) launching, displaying, accessing the EAS;
  - 4) the use of the EAS by third party participants in the Auction.
6. The licence granted to the Contracting Authority also includes the use of a modified version of the EAS resulting from the adaptation of this system to the auction documentation for the Auction, to the results of the consultation procedure, and the conclusions arising from the trial auction.

#### **§ 5**

##### **User documentation**

1. The Contractor is required to develop and deliver to the Contracting Authority the EAS user documentation referred to in § 2(3) of the Contract.

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<sup>1</sup> The value is a criterion for the evaluation of tenders and will be completed after the selection of the Contractor.

2. The documentation referred to in paragraph 1 must be prepared in two versions – as an Auction participant's manual and as an Auction administrator's manual.
3. The Contractor is required to provide documentation prior to the trial auction. Should modifications be made to the EAS after the trial auction, the Contractor will provide the Contracting Authority with an updated user documentation of the EAS by the date specified in the schedule referred to in § 3(1) of the Contract.
4. The documentation must be drawn up in Polish in the form of electronic documents in PDF format, delivered electronically or on an electronic medium (e.g. CD/DVD).
5. Upon acceptance by the Contracting Authority of the EAS user documentation, even unfinished, the economic copyright within the meaning of the Act on Copyright and Related Rights of 4 February 1994 (consolidated text: Dz. U. [Journal of Laws] of 2022, item 2509) are transferred to the Contracting Authority as part of the remuneration referred to in § 12(1) of the Contract. The Contractor transfers the rights to:
  - 1) recording and reproduction, in particular the production of copies by any technique, including printing, reprography, magnetic recording, and digital technology;
  - 2) as regards trading in the original or copies on which the work has been recorded – placing on the market, lending, rental, lease of the original work, its copies or digital copies;
  - 3) make available to the public, which includes exhibition, screening, reproduction, broadcasting and rebroadcasting, as well as to make available to the public in such a way that everyone can access the work from a place and at a time individually chosen by them;
  - 4) produce, distribute, and use derivative works, including all modifications, alterations, and improvements to the work, and to permit others to do so to the full extent.
6. The transfer of copyright from the Contractor to the Contracting Authority includes the latter's right to exercise and authorise the exercise of subsidiary rights in the works contained in the EAS user documentation, including the performance, distribution, and use of derivative works thereof, in all fields of use specified in the preceding paragraph.
7. The provision of EAS user documentation to the Contracting Authority means both the physical release of the individual copies of the EAS user materials as well as any other means of making them available to the Contracting Authority, in particular by transferring them or making them available for downloading in information systems.

## **§ 6**

### **Training**

1. The Contractor will provide training of up to 8 hours for a group of up to 20 employees of the Contracting Authority on the administration and use of the EAS.
2. The training should take the form of a short theoretical introduction and a workshop using the EAS.
3. The training will be conducted in Polish or English. If the training is conducted in English, the Contracting Authority will arrange for interpretation into Polish in this respect.
4. The Contractor will submit a training plan to the Contracting Authority for approval, taking into account the dates indicated in the schedule referred to in § 3(1) of the Contract.
5. The Contractor shall provide the Contracting Authority with the training materials at least 3 days before the date of the training. The Contracting Authority may only use the training materials for its own purposes in connection with the conduct of the auction.

6. The training will be conducted remotely or at the contracting authority's premises at ul. Giełdowa 7/9 in Warsaw on the date indicated in the schedule.
7. The Contracting Authority undertakes to provide training rooms for the training, equipped with an adequate number of computer workstations with Internet access and audiovisual equipment for the Contracting Authority's employees.
8. Any content contained in the training materials referred to in paragraph 5, in particular:
  - 1) the substantive programme of the training,
  - 2) the training materials,
  - 3) multimedia presentations of the lectures,are covered by the Contractor's economic copyright.
9. Under the Contract, the Contractor transfers to the Contracting Authority the copyright in the training materials provided to the Contracting Authority:
  - 1) the substantive programme of the training,
  - 2) the training materials,
  - 3) multimedia presentations of the lectures.
10. No copyright of the Contractor in the training materials is transferred to the Contracting Authority. Under the Contract, the Contractor grants the Contracting Authority, as part of the remuneration referred to in § 13(1)(1) of the Contract, a non-transferable, non-exclusive licence to use the substantive programme of the training, the training materials, the multimedia presentations of the lectures, to use the transferred printed slides of the multimedia presentations and their copies made for the purposes of the training, including in electronic version, and the other materials referred to in paragraph 9 of this section for the purposes of holding the Auction.

## **§ 7**

### **Assistance during the trial auction**

1. Pursuant to the provisions of § 2(1)(5) of the Contract, the Contractor is required to assist during the trial auction conducted using the EAS.
2. The Contractor shall provide the following assistance:
  - 1) with regard to the training provided by the Contracting Authority's employees on the use of the EAS – up to 8 hours;
  - 2) with regard to the workshops conducted through the EAS – up to 8 hours;for approximately 30 representatives of the entities identified by the Contracting Authority.
3. The assistance will be provided in Polish or English. The Contracting Authority will arrange for interpretation from English into Polish.
4. The trial auction training referred to in above paragraph 2(1) of the Contract will be conducted remotely.
5. The workshops as part of the trial auction as referred to in paragraph 2(2) of above will be conducted remotely.

## **§ 8**

### **Consultation**

1. Pursuant to the provisions of § 2(1)(2) of the Contract, the Contractor will provide advisory services in the form of consultation. The consultation will be provided during the term of the Contract, in the following forms:
  - 1) in electronic form (e-mail) – the Contractor will respond to enquiries sent by e-mail immediately, no later than within 24 hours of receiving the enquiry, or within the timeframe indicated in the detailed arrangements with the Contracting Authority made in electronic form;
  - 2) by phone – the Contractor will confirm in electronic form the position expressed during the telephone consultation at the latest on the day following the day on which the consultation was carried out or on the date indicated in the detailed arrangements with the Contracting Authority made by telephone;
  - 3) in the form of a meeting at the Contracting Authority's registered office (up to 2 meetings of 8 hours each) when requested by the Contracting Authority – the Contractor's position as presented during the meeting will be confirmed in the minutes of the meeting.
2. Should the Contracting Authority require a meeting at the Contracting Authority's registered office, the Contracting Authority will notify the Contractor at least 3 business days prior to the requested meeting date at the Contracting Authority's registered office.
3. The consultation will be provided in Polish or English. In the case of consultation in English, the Contracting Authority will arrange for interpretation into Polish in this respect.

