

**AGREEMENT No. ....**

concluded in ..... in Wrocław between:

Bioceltix S. A., with its registered office in Wrocław, at ul. 57-59 Bierutowska, bldg III, 51-317 Wrocław, entered in the Register of Entrepreneurs of the National Court Register under KRS number: 0000744521, with tax identification number NIP: 8992794360 and REGON number: 364963245, hereinafter referred to as the **"Employer"**

and

..... with its registered office in ..... at ul. ...., 00-000 .....,

KRS No.: .....

**Taxpayer Identification Number (NIP):** .....

National Business Registry (REGON) No.: .....

hereinafter referred to as the **"Contractor"**,

hereinafter referred to collectively as the **"Parties"** or individually as a **"Party"**.

with the following content:

**§ 1****Basis for concluding the Agreement**

1. This Agreement (hereinafter referred to as the "Agreement") was concluded as a result of proceedings conducted in accordance with the principle of competitiveness specified in subsection. 3.2 in the Guidelines on the eligibility of expenditure for the years 2021-2027 of March 14, 2025, and the provisions of the Act of September 11, 2019, Public Procurement Law, do not apply to it.
2. The agreement was concluded for the benefit of Project No. FENG.01.01-IP.02-0011/24 implemented by the Employer, entitled "Construction and launch of a pharmaceutical plant for innovative veterinary advanced therapy medicinal products," co-financed by the European Union under the European Funds for a Modern Economy Program.

**§ 2****Subject of the Agreement**

1. The Employer orders, and the Contractor undertakes to deliver, assemble, qualify, and train personnel in the use of the device: automatic vial filler, in accordance with the specification "User requirement specification of fill/finish machine installed within restricted access barrier system" ("URS") and other requirements contained in the annexes to the Agreement, which form an integral part thereof ("Subject of the Agreement").
2. The Parties agree that the place of delivery shall be: Bioceltix S.A., Ideal Idea Hall, ul. Skrzypowa 1, 54-530 Wrocław, Poland (formerly ul. Brzezinski bldg. H5).

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Address: ul. 57-59 Bierutowska, bldg III, 51-317 Wrocław

phone: +48 71 880 87 71, faks: +48 71 734 55 09

e-mail: office@bioceltix.com

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3. The Contractor guarantees that the device delivered as part of the performance of the Subject of the Agreement will be brand new, free from physical and legal defects, safe for people and the environment, and will meet the requirements of relevant standards and regulations, resulting in particular from: applicable laws, European harmonized standards contained in applicable EU New Approach Directives, which provide for CE marking of products, and the principles of reliable knowledge and established practices. The device, delivered as part of the performance of the Subject of the Agreement, shall be delivered to the Employer in the manufacturer's original packaging bearing the name of the product range, serial number, and other necessary information.
4. The Contractor guarantees that the device delivered as part of the performance of the Subject Matter of the Agreement meets the requirements of European standards in terms of safety requirements and complies with the FDA, EU GMP, 21 CFR part 11, and GAMP guidelines in force on the date of conclusion of the Agreement and is properly prepared for qualification.
5. As accompanying documents, the Contractor shall provide the device's operating and maintenance manual and all relevant certificates, CE declarations of conformity, safety data sheets, or the Contractor shall provide the Employer with constant access (24 hours a day, 7 days a week) to these documents on its website and, at the Employer's request, shall immediately deliver them by email or in printed form. Notwithstanding the above, at the request of the Employer, the Contractor shall, within the time limit specified by the Employer, submit documents confirming the approval of the delivery item for marketing in the EU, issued by the competent authority, if this requirement applies to the product in question.

### **§ 3**

#### **Substitute investor**

1. The Employer informs, and the Contractor acknowledges and accepts, that the Agreement will be partially performed on behalf of and for the benefit of the Employer by a substitute investor (hereinafter referred to as the "Substitute Investor") on the basis of a relevant investment substitution agreement concluded between the Employer and the Substitute Investor.
2. In view of the above, the Employer may act through a Substitute Investor who is not a party to this Agreement but performs tasks on behalf of and for the Employer.
3. The Contractor undertakes to cooperate with the Substitute Investor within the scope determined by the Employer in order to properly perform the subject of the Agreement.
4. The tasks of the Substitute Investor, within the scope of the performance of the Subject Matter of the Agreement, shall include in particular:
  - a. coordination of delivery and installation of critical equipment, including the device covered by the contract;
  - b. completion of the entire investment, part of which constitutes the Subject Matter of the Agreement;
  - c. organizing and conducting the construction process (excluding the performance of construction works);
  - d. supervision and management of investment construction;
  - e. carrying out other necessary activities related to the implementation of the

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investment.

