**(amended on 2017-11-27)**

**DRAFT**

**Contract no. ………………...**

**entered into on............2017**

as a result of an open tender public procurement proceeding pursuant to Section 39 of the Public Procurement Act of 29 January 2004 (Dz. U. [Polish Journal of Laws] of 2015, item 2164, as amended) named: Purchase and Implementation of an Integrated Library Resource Management System. The task is being implemented as a part of the „OMNIS E-service” project, jointly financed as part of the Operational Programme Digital Poland out of the European Regional Development Fund and out of the national budget pursuant to the Financing Agreement no. POPC.02.01.00-00-0043/16-01

by and between:

The National Library [Biblioteka Narodowa], with its registered office in Warsaw (02-086) at al. Niepodległości 213, REGON [Polish Official Business Registry Number]: 000275955, NIP [Taxpayer Identification Number]: 526-16-67-036, hereinafter referred to as the "Contracting Authority",

represented by ……………………………………………………………………………………

and

………………………………………………………………………………………………………….., NIP: …………………., REGON:………..……., hereinafter referred to as the "Contractor",

registered with …………………………………………………………………………………………

represented by: ……………………………………………………………………………………

both hereinafter collectively referred to as the Parties or each of them individually as a "Party".

**§ 1**

**Definitions**

Wherever used throughout this Contract, the following terms shall have the following respective meaning:

1. Technical Documentation – documentation intended for administrators that pertains to the functioning and administration of the system.
2. User Documentation – documentation intended for the Contracting Authority's employees that pertains to the use of all the system's features.
3. System Delivery – allowing the Contracting Authority to access and perform operations in the system, such as the verification of the functioning of various features, and other operations.
4. System Configuration – entering system settings for the system's parts and/or components, in accordance with specifications provided by the Contracting Authority following the signing of the Contract. System Configuration shall allow the start of the operation of the system.
5. Data Migration - the transfer of data from the system hitherto used by the Contracting Authority and/or the by the libraries indicated by the Contracting Authority to the System that is the object of this Contract.
6. Final Acceptance – acceptance of the cloud access service in the SaaS model to be provided from 1 January 2019 to 30 September 2024 whose proper performance has been confirmed in the final acceptance protocol to be signed by the representatives of the Parties to this Contract.
7. Subscription Fee – the remuneration due to the Contractor for the provision of services in the SaaS model based on cloud computing on the Contractor's side.
8. Implementation Fee – the remuneration due to the Contractor for the delivery and configuration of the System and for data migration.
9. DOC – Description of the Object of the Contract that constitutes Attachment no. 2 to the Contract.
10. Force Majeure - shall mean an extraordinary event with an external origin, beyond the control of any of the Parties, occurring following the signing of this Contract. Such an event significantly hinders or precludes the performance of the task and in not related to negligence by any of the Parties. The event is impossible to predict and unpreventable even with utmost diligence exercised. Such an event shall include, but not be limited to a war, revolution, fire, natural calamity.
11. System – the integrated library resource management software system that constitutes the Object of the Contract.
12. System Administrator Training – training on the system administration and operation for the System administrators.
13. Contract – shall mean this contract along with the attachments thereto, which shall constitute its integral part.
14. System Implementation – configuring the delivered system in accordance with the specifications provided by the Contracting Authority following the signing of this Contract and the data migration from the hitherto used systems in accordance with the DOC that constitutes Attachment no. 2 to the Contract.

**§ 2**

**Object of the Contract**

1. The Contracting Authority hereby commissions the Contractor, and the Contractor agrees, to perform the Object of the Contract, namely, to deliver and implement the Integrated Library Resource Management System, hereinafter referred to as the "System", along with a cloud-based access service, in the SaaS (Software as a Service) model, and to provide a statutory warranty and contractual warranty for the System and to provide service support for the operation of the System.
2. The Contractor shall perform the Object of the Contract in accordance with the provided bid that constitutes Attachment no. 1 to the Contract, the Description of the Object of the Contract that constitutes Attachment no. 2 to the Contract and the provisions of this Contract.