## **§ 9**

### **Technical support**

1. Pursuant to the provisions contained in § 2(1)(6) of the Contract, the Contractor shall provide direct technical support to the Contracting Authority, consisting in:
  - 1) uninterrupted contact with a technical expert by telephone and e-mail;
  - 2) remote presence of the technical expert or, if necessary, their presence at the Contracting Authority's registered office for a maximum of 7 days, in particular during the trial auction and phase 2 of the auction.
2. Should the Contracting Authority require the presence of the expert at the Contracting Authority's registered office, the Contracting Authority will notify the Contractor at least 3 business days prior to the requested date of the expert's presence at the Contracting Authority's registered office.
3. As part of technical support, the Contractor will ensure that the Contracting Authority has direct contact to and immediate assistance of the technical expert (on-call assistance) responsible for supervising the correct operation of the EAS and handling emergency situations during the trial auction and auction days in phase 2 of the auction from 9:00 a.m. to 7:00 p.m., Polish time.
4. Should phase 2 of the Auction be interrupted as a result of an EAS failure, a communications failure, or a hardware failure on the part of the Contractor, the Contractor is required to take steps (to rectify the failure) to resume the Auction in the EAS within 60 minutes of the interruption of phase 2 of the Auction.
5. Technical support will be provided in Polish or English. In the case of support in English, the Contracting Authority will arrange for interpretation into Polish in this respect.

## **§ 10**

### **Contractor's obligations**

1. The Contractor is required to:
  - 1) exercise the highest level of diligence in all activities associated with the implementation of the Subject of the Contract;
  - 2) closely cooperate with the Contracting Authority to ensure the proper implementation of the Subject of the Contract;
  - 3) inform the Contracting Authority immediately if the Subject of the Contract cannot be implemented in accordance with the agreed schedule or cannot be implemented in whole or in part, stating the reasons;
  - 4) identify alternatives should the situation referred to in point 3 above arise, in order to ensure the implementation of the Subject of the Contract;
  - 5) perform its obligations under the Contract and take other actions to ensure its proper implementation;
  - 6) comply with all the provisions set out in the applicable legislation relating to data protection as well as the protection of classified information and information relating to the Auction. Accordingly, the Contractor will obtain relevant declarations from its employees participating in the implementation of the Contract;
  - 7) enter into a separate non-disclosure agreement with the Contracting Authority, attached as Appendix 2 to the Contract.
2. Within 5 business days of the end of the auction, the Contractor undertakes to submit to the Contracting Authority:
  - 1) reports, in a format that allows for viewing and printing for a period of 10 years from the end of the auction,
  - 2) EAS logs of the activity of all auction system users (auction participants, Contracting Authority and Contractor administrators) and auction system 'substantive' transaction logs, in a format that allows for viewing and printing for a period of 10 years from the end of the auction,
  - 3) other data essential to the auction process to the Contracting Authority in a format that allows for viewing and printing, for a period of 10 years from the end of the auction.
3. The data and information referred to in paragraph 2 of this Article must be provided in a form that allows the Contracting Authority to seamlessly read the data. The data and information submitted must also not cause interpretation problems in terms of the auction and, e.g. in the case of CSV, TXT files, the documentation must be accompanied by a description of the file and data structure.

## **§ 11**

### **Communication between the Parties**

1. For the Contracting Authority, the persons authorised to contact the Contractor in matters relating to the Contract, to supervise its implementation, to provide information necessary for the implementation of the Subject of the Contract, and to sign the acceptance reports referred to in § 12 of the Contract, are:
  - 1) .....
  - 2) .....

2. The Contractor appoints the following person for contacts with the Contracting Authority during the implementation of the Subject of the Contract and for signing the acceptance reports referred to in § 12 of the Contract:
  - 1) .....
3. Technical support from the Contractor's side will be provided by the following persons:
  - 1) .....
  - 2) .....
  - 3) .....
4. A change of the persons referred to in paragraphs 1–2 of this paragraph does not require an amendment to the Contract or an annex thereto. Such a change is effected by means of a respective declaration, signed electronically using qualified electronic signatures, submitted to the other Party, and by indicating a person or persons designated to perform the activities referred to in paragraphs 1–2 of this Article.
5. The Contractor undertakes that the persons indicated in paragraph 3 will not be subject to change, except for unexpected events (e.g. illness), termination of the civil law relationship with the member of the Contractor's staff in question, or other circumstances for which the Contractor is not responsible. If a change in the Contractor's staff is necessary, the Contractor will present the new candidate to the Contracting Authority with a description of their experience, not inferior to that of the person being replaced. The Contracting Authority will either accept or reject the new candidate. If the Contracting Authority rejects a candidate, the Contractor will present another candidate to the Contracting Authority. A change in the Contractor's personnel does not require an annex to the Contract.
6. Should the persons indicated in paragraph 3 fail to perform their tasks properly, the Contracting Authority has the right to ask the Contractor with a reasoned written request to dismiss such person from the implementation of the Contract. Such dismissal is to be made no later than 5 calendar days after receiving the request. Once a person has been dismissed from the implementation of the Contract, the Contractor, within 5 calendar days, is required to present a new candidate member of staff with experience not inferior to that of the person dismissed.

## **§ 12**

### **Acceptance report**

1. The provision of services referred to in § 2 (1)(1)–(5) and § 2(2) of the Contract will be confirmed by a written acceptance report drawn up by the representatives of the Parties.
2. The Contractor's proper implementation of the services referred to in § 2(1)(6) of the Contract will be confirmed by a final acceptance report.
3. Each time the acceptance referred to in this Article takes place, subject to paragraph 4, no later than within 5 business days as of the date of implementation of the relevant part of the Subject of the Contract. The acceptance will consist of verifying the compliance of the implementation of the Contract with its content and the schedule referred to in § 3(1) of the Contract.
4. Should the Contracting Authority find during acceptance that the Contractor has failed to perform or has not duly performed any of the services that form the Subject of the Contract, the Contracting Authority shall make a note of this finding in the report and withhold acceptance until the Subject of the Contract has been performed or has been duly performed, at the same time setting the Contractor a deadline for its performance or completion, which must not be less than 5 business days.

5. The reports referred to in this Article will be drawn up electronically and signed using qualified electronic signatures.