#### § 4

##### **Contractor's responsibilities**

1. The Contractor undertakes to insure the Subject of the Agreement against all risks of loss during transport, including loading and unloading, up to its total value, at its own expense.
2. The Contractor declares that prior to signing the Agreement, they have familiarized themselves with the location conditions, design documentation, and detailed description of the Subject of the Agreement, and that the information they possess is complete and sufficient for the proper and timely performance of the Subject of the Agreement. In connection with the above, the Contractor declares that they do not raise and will not raise any claims against the Employer in this respect in the future, including in particular the lack of sufficient design guidelines for the performance of the Subject of the Agreement.
3. In case of doubt as to the interpretation of the documents referred to in section 2 or their compliance with applicable regulations, the Contractor shall consult the Employer prior to their application, who shall provide appropriate and binding explanations. In any case where the documents constituting annexes to the Agreement are contrary to applicable regulations, the Contractor shall notify the Employer thereof, indicating suggested alternative solutions.
4. The Contractor undertakes to perform the Subject of the Agreement in accordance with the provisions of the Agreement, applicable laws (including: the Safety and Health Protection plan, health and safety regulations, fire safety regulations, and environmental protection regulations), technical knowledge, and construction practices, and bears full responsibility in this regard.
5. The subject of the Agreement also includes those activities, tasks and works whose necessity will become apparent during the performance of the Agreement and which an experienced Contractor, exercising due diligence, could have foreseen on the basis of the design documentation provided, applicable technical and construction regulations and administrative provisions, as well as those which the Contractor could have foreseen on the basis of the Agreement, even if they were not specified in detail.
6. The Contractor undertakes to use only materials that have the necessary approvals, certificates, manufacturer's declarations, and attestations, and are approved for marketing and use in accordance with the relevant legal provisions, in the performance of the Subject of the Agreement.
7. The Contractor shall provide the Employer with the necessary documents referred to in section 6, as well as the as-built documentation required by law, prior to acceptance of the Subject of the Agreement.
8. The Contractor is responsible for organizing and carrying out the delivery at their own expense and risk.
9. The Contractor undertakes to keep records of employees/associates or other persons present on behalf of the Contractor at the site of performance of the Subject of the Agreement and to provide this data to the Employer.
10. The Contractor shall be liable for any damage caused to the owner of the building/facility in

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connection with the performance of the Subject Matter of the Agreement.

11. The Contractor undertakes, upon completion of the Subject of the Agreement, to restore the place of performance of the Subject of the Agreement to its condition prior to the commencement of work.
12. The Contractor undertakes to cooperate with the owner of the building/facility or an entity authorized by them, where the Subject of the Agreement will be performed, in particular by:
  - a. ensuring the compliance with all regulations, safety instructions, and other similar rules concerning the use of the building/facility;
  - b. immediately informing the owner of the building/facility or an entity authorized by them of any situations that may pose a threat to the safety of persons or property;
13. The Contractor undertakes to maintain, until the end of the warranty and guarantee period, appropriate civil liability insurance for its business activities, with a scope and sum insured appropriate to the Subject of the Agreement. The Contractor shall provide the relevant policy upon each request of the Employer.
14. The Contractor may use subcontractors to perform the Subject of the Agreement only after obtaining the Employer's written consent. The Contractor shall be liable for the actions and omissions of any subcontractors as for their own actions and omissions, and shall be liable for any damage caused by subcontractors.
15. The Contractor undertakes to provide, at the Employer's request, information on the current status and progress of the performance of the Subject of the Agreement.

## **§ 5**

### **Obligations of the Employer**

The Employer undertakes to:

- a. transfer the site of performance of the Subject Matter of the Agreement to the Contractor;
- b. transfer the necessary documentation, in accordance with the provisions of the Agreement;
- c. perform commissioning, in accordance with the provisions of the Agreement;
- d. pay remuneration, in accordance with the provisions of the Agreement.