**§3**

**Deadlines**

1. The Contractor shall perform the Object of the Contract referred to in Clause 2 above in the period from the date of signing of this Contract until 30 September 2024, in accordance with the following time schedule:
2. Phase I – by 30 June 2018 at the latest

Scope of the phase:

1. delivery of the Technical Documentation and User Documentation for the System
2. training of System administrators
3. delivery and configuration of the System
4. Phase II – by 31 December 2018 at the latest

Scope of the phase:

1. preparation of tools for data migration and data upload
2. migration of data of the National Library
3. Phase III – by 14 August 2019 at the latest

Scope of the phase:

1. implementation of the System at the libraries indicated by the National Library, in accordance with the DOC that constitutes Attachment no. 2 to the Contract.
2. Following the delivery and configuration of the System, the Contractor shall provide the service in the SaaS model, pursuant to the provisions of Clause 4.5 below, until 30 September 2024.
3. The deadlines for the performance of phases I and II of the Contract referred to in Clause 3.1 above may be subject to change only with the Contracting Authority's consent and in the following situations:
4. on the Contractor's request, on account of the occurrence of significant circumstances beyond the control of the Contractor that have a material effect on the performance of the Contract, subject to Clause 3.4 below,
5. in the event of force majeure that affects the performance of the Object of the Contract, subject to Clause 3.4 below,
6. on the Contracting Authority's request, on account of the occurrence of significant circumstances beyond the control of the Contracting Authority that the Contracting Authority r could not have predicted at the time of signing of the Contract despite exercising due diligence.
7. The Contracting Authority shall not have an obligation to consent to the extension of the deadlines for the performance of phases I and/or II if the Contractor does not provide the Contracting Authority, within three days from the date of occurrence of the circumstances referred to in Clauses 3.3.1 and 3.3.2 above, with a written request along with a statement of grounds substantiating the occurrence of the circumstances referred to in Clauses 3.3.1 and 3.3.2 above.
8. A change of the deadline for the performance of phases I and/or II set forth in the time schedule shall not constitute an amendment of the Contract, provided that such changes do not affect the deadline for the performance of phase III set forth in Clause 3.1.3 above.
9. Any change of the time schedule shall require the written consent of both Parties in order to be valid.

**§ 4**

**Obligations of the Parties**

1. The Contractor represents that it has the know-how and experience required for the proper performance of the Object of the Contract set forth in Clause 2 above.
2. The Contractor shall perform the Object of the Contract properly, in accordance with the applicable standards and with utmost professional diligence.
3. The Contractor warrants that the Object of the Contract shall be free from any physical or legal defects.
4. When performing the Contract, the Contractor may employ subcontractors, for whose actions it shall be liable as for its own actions. The Contractor represents that it shall exercise utmost diligence when choosing its subcontractors and shall ensure that they have the appropriate know-how, experience and resources for the proper performance of this Contract.
5. Under the SaaS model, the Contractor shall in particular ensure:
6. the provision of the hardware and software environment required for the proper functioning of the System in the scope consistent with the Contracting Authority's requirements,
7. access to features and the ability to use the software installed in the Contractor's hardware and software environment for up to 2500 user accounts,
8. the installation of patches and upgrades to newer versions of the software,
9. the administration and maintenance of system, tool and application software, including backups,
10. security with regard to events of security breaches by unauthorised users,
11. developer's supervision, to include:
12. the right to use newer versions of the software developed on the Contractor's initiative or as a result of user reports, which shall in particular include access to the current version adapted to changes to the domain systems,
13. access to the current User Documentation,
14. the ability to use the Contractor's helpdesk services in the scope of reporting, analysing, diagnosing and solving problems,
15. the right to use tools for remote recovery from malfunctions resulting from software errors,
16. the ability to submit proposals for modifications of the solutions.
17. The Contracting Authority shall cooperate with the Contractor for the purpose of proper performance of the Object of the Contract, in particular, the Contracting Authority shall provide all the necessary information and notify the Contractor promptly of any circumstances that affect the performance of the Contract.
18. If the Contract expires for any legal reason, the Contractor shall provide within 30 calendar days from the date of expiration of the Contract all the bibliographic data, at least in the following formats: MARCXML, ISO 2709 exchange format, JSON. The Contractor shall provide at the Contracting Authority's request all the other resources necessary to restore the library processes and the current status.
19. The Contractor shall provide the Contracting Authority will all the materials and work results, including the subcontractors' materials and work results, necessary for the proper use of the Object of the Contract and necessary for the acceptance pursuant to Clause 5 below.