## § 13

### Contractor's remuneration

1. On condition of proper and timely performance of obligations under the Contract, the Contracting Authority undertakes to pay the Contractor the remuneration specified in the offer in an amount not exceeding PLN ..... net (in words: .....), increased by the VAT rate of .....%\*, i.e. PLN ..... gross. The Contract will be implemented as an intra-Community acquisition of goods (services). The VAT due will be calculated and paid by the Contracting Authority in Poland\*. The remuneration will be paid in the portions as follows:
  - 1) PLN ..... net (in words: .....), increased by the VAT rate of .....%\* i.e. PLN ..... gross for the performance of the Subject of the Contract as defined in § 2(1)(1)–(3) and (5) and §2(2) of the Contract;
  - 2) PLN ..... net (in words: .....), increased by the VAT rate of <sup>2</sup>.....%\* i.e. PLN ..... gross for the performance of the Subject of the Contract as defined in § 2(1)(4) of the Contract;
  - 3) PLN ..... net (in words: .....), increased by the VAT rate of .....%\* i.e. PLN ..... gross for the performance of the Subject of the Contract as defined in § 2(1)(6) of the Contract;
2. The amount indicated in paragraph 1(3) constitutes remuneration for the period of provision of the services referred to in § 2(1)(6) of the Contract. This remuneration will be reduced if the period of provision of the services referred to in § 2(1)(6) of the Contract is shorter than specified in the Contract, in a proportion corresponding to the reduced period of provision of the services by the Contracting Authority pursuant to § 3(4) of the Contract. The Contractor is not entitled to any compensation or any claim for payment of the full amount of remuneration referred to in paragraph 1(3) on account of the fact that a shorter service period has been ascertained.
3. The remuneration referred to in paragraph 1 of this Article covers all costs to be incurred by the Contractor for the due and proper implementation of the Contract in accordance with this Contract and the applicable regulations.
4. The Contractor will invoice the Contracting Authority in each case after the completion of the part of the Subject of the Contract specified in paragraph 1, confirmed by the signing of an appropriate acceptance report.
5. The remuneration will be paid each time by transfer to the Contractor's bank account, no. .... within 21 (twenty-one) days as of the date of delivery to the Contracting Authority of a correctly issued invoice with a copy of the acceptance report signed by the parties.

## § 14

### Processing of personal data

1. Each of the Parties undertakes to comply with 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, repealing

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\*as applicable

Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, p. 1, as amended), hereinafter referred to as 'GDPR'.

2. The Parties declare that the contact details of the Parties' representatives made available by the Parties to each other in the Contract or made available to the other Party in any way during the term of the Contract are provided to secure the proper implementation of the Contract. The contact details provided include: name, business email address, and business telephone number. Each Party will act as data controller for the contact details provided to it under the Contract.
3. The Contractor undertakes to provide, on behalf of the Contracting Authority, to all persons whose personal data it has provided, the information referred to in Article 14(1) and (2) of the GDPR, in accordance with the template contained in Appendix 3 to the Contract (Contracting Authority's Information Clause).

## **§ 15**

### **Contractual penalties**

1. Should any of the following situation occur, the Contractor undertakes to pay the Contracting Authority the following contractual penalties:
  - 1) failure to meet any of the deadlines indicated in the schedule referred to in § 3(1) of the Contract – in the amount of 0.2% of the gross remuneration referred to in § 13(1) of the Contract – for each commenced business day of delay;
  - 2) failure to meet any of the deadlines referred to in § 3(3) of the Contract – in the amount of 0.5% of the remuneration referred to in § 13(1) of the Contract – for each commenced business day of delay;
  - 3) failure to provide the training referred to in § 6(1) of the Contract or providing it only in part – in the amount equal to 2% of the gross remuneration referred to in § 13(1) of the Contract;
  - 4) failure to provide the assistance referred to in § 7(1) of the Contract or to provide it only in part – in the amount equal to 2% of the gross remuneration referred to in § 13(1) of the Contract – for each identified case;
  - 5) failure to meet any of the deadlines referred to in § 8(3)(1)–(2) of the Contract – in the amount of 0.2% of the gross remuneration referred to in § 13(1) of the Contract – for each business day of delay;
  - 6) for each case of lack of access of the Contracting Authority to the EAS, lasting longer than 12 hours, noted during outside phase 2 of the auction – in the amount of 1% of the gross remuneration referred to in § 13(1) of the Contract;
  - 7) failure to ensure the presence of the expert in accordance with § 9(2) of the Contract or failure to ensure the presence of the Contractor at the meeting referred to in § 8(2) of the Contract – in the amount equal to 2% of the gross remuneration referred to in § 13(1) of the Contract – for each identified case;
  - 8) failure to provide technical support at the time and in the manner specified in § 9(3) of the Contract – in the amount equal to 1% of the gross remuneration referred to in § 13(1) of the Contract – for each identified case;
  - 9) failure to meet the deadline referred to in § 9(4) of the Contract – in the amount of 0.2% of the gross remuneration referred to in § 13(1) of the Contract – for each commenced hour of delay;

- 10) withdrawal from the Contract by the Contracting Authority for reasons attributable to the Contractor – in the amount of 20% of the total gross remuneration referred to in § 13(1) of the Contract;
  - 11) withdrawal from the Contract by the Contractor for reasons attributable to them – in the amount of 20% of the total gross remuneration referred to in § 13(1) of the Contract.
  - 12) the Contractor's failure to comply with the requirement to employ a person referred to in § 11(2) of the Contract on the basis of an employment contract – the amount of PLN 1,000.00 – for each identified case of failure to submit statements, documents or explanations referred to in § 19 of the Contract or for each identified case of submission of statements, documents or explanations that do not meet the requirements specified in the Contract.
2. In the event of damage exceeding the amount of the contractual penalties specified in this Contract, the Contracting Authority is entitled to seek redress of the damage under the general rules set out in the Civil Code of 23 April 1964 (Dz. U. [*Journal of Laws*] of 2024, item 1061).
  3. The aggregate limit of contractual penalties that may be charged under the Contract is 80% of the total gross remuneration referred to in § 13(1) of the Contract.
  4. The Contracting Authority may deduct the contractual penalties accrued and payable from the payment of the VAT invoice issued by the Contractor.