## **§ 6**

### **Delivery date**

1. The Contractor shall perform the Subject of the Agreement within ... months of the conclusion of the Agreement.
2. The Contractor shall notify the Employer of the exact delivery date no later than 30 days before the planned shipment.
3. If the delivery date falls on a non-working day or outside the Employer's working hours, the delivery will take place on the first working day after the specified date.
4. In the event of a delay or if the Contractor anticipates the possibility of delays in the performance of the Subject of the Agreement, the Contractor shall immediately notify the Employer thereof and present a detailed recovery plan for the Employer's approval.

## **§ 7**

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### **Commissioning of the Subject Matter of the Agreement**

1. Commissioning of the Subject of the Agreement includes final commissioning and the following partial commissioning procedures preceding it (including qualifications):
  - a) acceptance of the detailed executive design of the device ("DQ");
  - b) Factory Acceptance Test at the Contractor's premises ("FAT");
  - c) Site Acceptance Test at the Ordering Party's premises ("SAT");
  - d) installation qualification ("IQ");
  - e) operational qualification ("OQ").
2. The Contractor shall provide the Employer with proposals for protocols and qualification reports for all the above-mentioned partial commissioning procedures before commencing the performance of the Subject of the Agreement. Within 14 days of receiving the documents, the Employer shall verify, correct, and/or supplement these documents within the scope not exceeding the requirements described in the URS and in accordance with the guidelines of the FDA, EU GMP, 21 CFR part 11, and GAMP, and shall forward them to the Contractor for final approval.
3. SAT, IQ, and OQ commissioning tests, as well as final commissioning of the Subject of the Agreement, shall be performed within 14 business days of delivery of the device. Prior to final commissioning of the Subject Matter of the Agreement, the Contractor shall conduct training for up to 7 persons on the use and maintenance of the device, in accordance with the requirements of this Agreement and its annexes.
4. The Contractor undertakes to organize and carry out partial commissioning procedures in accordance with the accepted protocols, with the necessary cooperation from the Employer.
5. The Contractor shall notify the Employer of the date of each acceptance 21 days in advance. The Employer and the Contractor should be present during commissioning.
6. The Contractor shall prepare a report after each partial commissioning. Approval of the report by the Employer and signing of the relevant commissioning protocol allows proceeding to the subsequent stage of commissioning procedures. The Employer undertakes to review the report and submit comments within 3 business days of the Contractor's delivery of the report.
7. In the event of comments being made by the Employer, the Parties shall agree on deadlines for removing non-conformities/eliminating any deviations from the protocol/report for a given commissioning.
8. After removing defects/deviations/non-conformities, another commissioning report is drawn up.
9. Confirmation of final commissioning and proper performance of the Subject of the Agreement shall be a final commissioning report signed by the Employer without any comments.
10. If the defects identified during the final commissioning are not removed, the Employer has the right to refuse to sign the commissioning report and to charge a contractual penalty, in accordance with § 11 of the Agreement, until the defects are removed, from the date of the first report identifying the defects.
11. In the event of failure to remove defects identified during final commissioning within the specified time limit, or in the event of a delay in the performance of the Subject of the Agreement and failure by the Contractor to present or rejection by the Employer of the repair plan referred to in § 6(4) of the Agreement, the Employer may entrust the performance of further work to another contractor at the expense and risk of the Contractor.

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## § 8

### Remuneration and payment terms

1. For the proper performance of the Subject of the Agreement, the Contractor shall receive a total remuneration of PLN ..... (say: PLN ..... ) net.
2. Remuneration will be paid according to the following payment schedule:
  - a) an advance payment of 30% of the total remuneration – payable within 14 days of the date of conclusion of the Agreement;
  - b) 30% of the total remuneration – payable after acceptance of the FAT by the Employer and signing of the relevant acceptance protocol by the Employer;
  - c) 40% of the total remuneration – payable after acceptance of SAT, IQ, and OQ by the Employer and signing of the final acceptance protocol for the Subject of the Agreement by the Employer – without comments.
3. VAT will be added to the remuneration in accordance with applicable law.
4. The remuneration specified in section 1 includes all costs related to the performance of the Subject Matter of the Agreement.
5. The basis for payment of each part of the remuneration specified in section 2(b) and (c) shall be a correctly issued invoice by the Contractor, accompanied by an commissioning report relevant to the given commissioning, without any comments.
6. The remuneration shall be payable within 30 (in words: thirty) days of receipt by the Employer of a correctly issued invoice, to the Contractor's bank account number indicated on the invoice. The Employer agrees to receive electronic invoices. The Contractor should send the electronic invoice to the Employer's email address: [faktury@bioceltix.com](mailto:faktury@bioceltix.com).
7. The Employer declares that they are an active VAT taxpayer and have the following tax identification number (NIP): 899-27-94-360 and a registered office and permanent place of business in the territory of the Republic of Poland.
8. The place of taxation for VAT purposes is the territory of the Republic of Poland.