**§ 5**

**Terms of acceptance**

1. The Contractor shall perform the Object of the Contract in a timely manner and in accordance with the time schedule referred to in Clause 3.1 above.
2. Upon the completion of each phase, the Contractor shall submit the results of that phase to the Contracting Authority so that the Contracting Authority may review them and perform the acceptance at the date set forth in the time schedule.
3. The Contractor shall notify the Contracting Authority of the submission of the results of the given phase for acceptance, via an e-mail with the given name and surname of the sender, sent to the following address …………..
4. Unless the Contracting Authority notifies the Contractor within 10 calendar days from the date of submission for acceptance of the results of the given phase of the identified irregularities within the meaning of Clause 5.12 below, the phase shall be deemed accepted without qualifications. The completion of the phase shall be documented in the "Unqualified acceptance protocol".
5. If the Contracting Authority notifies the Contractor within 10 calendar days from the date of submission for acceptance of the results of the given phase of the identified irregularities within the meaning of Clause 5.12 below, the Contractor shall redress the indicated irregularities within 10 business days from the date of provision of such notice by the Contracting Authority and shall resubmit for acceptance the results of the given Phase. Unless the Contracting Authority notifies the Contractor within 10 calendar days from the date of the above mentioned resubmission, the phase shall be deemed accepted without qualifications.
6. The notice referred to in Clause 5.5 above may take the form of a one-off or repeated communication of remarks and qualifications over the entire period stipulated for their reporting.
7. Following the unqualified acceptance of a phase, the Parties shall sign a phase acceptance protocol. The unqualified phase acceptance protocol shall constitute a basis for the issue by the Contractor of a partial invoice. The acceptance protocol shall be made in writing in two copies, one for each of the Parties.
8. The acceptance of the Object of the Contract in the scope referred to in Clause 3.1.3 shall be documented in the unqualified phase three acceptance protocol. The phase III acceptance protocol shall constitute the basis for the issue by the Contractor of the invoice for that part of the Contract.
9. The unqualified acceptance protocol shall be in each case signed by at least of the persons listed in Clause 11.2 below and by at least two of the persons listed in Clause 11.1 below.
10. The Parties represent that the only persons authorised to make the statements contemplated in the provisions of this Clause 5, in particular to signing unqualified acceptance protocols and sending the e-mails referred to in Clauses 5.3-5.8, shall be the persons referred to in Clause 11.1 below on behalf of the Contracting Authority and in Clause 11.2 below on behalf of the Contractor.
11. The notices referred to in this Clause 5 may take form of electronic mail, unless another form is stipulated as required. An e-mail shall be deemed duly sent at the time of delivery of the e-mail to the recipient's server. If problems occur with regard to electronic mail, any notices shall take the written form.
12. An irregularity shall be understood by the Parties as any shortcoming, physical or legal defect, non-compliance with the Contract of the Object of the Contract as performed or any of its elements, in particular:
13. a failure to deliver any of the System's features,
14. the non-compliance of any of the features with the provision of the DOC,
15. non-compliance with the SLA parameters and/or other System uptime terms,
16. a failure to provide the Technical Documentation and/or User Documentation,
17. a failure to conduct the required administrator training,
18. those pertaining to the processing of personal data.