## **§ 16**

### **Withdrawal from the Contract**

1. The Contracting Authority is entitled to withdraw from the Contract and require the Contractor to pay the contractual penalty referred to in § 15(1)(10) of the Contract if any of the following circumstances occur:
  - 1) failure to meet the deadline referred to in § 3(1) of the Contract;
  - 2) the Contractor's failure to make the EAS available and to grant a licence in accordance with § 4 of the Contract on any of the dates referred to in § 3(3) of the Contract;
  - 3) failure to provide assistance during the trial auction, as referred to in § 7 of the Contract, on any of the dates indicated in the schedule referred to in § 3(1) of the Contract or to provide it in full;
  - 4) failure to provide the technical support referred to in § 9 on any of the dates indicated in § 9(1) or § 9(4) of the Contract;
  - 5) in the event of a significant change of circumstances resulting in the implementation of the Contract not being in the public interest, which could not have been foreseen at the time of concluding the Contract, or where further performance of the Contract may jeopardise an important interest of state security or public safety, the Contracting Authority may withdraw from the Contract – within 30 (thirty) days of becoming aware of such circumstances.
2. The Contracting Authority has the right to withdraw from the Contract and to claim contractual penalties each time within 60 days as of the date of the occurrence of any of the circumstances giving rise to the right of withdrawal referred to in paragraph 1 above with the exclusion of point 5.
3. Should the Contractor perform its obligations under the Contract in a manner inconsistent with the provisions of the Contract or detrimental to the interests of the Contracting Authority, the Contracting Authority will call on the Contractor to change the manner of performance of the Contract, setting a deadline of no more than 5 business days for this purpose, with the stipulation that upon the ineffective expiry of this deadline, the Contracting Authority will be entitled to

withdraw from the Contract and claim the contractual penalty referred to in § 15(1)(10) of the Contract.

4. Where a circumstance, breach, or event would entitle the Contracting Authority to impose more than one contractual penalty on the Contractor, the Contracting Authority will only impose one contractual penalty on the Contractor – the one that represents the higher value.
5. Withdrawal from the Contract does not exclude or limit the Contracting Authority's rights to assert claims against the Contractor for payment of contractual penalties stipulated in the Contract if such claims are based on an event occurring prior to the declaration of withdrawal from the Contract. Withdrawal from the Contract does not also exclude the Contractor's obligation to pay the contractual penalty for non-performance or improper performance of the Contractor's obligations provided for the situation of withdrawal from the Contract by the Contracting Authority for reasons attributable to the Contractor.

## **§ 17**

### **Amendments to the Contract**

The Contracting Authority allows amendments to the Contract in the following cases:

1. When the Auction procedure takes longer than the Contract term, the Contractor will make the EAS available to the Contracting Authority together with the necessary ICT infrastructure, grant an appropriate licence for the use of the EAS, and provide technical support for an additional maximum period of one month from the Contract termination date. For the additional period of service referred to in the preceding sentence, the Contractor is not entitled to any claim for an increase in remuneration or compensation on this account.
2. Apart from the case specified in paragraph 1, the Contract may be amended in the following cases:
  - 1) changes to the generally applicable legislation during the term of the Contract to the extent that they affect the implementation of the Subject of the Contract or the performances of the Parties;
  - 2) the occurrence, after the Contract has been concluded, of a force majeure event, which for the purposes of the Contract is to be understood as an external event beyond the control of the Parties, which the Parties could not have foreseen prior to the conclusion of the Contract and which the Parties could not have avoided or prevented with all due diligence. Force majeure on which an amendment to the Contract is contingent includes, in particular: flood, fire, and other natural disasters, terrorist attacks, sudden breakdown in weather conditions, sudden interruptions in the supply of electricity or communications;
  - 3) discrepancies or ambiguities in the meaning of the terms used in the Contract which cannot be removed by other means; such an amendment will enable the discrepancies to be removed and the Contract to be clarified in order for the Parties to unambiguously construe its provisions;
  - 4) change of the Contract implementation term, in the event of cancellation of the auction, for reasons beyond the control of the Parties and the need to announce a new auction by the President of UKE.
3. The Parties allow for changes in the amount of remuneration payable to the Contractor in the event of a change of:
  - 1) the rate of goods and services tax;
  - 2) the amount of the minimum remuneration for work or the amount of the minimum hourly rate, established pursuant to the provisions of the Act of 10 October 2002 on the Minimum Wages;

- 3) the rules governing the application of social security or health insurance or the rate of social security or health insurance contributions;
  - 4) the rules for collecting and the amount of contributions to employee capital schemes referred to in the Act of 4 October 2018 on Employee Capital Schemes – if these changes affect the Contractor's performance costs.
4. The request for a change of the amount of remuneration referred to in paragraph 3 should contain an exhaustive factual and legal justification and a precise calculation of the amount of remuneration after the Contract has been amended. In particular, the Party requesting the change will be obliged to demonstrate the link between the requested change in the contractual remuneration and a change in the law.
5. The remuneration will only be changed by the amount by which the costs directly related to the implementation of the remaining part of the Contract, at the moment of signing the annex, are changed.
6. The request should include only those costs of the Contract that the Party is obliged to bear as a result of the change in the law.
7. The remuneration is changed as of the signing of the relevant annex, with the reservation that an amendment to the Contract in connection with a change in the VAT rate takes effect as of the effective date of the change in the VAT rate.
8. The Contracting Authority provides for the possibility of changing the amount of the remuneration (its increase or decrease) on the following terms:
- 1) For the purposes of calculating the change in remuneration, the Parties will apply the annual average consumer price index for the previous year, as published by the President of the Statistics Poland;
  - 2) The remuneration may be changed provided that the change in the Statistics Poland index has a real impact on the change in the costs of performing the Subject of the Contract;
  - 3) the Statistics Poland index referred to in point 1, entitling to an increase in the Contractor's remuneration, increases by at least 15% (inflation);
  - 4) the Statistics Poland index referred to in point 1, entitling to a decrease in the Contractor's remuneration, decreases by at least 15% (deflation);
  - 5) In the case referred to in point 3, the Contractor will submit to the Contracting Authority a written request justifying the actual increase in the costs of services, resulting in an increase of the Contractor's remuneration, in particular the Contractor will be obliged to demonstrate the link between the requested change in the contractual remuneration and the change in the costs related to the Contract performance;
  - 6) In the case referred to in point 4, the Contracting Authority will communicate to the Contractor a justified reduction of the remuneration resulting from the decrease in the value of the index referred to in point 1;
  - 7) The remuneration may only be changed once during the Contract. The maximum amount of the change in remuneration will not exceed 15% of the total remuneration throughout the Contract period;

8) The Contractor whose remuneration has been changed is required to change the remuneration due to the subcontractor with whom the Contractor has concluded a contract to the extent corresponding to the changes in costs concerning the subcontractor's obligations. The changes referred to in this Article are to be made to the extent necessary to adapt the Contract to the existing circumstances. The Contracting Authority will notify the Contractor of the need to make a change by providing a description of the change. No later than 14 (fourteen) days after receipt of the change request, the Contractor will analyse the impact of the change on the Contract and submit such an analysis in writing to the Contracting Authority. The Contractor, within 5 days as of the date on which the circumstances justifying an amendment to the Contract arise, may propose an amendment to the Contract to the Contracting Authority, communicating in writing the terms of the amendment together with the reasons thereof. The Contracting Authority may at its sole discretion approve or reject the change proposed by the Contractor without further justification for the decision taken.