## § 9

### Quality guarantee and warranty for defects

1. The Contractor grants the Employer a quality guarantee for the Subject of the Agreement for a period of ... months from the final commissioning of the Subject of the Agreement.
2. The Contractor shall be liable for physical and legal defects of the Subject Matter of the Agreement. The Contractor guarantees that the device will be free from material and manufacturing defects and that it has the guaranteed properties described in detail in the URS and other appendices to this Agreement.
3. The Contractor is liable under warranty for defects for a period equal to the warranty period.
4. Under the warranty and guarantee, the Contractor shall be obligated to remove defects and faults within 7 working days from the date of receipt of the notification sent by the Employer by post or electronically. The existence of defects and faults is recorded in a report.

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5. The Contractor undertakes to respond to service requests, i.e., to take corrective action (commencement of diagnosis and action plan with schedule) during the warranty period no later than 48 hours from the time of notification (on business days).
6. If, for reasons beyond the Contractor's control, it is not possible to meet the deadline referred to in section 4, it may be extended by the Employer upon the Contractor's written request.
7. In the event of failure to meet the deadline referred to in section 4 or the deadline set in the manner specified in section 6, the Employer reserves the right to commission another entity to remove these defects and faults at the expense and risk of the Contractor, regardless of the right to charge contractual penalties and supplementary compensation.

## **§ 10**

### **Confidentiality**

1. The Contractor undertakes to treat as confidential any data or information of a confidential or proprietary nature that is not generally known to the public, in tangible or intangible form, on any medium, regardless of whether it is marked as "confidential," "proprietary" or with any other similar designation, which a reasonable party should, given the nature of the information or the circumstances surrounding its disclosure, understand to be confidential, disclosed by the Employer ("Confidential Information"). Confidential Information includes, among other things, all technical and non-technical information related to the Employer's business and its products, including, but not limited to, ideas and concepts, information regarding research, development, engineering/design details, inventions, know-how, specifications, trade secrets, financial information, lists of customers/suppliers/employees, strategies, forecasts and business plans, internal operations and methods, sales information, marketing plans, and the existence and content of any negotiations or other discussions between the Parties.
2. The Contractor shall use Confidential Information solely in connection with the performance of the Subject Matter of the Agreement and shall not use, disseminate, or disclose Confidential Information to any third party, except for the Contractor's employees, associates, officers, consultants, contractors, and/or agents, intermediaries (collectively, the "Representatives") who are bound by a duty of confidentiality (including a professional duty of confidentiality or confidentiality agreements) at least as restrictive as this Agreement, on a "need-to-know" basis, solely in connection with the performance of the Subject Matter of the Agreement. The Contractor shall be liable for any violations of the provisions of this section by their Representatives.
3. The Contractor shall exercise the same degree of care as they use to protect their own Confidential Information, which shall be at least a reasonable degree of care, in order to prevent unauthorized disclosure of Confidential Information.
4. Confidential Information may not be reproduced in any form, except where strictly necessary for the performance of the Subject Matter of the Agreement. Any reproductions (including copies or summaries) of any Confidential Information of the Employer made by the Contractor shall remain the property of the Employer and shall include all information or legends regarding confidentiality or intellectual property that appear in the original.