**§ 6**

**Intellectual property rights**

1. The Contractor represents that:
2. it holds all the economic copyrights to the System, Technical Documentation and User Documentation, which are not encumbered by any third party rights;
3. the use of the System, Technical Documentation and User Documentation under this Contract does not require the obtaining of any consent, license or permit from any third party;
4. it has not transferred to any entity or third party the economic copyrights to the System and has not granted an exclusive license for the System;
5. the materials provided to the Contracting Authority for the purpose of performance of the Contract do not breach any third party rights, in particular any rights arising from the provisions of law governing economic copyrights, moral copyrights and neighbouring rights, rights arising from patents and inventions, registration of trademarks, utility models, technology improvement designs and trade secrets.
6. The Contractor hereby agrees not to transfer the economic copyrights to the System to any third party and not to grant an exclusive license thereto to any other party. In the case of a breach by the Contractor of the above stipulations, the Contracting Authority shall have the right to rescind this Contract with the effect referred to in Clause 10.9.
7. The economic copyrights to the User Documentation:
8. upon the delivery to the Contracting Authority of the User Documentation for the System referred to in Clause 3.1.1.(a) above, the Contractor shall transfer to the Contracting Authority, as a part of consideration for the contract remuneration, all the author’s economic copyrights and neighbouring rights thereto, including the, unlimited in terms of time and territory, right to use in various forms and shapes, as the need may be, and to any and all works, documents and other elements made in the course of making of the design documentation, in any form;
9. the Contractor hereby consents to the exclusive exercise by the Contracting Authority of the derivative rights to the above mentioned documentation.
10. the Contractor represents that starting from the transfer of the economic copyrights and neighbouring rights, the Contracting Authority shall have the exclusive and unlimited in time right to use the entirety of the documentation in any known and identifiable fields of use, in particular to:
11. record it on any medium,
12. to multiply it with the use of any technology, including copying and production of copies of the works of authorship or their elements, in their entirety or in part, with the use of digital technology, print, photocopy, as a magnetic record and to enter it into computer memory and computer and telecommunication networks, without limitations;
13. to introduce into trading, grant for gratuitous use, rent or otherwise make available copies of the works of authorship, in their entirety or in part and to disseminate the works of authorship in computer and telecommunication networks;
14. to disseminate it as hard copies, digital records and/or multimedia transmissions.
15. the Contractor shall also transfer to the Contracting Authority the ownership of the media on which the documentation is recorded.
16. the Contractor represents that the documentation made by the Contractor is a result of its own creative efforts and that it shall not breach any third party rights and that the rights to the documentation to the extent set forth in this Contract shall not be limited in any manner. The Contractor assumes liability for any results of any possible infringement of third party rights.
17. the Contractor warrants and represents that as of the date of delivery of the documentation, to the extent arising from this Contract, the Contracting Authority has no obligation to pay to any subcontractors and/or other parties holding neighbouring rights any remuneration that might be due to them, either directly or indirectly.
18. Licences (\*this provision applies if licences are granted):
19. upon the date of the delivery and configuration of the System, the Contractor shall grant to the Contracting Authority, as part of the contract fee, a non-exclusive license without limitations as to time or territory to ………………………….. (description of the licensed work of authorship), at least in the following fields of use:
20. entering the software into computer memory;
21. use of the software, in particular the display, application, transfer and storage of the software;
22. permanent or temporary multiplication of the software in its entirety or in any part, to the extent necessary to use the software;
23. the Parties agree that the license referred to in item 4.1 above shall be granted for 2500 users accounts of the System.
24. the Parties represent that the license shall be granted for an unlimited period, starting from the date of acceptance of the product to which the license applies. The Parties represent that with regard to the fields of use referred to in item 4.1 above, the Contracting Authority shall have the right to grant sublicenses to the libraries indicted by the Contracting Authority, in accordance with the DOC, without any limitation.
25. upon release to the Contracting Authority of an update to the System or Search Engine software, in accordance with the provisions of this Contract, such updates shall become the object of the license referred to in item 4.1 above, without the need for any further statement by the Parties.
26. the Contractor shall be liable for the compliance of its actions with the provisions of the Polish Act on Copyright and Neighbouring Rights of 4 February 1994.
27. the Parties represent that the rights to any and all data of the Contracting Authority and of the libraries named by the Contracting Authority and referred to in the DOC to be entered in the System, either through Data Migration or inputted later pursuant to the provisions of this Contract, shall be held by those respective entities.
28. the Contractor shall satisfy at its own expense any third party claims arising from any breach of such parties' moral copyrights, economic copyrights and/or any other rights if such claims arise as a result of the use of the works of authorship by the Contracting Authority, and, if such claims are satisfied by or adjudicated against the Contracting Authority, the Contractor shall reimburse by way of recourse, at the Contracting Authority's first request, the entirety of the satisfied claims and any related expenses, including the costs of the judicial, arbitration, administrative or settlement proceeding. The Contractor shall also accede, at its own expense, at the request of the Contracting Authority or of the relevant authority, to any pending judicial or non-judicial proceeding in which the Contracting Authority participates that arose as a result of the use of the works of authorship by the Contracting Authority.
29. should there be any consents, licenses or permits required for the proper use of the works of authorship, the Contractor shall promptly cover, at the Contracting Authority's request, any costs arising therefrom, including in particular the costs of remunerations and license fees. In the case of a breach of the above stipulation by the Contractor or the inability to obtain the relevant consents, licenses or permits, the Contracting Authority may rescind this Contract at the Contractor's fault with the effect referred to in Clause 10.4 below.