9. The following, in particular, do not constitute a material change to the Contract:

- 1) change of the contact persons of the Parties or their contact details;
- 2) change of the Contractor's details indicated in the Contract, consisting in a change of legal form, business name, contact details, etc. (e.g. as a result of a change of the registered office, transformation, acquisition), provided that the change does not lead to a change of the Contractor's entity;
- 3) change of the bank account number indicated in the Contract.

10. The Party will notify the other Party of the changes referred to in paragraph 9 in writing by e-mail. These changes shall take effect as of the date of service of the notice to the other Party.

## **§ 18**

### **Address details**

1. All letters and notices between the Parties relating to the Contract will be made electronically and signed with qualified electronic signatures and will be sent to the following email addresses:

Contracting Authority: sekretariat.dc@uke.gov.pl

Contractor: .....

2. Any correspondence concerning the manner of implementing the Subject of the Contract, i.e. the services indicated in § 2(1)(1)–(6), conducted between the Parties is to be directed to the e-mail addresses of the persons indicated in § 11 of the Contract.
3. Any correspondence conducted in the course of the auction from the commencement of preparations for the trial auction is to be addressed to the auction committee's subsequently indicated e-mail address and the e-mail addresses of the persons indicated by the Contractor in § 11(3) of the Contract.
4. The date on which the letter is sent by e-mail will be deemed to be the date of receipt by the Party.
5. The Parties undertake to inform each other of any change in the details set out in paragraph 1.

## **§19**

### **Employment of a coordinator**

1. The Contracting Authority requires that at least one person performing the activities referred to in § 11(2) of the Contract be employed by the Contractor under a contract of employment.
2. During the implementation of the Subject of the Contract, the Contracting Authority is entitled to undertake control activities with respect to the Contractor regarding the fulfilment, by the Contractor or its subcontractor, of the requirement to employ, on the basis of an employment contract as referred to in paragraph 1, the persons indicated to implement the Subject of the Contract.
3. The Contracting Authority is entitled in particular to:
  - 1) demand declarations and documents to confirm the fulfilment of the aforementioned requirements and to assess them;
  - 2) request clarification in case of doubt as to whether the above requirements are met.
4. Upon the Contracting Authority's request, within the period indicated by the Contracting Authority, which will not be shorter than 5 business days, the Contractor undertakes to submit to the Contracting Authority a statement to confirm that the requirement to employ the person referred to in paragraph 1 on the basis of an employment contract is fulfilled. This statement should include: the entity making the statement, date of the statement, indication that the tasks in question are performed by individuals employed under a contract of employment, including the number of such individuals, their names, type of employment contract, employment scope, and signature of the authorised representative of the Contractor.
5. Should the required statements, documents, or explanations referred to in paragraphs 2, 4 or 5 not be provided within the deadline requested by the Contracting Authority, the Contractor will be called upon again to submit them, with an additional deadline set for doing so. Should the Contractor fail to comply with the obligation to submit the required statements, documents, or explanations within the additional deadline, or should the Contractor submit statements, documents, or explanations that do not meet the requirements specified in this Contract, the Contractor will be obliged to pay to the Contracting Authority the contractual penalty referred to in § 15(1)(12) of the Contract.
6. Failure by the Contractor to submit, within the timelimit determined by the Contracting Authority, the evidence required by the Contracting Authority to confirm that the Contractor or its subcontractor meets the requirement of employment under an employment contract will be treated as a failure by the Contractor or its subcontractor to meet the requirement of employing the individuals designated to implement the Subject of the Contract under an employment contract.
7. In case of reasonable doubt concerning the Contractor's or subcontractor's compliance with labour laws, the Contracting Authority may request the State Labour Inspectorate to conduct an inspection.

## **§ 20**

### **Final Provisions**

1. The Contractor is not allowed to entrust the implementation of the Contract to a third party or to assign its receivables under the Contract to such a third party.
2. No amendment of this Contract will be valid, unless it is made in writing.

3. Any disputes or claims between the Parties arising out of the Contract are to be resolved without undue delay – by negotiation between the Parties.
4. Should these negotiations fail, any disputes that arise will be settled by the ordinary court with jurisdiction over the Contracting Authority's registered office.
5. In matters not covered by this Contract, the provisions of the Civil Code Act of 23 April 1964 (Dz. U. [*Journal of Laws*] of 2024, item 1061, as amended), and the Act of 4 February 1994 on Copyright and Related Rights (Dz. U. [*Journal of Laws*] of 2022, item 2509) apply.
6. The Contract has been drawn up in electronic form and has been signed by the Parties with qualified electronic signatures.
7. The appendices to the Contract form an integral part thereof:
  - 1) Detailed Requirements for the Contract Subject
  - 2) Confidentiality Agreement
  - 3) Contracting Authority's Clause

**CONTRACTING AUTHORITY:**

**CONTRACTOR:**

## Appendix 1 to the Contract – Detailed Requirements for the Contract Subject.

Table 1. Contracting Authority’s Requirements for EAS

Contracting Authority’s Requirements for EAS	preliminary version	basic version
<b>Functional Requirements</b>		
1. The EAS must enable the definition of frequency blocks that are the subject of the SMRA auction.	YES	YES
2. The EAS must enable the definition of a limit related to the ability to obtain individual frequency reservations (spectrum cap).	YES	YES
3. The EAS must enable defining ESA users who are auction participants by indicating the auction participant’s name.	YES	YES
4. The EAS must enable assigning anonymous names to auction participants during phase 2 of the auction.	YES	YES
5. The EAS must allow granting users permissions to use the EAS in accordance with the adopted authentication scheme (e.g., login, password, electronic key, or code matrix).	NO	YES
6. The EAS must enable granting users appropriate permissions (e.g., execution, reading, no access) to specific subsystems, functions, actions, and data.	YES	YES
7. The EAS must enable conducting a round-based auction.	YES	YES
8. The EAS must automatically number the rounds.	YES	YES
9. The EAS must inform auction participants about the current round number.	YES	YES
10. The EAS must inform auction participants of the start time and duration of each round.	YES	YES
11. The EAS must allow setting and modifying the start and end date and time for each auction round.	YES	YES
12. The EAS is to present within the system a clock synchronised to the template and server time according to universal time on all computer workstations participating in the auction.	YES	YES
13. The EAS must allow setting and modifying the duration of individual auction rounds.	YES	YES
14. The EAS must allow defining and modifying the daily auction schedule.	NO	YES
15. The EAS must allow the submission of auction bids by placing a bid on an available block, raising a bid, or transferring a bid to another block.	YES	YES