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5. The Contractor shall be obligated to notify the Employer of any case of unauthorized disclosure, use, loss, or reproduction of Confidential Information immediately after becoming aware of such a case.
6. The Employer's Confidential Information is and shall remain the exclusive property of the Employer.
7. Nothing in this section shall be construed as granting the Contractor any intellectual property rights, by license or otherwise, to any Confidential Information of the Employer (or any part thereof or derivative thereof) or to any invention or any patent, copyright, trademark, or other intellectual property that has been or may be created based on such Confidential Information (or any derivative thereof).
8. The Contractor's obligations under this section, including the obligation of confidentiality, shall remain in force and effect for ten (10) years from the date of termination of the Agreement, even after the return or destruction of Confidential Information by the Contractor. If the Employer discloses information constituting a trade secret to the Contractor, such information shall be protected by the Contractor in accordance with the requirements of the Agreement indefinitely or for as long as such information remains a trade secret in accordance with applicable law.
9. Upon written request of the Employer, all documents and other materials related to Confidential Information, including any derivatives of such Confidential Information created by the Contractor (and all copies thereof) in the possession of the Contractor or their Representatives, must be immediately returned or destroyed (deleted if in digital form) at the discretion of the Employer, and in the event of destruction, it must be certified by an authorized representative of the Contractor.
10. The obligations arising from this section are not limited by territory.
11. The Parties agree that any breach of the provisions of this section may cause irreparable damage to the Employer, and that any legal remedy will be insufficient in the event of such a breach. To the extent permitted by law, the Employer shall be entitled to seek specific performance of the Agreement and to apply for both permanent and temporary collateral for claims and other compensation, without having to prove actual damage. The prevailing party in any legal or arbitration proceedings arising out of or in connection with the Agreement shall be entitled to reimbursement of the costs incurred in such proceedings, including reasonable legal fees and court costs.
12. The provisions of this section shall not apply to information which:
  - a. is widely known;
  - b. has been previously disclosed by the Employer or provided with an explicit exclusion of the obligation of confidentiality;
  - c. has been disclosed in accordance with mandatory provisions of law, based on a decision or ruling of a competent public authority.

## **§ 11**

### **Contractual Penalties**

1. The Contractor shall pay the Employer contractual penalties for the following reasons and according to the rates specified below:
  - a. for delay in performing the Subject of the Agreement in the amount of 0.2% of the net remuneration referred to in § 8(1) of the Agreement for each commenced day of delay;
  - b. for delay in removing defects and faults found upon commissioning of the Subject of the Agreement or during the warranty and guarantee period, in the amount of 0.2% of

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the net remuneration referred to in § 8(1) of the Agreement, for each day of delay counted from the date set for the removal of defects and faults;

- c. for withdrawal from the Agreement by either Party for reasons attributable to the Contractor, in the amount **of 20%** of the net remuneration referred to in § 8(1) of the Agreement.
2. Regardless of the contractual penalties referred to in section 1, the Employer shall have the right to claim damages in excess of the amount of the reserved contractual penalties, on general terms.
3. The Contractor agrees to the deduction of contractual penalties from the remuneration due to the Contractor.
4. The Parties agree that the written consent of the Employer is required for the effective transfer to third parties of the Contractor's claims against the Employer arising from the performance of the Agreement.

## **§ 12**

### **Amendments and termination of the Agreement**

1. Amendments to the Agreement must be made in writing under pain of nullity.
2. The Employer reserves the right to make significant changes to the provisions of the concluded Agreement in relation to the content of the offer on the basis of which the Contractor was selected, if it is beneficial to the Employer and could not have been foreseen at the time of signing the Agreement, in particular in the following areas and situations:
  - a. changes in European Union or national law affecting the performance of the Agreement (in particular changes in VAT rates);
  - b. changes to the Agreement completion date (both extensions and reductions):
    - i. in the event of changes to the Employer's project, including in particular changes concerning the deadlines for the performance of tasks or changes requiring the approval of the Intermediate Body (IB);
    - ii. due to force majeure, along with all consequences arising in connection with the extension of this deadline;
    - iii. for other reasons justified by circumstances beyond the Contractor's control or resulting from the Employer's justified needs.
  - c. changes to the subject of delivery in the event of unavailability of the ordered subject of delivery, which results from reasons beyond the Contractor's control (including in the event of withdrawal from the market by the manufacturer or discontinuation of production of the subject of delivery offered by the contractor), provided that the same or higher quality parameters as those originally offered are guaranteed. The price of the replacement cannot be higher than the price of the ordered device;
  - d. change in payment terms for the Contractor;
  - e. in the event of discrepancies or ambiguities in the understanding of the terms used in the Agreement that cannot be resolved in any other way, and the amendment will enable the removal of discrepancies and clarification of the Agreement for the purpose of unambiguous interpretation of its provisions by the Parties;