**§ 7**

**Entrusting the processing of personal data**

1. On account of the performance of the Contract, the Contractor shall gain access to or otherwise process personal data within the meaning of the Personal Data Protection Act. Accordingly, the Contracting Authority hereby entrusts the Contractor with the processing of the personal data in respect of which the Contracting Authority is the data administrator or which it processes under commission, solely for the purpose of performance by the Contractor of its contractual obligations and to the extent necessary to achieve that purpose.
2. Any terms related to the processing of personal data such as "data administrator", "personal data", "processing" and other terms shall be understood as they are defined in the provisions of law in force at that time, in particular in the Polish Personal Data Protection Act and its statutory instruments.
3. The Contractor shall process personal data in accordance with the provisions of the Personal Data Protection Act and its statutory instruments or any superseding laws. In particular, the Contractor shall apply technical and organisational measures ensuring the protection of the personal data in accordance with the threats and categories of data to be processed.
4. The personal data shall be entrusted to the Contractor for a time necessary to perform this Contract.
5. The Contracting Authority represents that it is the administrator of the personal data that it shall entrust to the Contractor. The personal data to be entrusted include information pertaining to individuals and/or institutions.
6. The Contracting Authority hereby entrusts to the Contractor the processing of personal data and the Contractor shall process the following categories of personal data/personal data files entrusted under this Contract:
7. email address,
8. address,
9. lending history,
10. full name,
11. institution name,
12. telephone number,
13. series and number of identity document.
14. The Contractor represents that it has the appropriate resources at its disposal, including appropriate protection measures, that allow it to process the personal data in accordance with the applicable provisions of the Polish Personal Data Protection Act and its statutory instruments. When processing the personal data referred to in this Clause 7, the Contractor shall secure such personal data by employing technical and organisational measures while processing such personal data.
15. When processing the personal data referred to in this Clause 7, the Contractor shall maintain the relevant records as required from an entity entrusted with the processing of personal data pursuant to the applicable provisions of Polish law.
16. The Contractor shall keep itself up-to-date with any developments regarding data protection regulations and adapt its data processing activities, in particular its internal procedures and personal data protection measures, to any updated legal requirements.
17. The Contractor shall keep secret any personal data that it might become aware of in connection with the performance of this Contract. The obligation to maintain secrecy shall continue following the expiration of this Contract. The Contractor shall also ensure that the obligation set forth in this Clause 7.10 is duly complied with by any persons and/or entities engaged by the Contractor to perform this Contract.
18. The Contractor shall be liable for any damage to any third party caused in connection with improper processing by the Contractor of the entrusted personal data.
19. The Contractor shall notify the Contracting Authority promptly of:
20. any legitimate request to disclose the personal data to a competent government authority, unless where legally prohibited to issue such a notice, in particular under the criminal procedure laws where the purpose of the prohibition is to ensure the confidentiality of a pending proceeding,
21. any unauthorised access to the personal data,
22. any event of breach of personal data secrecy or misuse of the personal data,
23. any activities in which it participates in any proceeding pertaining to personal data protection, in particular pending before the General Inspectorate for Personal Data Protection, government authorities, the Police or a court,
24. The Contracting Authority shall have the right to audit the performance of this Contract by way of spot checks regarding the protection of the personal data by the Contractor and requesting written explanations from the Contractor.
25. At the end of a check referred to in this Clause 7, the representative of the Contracting Authority shall prepare a protocol in two copies to be signed by the representative of both Parties. The Contractor may file remarks with regard to the protocol within five business days from the date of its signing.
26. The Contractor shall comply with post-check recommendations aimed at redressing any identified irregularities with regard to compliance with the provisions of the Polish Personal Data Protection Act and its statutory instruments.
27. Once the activities for whose purpose the entrusted personal data was processed have been completed, the Contractor shall, on each request of the Contracting Authority, delete any personal data entrusted by the Contracting Authority. The data shall be deleted permanently in order to prevent the retrieval of the personal data by third parties.
28. The Contractor may engage other persons/entities (the "subcontractors") for the purpose of due performance of this Contract only with the prior written consent of the Contracting Authority.
29. The Contractor shall ensure, in particular by way of stipulating relevant provisions in written contracts with its subcontractors, that the subcontractors shall employ and implement, prior to the commencement of their services, at least such data protection measures as the Contractor is required to employ under this Contract and that they shall comply with the requirements of generally applicable laws and that they shall ensure the safety of personal data processing at a level no lower than that employed by the Contractor.
30. The subcontractors may further entrust the provision of the services to other entities (the "Further Subcontractors"), but only with the prior written consent of the Contracting Authority. The Contractor shall specify the purpose and scope of the further subcontracting in the written request for consent to further subcontracting of services.
31. Furthermore, in the case of further subcontracting of services, the Contractor shall ensure and warrant, in particular by way of stipulating relevant provisions in the written contracts with subcontractors, that the Further Subcontractors shall employ and implement, prior to the commencement of their services, at least such data protection measures as the Contractor is required to employ under this Contract and that they shall comply with the requirements of generally applicable laws and that they shall ensure the safety of personal data processing at a level no lower than that employed by the Contractor.
32. The Contractor shall indemnify and reimburse the Contracting Authority for any expenses, costs, administrative fines or damages incurred by the Contracting Authority as a result of the processing of personal data by the Contractor and/or its subcontractors and/or further subcontractors in breach of the law and/or this Contract.