16. The EAS must prevent the submission of an auction bid that violates the rules specified in the auction documentation (e.g., a participant cannot: (a) submit more bids than allowed in the auction documentation per round, (b) raise/cancel a bid marked as the highest declared amount (HDA), (c) cancel a bid without submitting a new one) and inform the participant of an invalid bid attempt.	YES	YES
17. The EAS must inform the auction participant of the bid submission and registration in the EAS.	YES	YES
18. The EAS must generate notifications of bids not submitted within the designated time.	YES	YES
19. The EAS must record and mark submitted bids with a date stamp and a time stamp with an accuracy of 0.001 seconds, in accordance with RFC3161 or ISO/IEC18014.	NO	YES
20. The EAS must allow setting the starting price for each frequency block.	YES	YES
21. The EAS must automatically define up to six bid increments for each frequency block in each round. In the first round, the starting price is set along with up to five increments calculated as: $IA = (X/100) \times SP$ (where IA = increment amount, SP = starting price for the block, X = increment factor). In the second and subsequent rounds, up to five increments are calculated as $IA = (X/100) \times HDA$ (where IA = increment amount, HDA = highest declared amount for the block, X = increment factor). If no valid bid is submitted for a block in the second or later rounds, increments are defined analogously to the first round.	YES	YES
22. The EAS must display current bid increments for each frequency block to auction participants as a list of bid increments.	YES	YES
23. The EAS must allow participants to select a bid increment from the list of increments during a round.	YES	YES
24. The EAS must automatically determine the highest declared amount (HDA) for each frequency block in each round.	YES	YES
25. The EAS must automatically randomise the order of bids of the same value (the randomisation mechanism should be described by the Contractor).	YES	YES
26. The EAS must display the current HDA for each frequency block to all auction participants.	YES	YES
27. The EAS must inform a specific auction participant of the frequency block on which their bid is the HDA, and the EAS must automatically retain the HDA for a block until a new bid is placed on that block.	YES	YES
28. The EAS must allow defining the number of bidding points (BP) allocated to each auction participant in the first auction round according to the auction documentation.	YES	YES
29. The EAS must automatically determine the number of BP for each auction participant after each round. In the first round, BP are allocated for placing a bid. In subsequent rounds, BP are allocated for placing a bid in that round or for retaining the HDA bid.	YES	YES
30. The EAS must display the current number of BP to auction participants (e.g., number of BP held in the round, number used in the round, number available for use in the round).	YES	YES
31. The EAS must automatically cancel bids when they are replaced by a higher bid on the same frequency block or transferred to another block.	YES	YES
32. The EAS must allow defining the number of rights to withhold (RWG) granted to an auction participant.	YES	YES

33. The EAS must automatically indicate the use of RWG if an auction participant fails to place an order during the second and subsequent rounds, which would lead to a loss of BP.	YES	YES
34. The EAS must allow the participant to declare the use of RWG starting from the second round.	YES	YES
35. The EAS must automatically determine the number of RWG allocated for each auction participant after each round.	YES	YES
36. The EAS must display the current number of RWG to auction participants.	YES	YES
37. The EAS must allow the administrator to pause/suspend the auction and resume it.	YES	YES
38. The EAS must automatically interrupt the auction in case of an EAS failure.	NO	YES
39. The EAS must enable resuming the auction directly from the point at which it was interrupted.	NO	YES
40. The EAS must enable the cancellation of individual auction rounds by the administrator if any irregularities affecting the course of the auction are detected, for example, in the event of an EAS failure that impacts the calculations made after a round.	NO	YES
41. The EAS must allow for the disqualification of an auction participant in the event of failure to provide the required deposit.	YES	YES
42. The EAS must automatically block access to the system for disqualified auction participants.	YES	YES
43. The EAS must automatically conclude phase 2 of the auction if, in a given round, no participant (a) submits a new bid or (b) uses RWG or a RWG is not automatically invoked.	YES	YES
44. The EAS must notify participants of the conclusion of phase 2 of the auction.	YES	YES
45. After phase 2 of the auction, the EAS must display the highest bid amounts (HDA) for specific frequency blocks along with the names of the entities that submitted them.	NO	YES
46. The EAS must allow internal system communication between the administrator and all auction participants.	YES	YES
47. The EAS must allow internal system communication between the administrator and a selected auction participant.	NO	YES
48. The EAS must allow internal system communication between an auction participant and the administrator.	NO	YES
49. The EAS must require confirmation from auction participants for actions affecting the course of the auction (e.g., bid submission confirmation, use of RWG).	YES	YES
50. The EAS must require confirmation from the administrator for actions affecting the course of the auction (e.g., auction suspension, resumption, setting of round times and durations, disqualification of an auction participant).	YES	YES
51. The EAS must enable the use of an emergency mode if necessary (e.g., by submitting a bid in emergency mode by the Committee or by introducing an emergency RWG by the Committee).	NO	YES