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- f. changes listed in section 3.2.4, item 4 of the Guidelines on the eligibility of expenditure for the years 2021-2027.
3. The Employer also provides for the possibility of making minor changes to the provisions of the concluded Agreement in relation to the content of the offer on the basis of which the Contractor was selected.
4. The Employer may terminate the Agreement with immediate effect if:
  - a. the Contractor violates their provisions and does not remedy the violation within an additional 7-day period set by the Employer;
  - b. the Contractor has not commenced performance of the Subject Matter of the Agreement without a valid reason;
  - c. the Contractor is declared bankrupt or restructuring proceedings are initiated against the Contractor.
5. In the event of termination of the Agreement, the Contractor shall, within 5 business days from the date of termination of the Agreement:
  - a. leave the site of performance of the Subject of the Agreement and remove the equipment and materials at their own expense;
  - b. shall draw up, with the participation of the Employer, an inventory report on the performance of the Subject of the Agreement (as at the date of termination), and shall secure the interrupted works at their own expense in the manner indicated by the Employer;
  - c. shall provide the Employer with all documents related to the Subject of the Agreement concerning the parts of the Subject of the Agreement completed to date Subject of the Agreement.
6. If changes to the Agreement are necessary, the Employer shall inform the Contractor thereof. Within 7 business days, the Contractor shall submit an offer to the Employer, informing them of the possibility of introducing such changes, their impact on the remuneration due to the Contractor under this Agreement, and the impact of the changes on the date of completion of the Subject of the Agreement.

### **§ 13**

#### **Compliance with the provisions of the MAR Regulation**

1. The Employer declares that they are a public company within the meaning of Article 4(20) of the Act of July 29, 2005, on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Journal of Laws of 2020, item 2080, as amended).
2. As the Employer is a public company, Regulation (EU) No. 596/2014 of the European Parliament and of the Council of April 16, 2014, on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC, and 2004/72/EC (Text with EEA relevance) (OJ EU L 2014.173.1. as amended) (the "MAR Regulation") applies to the Employer, including the provisions of Chapter 2 of the MAR Regulation concerning inside information as defined in Article 7 of the MAR Regulation ("Inside Information").

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3. Considering that, within the framework of cooperation between the Parties under this Agreement, the Contractor may come into possession of Confidential Information concerning the Employer, the Contractor acknowledges that the following actions concerning Confidential Information are prohibited:
  - a. use of Confidential Information or attempted use of Confidential Information,
  - b. recommending or inducing another person to use Confidential Information,
  - c. unlawful disclosure of Confidential Information,
  - d. market manipulation or attempted market manipulation ("Prohibited Acts").
4. The Contractor acknowledges that committing any of the Prohibited Acts may constitute a criminal offense punishable under Articles 180–183 of the Act of July 29, 2005, on Trading in Financial Instruments (Journal of Laws 2021, item 328, as amended).
5. The Contractor undertakes to comply with the provisions of the MAR Regulation to the extent that it applies to the Contractor in connection with the performance of this Agreement, in particular to comply with the provisions on Confidential Information contained in Chapter 2 of the MAR Regulation and to refrain from committing Prohibited Acts.

#### **§ 14**

##### **Performance bond**

1. To ensure proper performance of the Agreement, a performance bond in the amount of 5% of the remuneration referred to in § 8(1) of the Agreement, which amounts to PLN ..... (Say: PLN ..... ) is agreed upon.
2. The Contractor shall provide, no later than on the date of conclusion of the Agreement, a performance bond in one or more of the following forms:
  - a. money paid by bank transfer to the Employer's bank account no. ....
  - b. bank guarantees;
  - c. insurance guarantees.
3. Before submitting a bank or insurance guarantee, the Contractor shall present a draft document to the Employer for approval of its content. Performance bond provided in the form of a guarantee must meet at least the following requirements:
  - a. must include liability for all circumstances related to non-performance or improper performance of the Agreement (including coverage of accrued contractual penalties), without confirmation of these circumstances;
  - b. any changes, additions, or modifications to the terms of the Agreement or the subject matter of the order shall not release the guarantor from its liability under the guarantee;
  - c. its content should clearly indicate the guarantor's obligation to pay the entire amount of the performance bond;
  - d. should be irrevocable and unconditional and payable on first demand;
  - e. must clearly specify the term of the performance bond;
  - f. the name of the proceedings in question should be included in the text of the performance bond;
  - g. indication of the beneficiary of the performance bond;
  - h. in the case of a Contractor operating as part of a consortium, the Employer requires

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KRS No.: 0000744521, Tax Identification Number: 899-27-94-360, REGON: 364963245



that the performance bond covers (i.e., be binding on) all entities operating in the consortium.