Non-functional, Performance, and Security Requirements			
1.	Access to the EAS must be possible from any computer meeting at least the minimum hardware requirements specified by the Contracting Authority in Appendix 3 to the auction documentation, 'Minimum hardware and Internet connection requirements', published on <a href="https://bip.uke.gov.pl/download/gfx/bip/pl/defaultaktualnosci/132/19/1/dc.wap.5131.1.2024.02_da_z3_minimalne_wymagania.pdf">https://bip.uke.gov.pl/download/gfx/bip/pl/defaultaktualnosci/132/19/1/dc.wap.5131.1.2024.02_da_z3_minimalne_wymagania.pdf</a> (hereinafter 'Appendix 3') and with an Internet connection meeting at least the minimum requirements specified by the Contracting Authority in Appendix 3.	YES	YES
2.	The EAS must operate correctly within a Windows 10 or later environment. Launching the EAS should not require any actions by the user beyond standard computer and operating system use and should not depend on the purchase of additional software other than the operating system.	YES	YES
3.	The operating language of the EAS is Polish, which applies to menus, forms, notifications, and data entry and printing functions that support Polish diacritical characters and proper sorting order.	NO	YES
4.	The EAS must have a user-friendly graphical interface that maximises ease of operation. The system should be clearly designed and intuitively navigable. The way EAS functions are accessed should be as consistent and uniform as possible.	NO	YES
5.	The EAS must perform at a level that allows effective and comfortable use by 30 simultaneous users.	YES	YES
6.	The average response time of the user interface for operations not requiring new data retrieval must be less than 0.2 seconds, with a maximum response time of 10 seconds.	YES	YES
7.	The average response time of the user interface for operations requiring new data retrieval must be less than 2 seconds, with a maximum response time of 20 seconds.	YES	YES
8.	The EAS must ensure the security and integrity of the data collected in the system.	NO	YES
9.	The EAS should ensure the confidentiality of processed data, particularly through the use of strong encryption for communications between EAS users and the server(s), along with server authentication.	NO	YES
10.	The EAS must provide user identification and authentication for each system user.	YES	YES
11.	The EAS must authorise user operations according to the permissions assigned.	YES	YES
12.	Operations that impact the auction's course or data security must be recorded in the EAS, including the user performing the operation and a timestamp.	NO	YES
13.	The EAS must include mechanisms to verify the completeness and consistency of entered data to prevent incomplete data entries in the system.	YES	YES
14.	The Contractor must provide a system security policy, including a description of the timestamping mechanism.	NO	YES

**Table 2. Additional Requirements of the Contracting Authority regarding the Subject of the Contract**

Additional Requirements of the Contracting Authority regarding the Subject of the Contract	
<b>Functional Requirements</b>	
1.	The EAS must archive all messages sent by the EAS in a format accessible to the Contracting Authority, even after the auction has concluded.
2.	The EAS must allow for the visualisation and printing of specified data (the scope and format of data will be determined between the Contractor and the Contracting Authority).
3.	<p>The EAS must enable the creation, saving, and printing of reports containing information on the course of each auction round (the scope and format of data will be determined between the Contractor and the Contracting Authority), in particular, covering:</p> <ul style="list-style-type: none"> <li>▪ Initial auction parameters and settings,</li> <li>▪ Parameters and settings for each auction round,</li> <li>▪ Actions recorded for both participants and the auction administrator, with date and timestamp,</li> <li>▪ Bids submitted by participants in each round,</li> <li>▪ Results of each auction round,</li> <li>▪ Other data relevant to the auction process.</li> </ul> <p>Access to this functionality must be provided to the Contracting Authority during the auction and for a period of no less than 10 years after its conclusion, allowing for data export in the following electronic formats: CSV, XML, TXT.</p>
4.	The EAS must allow the Contracting Authority access to the system event log (including logs for participants' actions, the administrator's actions, and the Contractor's actions) even after the auction has concluded, for a period of no less than 10 years after the auction's conclusion.
<b>Additional Non-Functional, Performance, and Security Requirements</b>	
1.	During phase 2 of the auction, the EAS must be continuously monitored by the Contractor for any unauthorised data access attempts or interference in the auction process. The Contractor shall immediately notify the Contracting Authority of such incidents.
2.	The EAS must allow users to change their passwords. Users set their new passwords independently, and these passwords must not be known to the Contractor or the auction administrator. The EAS must also provide an option for resetting the password set by the user in cases where it has been lost or forgotten.
3.	The Contractor will generate and supply the Contracting Authority with electronic keys or code matrices required for all EAS users to log in to EAS for both the trial auction and phase 2 of the auction.
4.	The Contractor will deliver reports to the Contracting Authority in a format that allows for viewing and printing for a period of 10 years from the end of the auction.

- |    |  |
|----|--|
| 5. | The Contractor will provide EAS logs and other data essential to the auction process to the Contracting Authority in a format that allows for viewing and printing, for a period of 10 years from the end of the auction.  |
| 6. | The Contractor will ensure an IT infrastructure that enables the auction to be conducted by the President of UKE. In addition to the primary IT infrastructure, the Contractor will also provide alternative infrastructure located in a different facility to enable data recovery in the event of disruptions targeting the EAS. |
| 7. | If phase 2 of the auction is interrupted due to a connectivity failure or hardware malfunction on the Contractor's side, the EAS must allow for the auction to resume within 60 minutes from the interruption of phase 2.  |

**Appendix 2 to the Contract – Confidentiality Agreement.**

**Confidentiality Agreement**

entered into on .....

between:

**State Treasury – Office of Electronic Communications (Office of Electronic Communications)**, with its registered office in Warsaw (01-211) at ul. Giełdowa 7/9, NIP 5272367496, REGON 017510794, hereinafter referred to as '**Contracting Authority**', represented by:

.....– .....

and

..... with its registered office in ..... (postcode: .....) at ul. ...., entered in the Commercial Register maintained by the Commercial Court in ....., with number ....., ....., ordinary contribution of EUR ....., hereinafter referred to as '**Contractor**', represented by:

.....– .....

**§ 1**

On ....., Contract No. .... was concluded between the Contracting Authority and the Contractor for the provision of an electronic auction system (EAS) for the purposes of conducting a frequency reservation auction by the President of the Office of Electronic Communications for seven frequency reservations in the bands below 1 GHz, including training on the use of the EAS, consultancy, and dedicated technical assistance.

**§ 2**

The Contracting Authority is or will be in possession of unpublished information (hereinafter referred to as 'Unpublished Information'), whose use may be necessary for the performance of the Subject of the Contract referred to in § 1 of this agreement.

**§ 3**

1. The Contracting Authority will make the Unpublished Information available to the Contractor. However, the Contracting Authority reserves the right to refrain from disclosing Unpublished Information of the Contracting Authority's choice, unless otherwise required under generally applicable law, in particular the Act on Access to Public Information of 6 September 2001 (Dz.U. [Journal of Laws] 2022, item 902).
2. The Unpublished Information includes information containing legally protected secrets, in particular business secrets within the meaning of Article 11(4) of the Act of 16 April 1993 on Combating Unfair Competition (Dz. U. [Journal of Laws] of 2022, item 1233).