4. The performance bond shall be used to cover any financial claims of the Employer against the Contractor arising in connection with the performance of the subject of the Agreement, in particular on account of:
  - a. application of contractual penalties;
  - b. the Employer's bearing the costs of replacement removal of defects during the warranty and guarantee period;
  - c. losses and damages incurred by the Employer due to the Contractor's fault;
  - d. third-party claims against the Employer arising from the Contractor's fault.
5. The Employer shall return the performance bond in the following parts:
  - a. 70% within 30 days of the date of performance of the subject matter of the Agreement and its acceptance by the Employer as duly performed;
  - b. 30% of the performance bond's amount, after deduction of any claims under the warranty and guarantee for defects – no later than on the 15th day after the expiry of the warranty and guarantee period for defects.
6. The Employer shall return the security deposit paid in cash in its nominal amount.

## **§ 15**

### **Copyright policy**

1. In the event that, during or in connection with the performance by the Contractor of their obligations under the Agreement, a work is created within the meaning of the Act of February 4, 1994, on copyright and related rights or replacing it ("Work"), the Contractor shall transfer to the Employer, as part of the remuneration specified in § 8(1) of the Agreement, all economic copyrights to the Work, as well as the rights to any information, research results, and studies made by the Contractor as part of the work on the Work. In each case, the transfer of economic copyrights is not limited by any time limit, condition, or territorial scope, and their transfer takes place in all currently known fields of exploitation, including in particular those listed in Article 50, Article 74(4), Article 86(1)(2) and Article 94(4) of the Act on Copyright and Related Rights, in particular in the following fields of use:
  - 1) permanent or temporary recording and reproduction, in whole or in part, by any means and in any form of the Work - production of copies of the Work by any possible technique, including printing, reprography, magnetic recording, or mechanical, digital, optical, laser, microwave, entering, displaying, using, transmitting, storing the Work, in particular in the memory of a device, computer network, telecommunications network or any other means of electronic communication;
  - 2) marketing of the original or copies, including electronic copies, on which the Work is recorded—all forms of marketing, transfer as part of a business, contribution as a non-cash contribution (in-kind contribution) to a commercial law company or civil law company, lease, encumbrance, license, loan, lending, or rental of the original or copies;
  - 3) distribution of the Work in a manner other than specified in item 2) above - public performance, exhibition, display, reproduction, broadcasting, and rebroadcasting (digitally

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BIOCELTIX S. A.

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or analogically, using Hertz waves, lasers, microwaves, with or without data compression, and webcasting, including near-on-demand webcasting and on-demand broadcasting), making the Work publicly available in such a way that anyone can have access to it at a place and time of their choosing, including communication and availability on devices, device networks, telecommunications networks, computer networks, or individual or mass electronic communications), in all types of media;

- 4) downloading data, secondary use of data in whole or in substantial part, in terms of quality or quantity, compiling, modifying the content of databases in terms of quality or quantity, adding to or deleting parts, translating, adapting, changing the layout or making any other changes to the Work;
  - 5) saving or reproducing in the memory of any media/means/devices, computers or computer networks (including, in particular, using the Internet or databases, internal networks such as Intranet), including publication on the Internet, in particular through the use or storage and enabling reading via websites, including as part of commercial activities carried out via computer networks (e-commerce);
  - 6) use in advertising or promotion, regardless of the form of advertising materials and their size, regardless of their quantity, circulation, production technique, and method of distribution;
  - 7) use in the content of any kind of notifications or applications submitted to public authorities, in particular in proceedings related to the protection of intellectual property rights, proceedings in the field of public aid and public procurement, in particular in order for the Employer to obtain protective rights to the Work (its elements) in any country, office, or protection system in the world, and the use of the Works as trademarks or other intellectual property rights throughout the world;
  - 8) use of the Work (or its elements) or its modifications as industrial property rights;
  - 9) use in industrial production;
  - 10) marketing products that use the Works.
2. The transfer of economic copyrights to the Work is accompanied by the right to create derivative works, the right to dispose of and use derivative works, and the exclusive right to authorize the exercise of derivative copyright (Articles 2 and 46 of the Act on Copyright and Related Rights) in the fields of use indicated above. The Employer may exercise these rights independently or authorize a third party to do so without obtaining the Contractor's consent.
3. The moment of transfer of the copyright to the Work to the Employer shall be deemed to be the moment of creation (origination) of the Work, even if it is in an unfinished form. The transfer of copyrights to the Work to the Employer shall not require any other actions. The Contractor undertakes to immediately release all materials, including source codes, enabling the Employer to exercise its copyrights without interference.
4. The Contractor undertakes not to exercise personal copyrights to the Work and declares and warrants that third parties entitled to personal copyrights to the Work will not exercise such rights in relation to the Employer, their legal successors, subsequent purchasers, and licensees, and in particular that they will not exercise their rights related to copyright supervision over the use of the Work.