3. The Contracting Authority may provide the Contractor with documents other than the aforementioned documents containing the legally protected secrets referred to above on the basis of an acceptance report.
4. The Unpublished Information as well as the Information referred to in paragraph 3 of this Article will be hereinafter referred to as 'Confidential Information' and will be subject to disclosure in accordance with the following rules.
5. The Contracting Authority undertakes to mark the provided Confidential Information as confidential or otherwise inform the Contractor that the Contracting Authority treats such information as confidential.
6. To avoid doubt, the Parties confirm that information which the Contracting Authority is required to disclose under applicable law is not considered to be Confidential Information.
7. The Contractor undertakes that Confidential Information received from the Contracting Authority will be kept confidential. This information will only be available to members of the Contractor's team implementing the Contract referred to in § 1.
8. The Contractor undertakes not to disclose the Confidential Information to any other person or entity without the Contracting Authority's consent granted in writing on pain of nullity. Such a consent is also required for disclosure of Confidential Information to a subcontractor.
9. The Contractor undertakes not to duplicate Confidential Information beyond what is necessary for the implementation of the Contract referred to in § 1 of this agreement.
10. The Contractor undertakes to protect the Confidential Information from access by unauthorised persons or entities to the extent necessary to preserve the confidential nature of such information.
11. Any activities carried out within the Contractor's company and related to its organisation, including in particular internal quality controls, must not violate the provisions of this agreement. For the purposes of internal quality controls, the Contractor may only make data based on Confidential Information available to controllers in a processed form that safeguards the secrets contained in the Confidential Information (e.g. appropriate aggregation).
12. The Contractor undertakes that Confidential Information received from the Contracting Authority will only be used for the purposes of the Contract and will be deleted or anonymised thereafter.
13. The Parties unanimously declare that the Contractor is liable under this agreement both for its own acts and omissions and for the acts and omissions of persons and entities to whom it has made Confidential Information available under any circumstances. The Contractor acknowledges that they are also liable for persons and entities to whom they have not made the Confidential Information available and who have come into possession of the Confidential Information as a result of the Contractor's negligence or recklessness.
14. The rules established hereunder do not apply to the provision of information to state services, bodies, and entities requesting the Contractor and the persons and entities it uses to provide information in accordance with universally applicable law (this applies in particular to court, prosecutor, and tax authority requests in the forms provided for by law).

#### § 4

Should the Contractor fail to comply with the provisions of this agreement, the Contractor agrees to pay a contractual penalty to the State Treasury in the amount of: **PLN 50,000.00** (in words: fifty thousand zloty) for each single breach. The State Treasury may claim compensation exceeding the amount of the aforementioned contractual penalty in order to compensate the State Treasury for any damage suffered by the State Treasury as a result of the settlement of legitimate third party claims brought in connection with the Contractor's breach of its obligations under this agreement. The

Contractor further undertakes to join, at their own expense, any judicial or extra-judicial proceedings involving the State Treasury arising from the Contractor's failure to comply with the terms and conditions set out in this agreement.

**§ 5**

1. Any changes to this agreement must be made in writing to be valid.
2. The obligations assumed under this agreement remain in force as long as it is justified by their nature.

**CONTRACTING AUTHORITY:**

**CONTRACTOR:**

## Appendix 3 to the Contract – Contracting Authority’s Clause

### The Contracting Authority's information clause for persons representing the Contractor and implementing the Contract on behalf of the Contractor

Pursuant to Article 14(1) and (2) 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, repealing Directive 95/46/EC (General Data Protection Regulation, ‘GDPR’), please be informed that:

1. The Controller of your personal data is the President of the Office of Electronic Communications, with its registered office at: ul. Giełdowa 7/9, 01-211 Warsaw.  
Contact details: Urząd Komunikacji Elektronicznej (UKE) [Office of Electronic Communications], telephone number: +48 22 33 04 000, fax number: +48 22 53 49 162. The contact form is available at <http://uke.gov.pl/kontakt/>
2. Contact details of the Data Protection Officer: telephone number: +48 22 53 49 241, e-mail: [iod@uke.gov.pl](mailto:iod@uke.gov.pl).
3. The President of UKE processes your personal data (contact details including name, email address, telephone number), which it received from ....., in order to implement the contract concluded for ***Provision of an electronic auction system (EAS) for the purposes of conducting a frequency reservation auction by the President of the Office of Electronic Communications, conducting training on the use of the EAS, consultancy, and dedicated technical assistance.***
4. Your personal data will be processed by authorised employees of the Controller who needs to access this data to perform its duties.
5. The personal data processed by the President of UKE may be shared with other recipients of personal data or categories of recipients:
  - a) entities which process data on behalf of the President of UKE under an agreement for the entrustment of personal data processing (e.g. entities operating UKE's ICT systems or providing UKE with ICT tools, entities operating and maintaining UKE's telecommunications network, entities providing advisory, audit, and legal assistance services to UKE),
  - b) other controllers processing the data on their own behalf (e.g. postal or courier operators).The personal data processed by the President of UKE may also be disclosed to entities authorised to receive the data on the basis of applicable laws (e.g. administrative authorities, courts, state services).
6. The personal data will be processed for a period necessary for the implementation and settlement of the contract, and thereafter for archival purposes for a period provided for in the internal UKE's office and archives regulations adopted pursuant to the Act on National Archive Resources and Archives. 7. In relation to the processing of your personal data by the President of UKE, you have the following rights:
  - a) the right to obtain confirmation as to whether the President of UKE is processing your personal data and, if so, to obtain access to the content of such data and information on such processing,
  - b) the right to receive a copy of your personal data,
  - c) the right to rectify inaccurate data or complete incomplete data, on the grounds and in accordance with the principles set out in Article 16 of the GDPR,

- d) the right to have the processing of your data restricted, on the grounds and in accordance with the principles set out in Article 18 of the GDPR.

You can exercise these rights by sending an e-mail to: [iod@uke.gov.pl](mailto:iod@uke.gov.pl).

The extent to which the above-mentioned rights can be exercised is determined by the provisions of the GDPR. The President of UKE is entitled to verify the identity of persons requesting to exercise their rights.

- 8. You have the right to lodge a complaint with the President of the Personal Data Protection Office if the processing of your personal data by the President of UKE violates the provisions of law.
- 9. The President of UKE does not employ automated decision-making, including profiling, in relation to your personal data in a manner leading to any decision or other legal consequence, or other material effect on you as a result of such automated processing.