5. In the event of new fields of use arising that were unknown on the date of conclusion of the Agreement, the Contractor shall transfer (and if this is not possible, undertakes to transfer) to the Employer the economic copyrights covering the use of the Works or their individual elements in new fields of use not specified in the Agreement, as part of the remuneration specified in § 8(1) of the Agreement. The Contractor undertakes not to transfer the economic copyrights to the Works to third parties without the prior consent of the Employer expressed in writing under pain of nullity.
6. The Employer shall not be obligated to use or distribute the Work to which they have acquired copyrights. If the Employer does not proceed with the distribution of the Work intended for distribution, the rights obtained by the Employer or the ownership of the Media on which the Work was recorded shall not revert to the Contractor, nor shall they be lost or limited, regardless of the duration of the Employer's failure to distribute the Work.
7. At the request of the Employer, the Contractor undertakes to prepare and provide the Employer, within 30 days, with a detailed list of Works and industrial property rights created during or in connection with the performance of the Agreement and, if necessary, to conclude a separate agreement with the Employer confirming the transfer of copyrights to the Works or, respectively, industrial property rights to the Employer.
8. With regard to intellectual property other than that referred to in the aforementioned items, including know-how, the Contractor also transfers to the Employer, and the Employer acquires all such rights to these items at the earliest moment permitted by applicable law (in particular, at the moment of creation, if this is permissible under applicable law) in exchange for the remuneration specified in § 8(1) of the Agreement.
9. It is the mutual intention of the Parties that the remuneration specified in § 8(1) of the Agreement shall comprehensively regulate the remuneration due to the Contractor from the Employer. The Contractor shall not be entitled to demand additional remuneration for any use by the Employer of intellectual property (including Works, know-how, and inventions) described in the Agreement, anywhere in the world and at any time.

## **§ 16**

### **Final Provisions**

1. Neither Party to the Agreement shall be liable for failure to perform their obligations under the Agreement if such failure was caused by force majeure. Force majeure shall be understood as external and extraordinary circumstances that occurred after the conclusion of the Agreement and which were impossible to predict, prevent, or avoid by the Party, and which objectively prevent or hinder the performance of this Agreement, in particular such as: war, riots, floods, earthquakes, epidemics, pandemics, states of epidemic threat, strikes, and official decisions of state authorities. The party experiencing an obstacle due to force majeure shall be obligated to immediately notify the other party of its occurrence.
2. The Contractor may not transfer the rights and obligations arising from the Agreement to a third party without the written consent of the Employer.
3. In matters not covered by this Agreement, the provisions of the Civil Code shall apply.
4. All disputes arising from the performance of the Agreement shall be settled by the parties through negotiation. If no agreement is reached through negotiation, any disputes shall be settled in

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Fundusze Europejskie  
dla Nowoczesnej Gospodarki



Rzeczpospolita  
Polska

Dofinansowane przez  
Unię Europejską



accordance with Polish law by a common court with jurisdiction over the Employer's registered office.

5. In the event of any discrepancies between the content of the Agreement and its appendices, the Parties shall give decisive importance to the Agreement.
6. The persons designated to agree and coordinate the implementation of this Agreement are:
  - a. on the part of the Employer: .....
  - b. on the part of the Contractor: .....
7. The change of persons referred to in section 6 shall be effected by written notification to the other party and shall not require an amendment to the Agreement.
8. The agreement has been drawn up in two identical copies, one for each Party.
9. The Agreement shall be concluded for the duration of the performance of the Subject Matter of the Agreement, taking into account the warranty and guarantee period referred to in § 9 of the Agreement.
10. The Agreement shall enter into force on the date of its signing by both Parties.
11. Appendices constituting an integral part of the Agreement:
  - a. Appendix No. 1: Request for proposal;
  - b. Appendix No. 2: Contractor's offer;
  - c. Appendix No. 3 - Qualification questionnaire for infrastructure component suppliers.

**EMPLOYER**

**CONTRACTOR**

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