**§ 8**

**Remuneration and form of payment**

1. The total remuneration due to the Contractor for the performance of the entire Object of the Contract shall amount to ………………………. (say: …………………………………………) PLN net plus the VAT at the rate of ….., i.e. ……………. PLN (say: ………………………………………………..) PLN gross,

including:

1. for the performance of the Object of the Contract referred to in Clauses 3.1.1-3.1.3 above (implementation, training, transfer of intellectual property rights, grant of licenses): ………………………. (say: …………………………………………) PLN net plus the VAT at the rate of ….., i.e. ……………. PLN (say: ………………………………………………..) PLN gross,
2. for the performance of the Object of the Contract referred to in Clause 3.2 above (performance of the service in the SaaS model): ………………………. (say: …………………………………………) PLN net plus the VAT at the rate of ….., i.e. ……………. PLN (say: ………………………………………………..) PLN gross,
3. The above remuneration shall constitute the entire remuneration and shall not be subject to change, save for the provisions of Clause 15.1 below.
4. The remuneration referred to in Clause 8.1.1 above shall be payable in instalments, on the basis of invoices to be issued following the signing of an unqualified acceptance protocol for the given phase, in accordance with the following remuneration payment schedule:
5. For the completion of phase Ireferred to in Clause 3.1.1 above - 15 % of the remuneration referred to in Clause 8.1.1 above,
6. For the completion of phase IIreferred to in Clause 3.1.2 above - 15 % of the remuneration referred to in Clause 8.1.1 above,
7. For the completion of phase IIIreferred to in Clause 3.1.3 above - 70 % of the remuneration referred to in Clause 8.1.1 above.
8. The remuneration referred to in Clause 8.1.2 above (the subscription fee) shall be payable in instalments, in accordance with the following payment schedule:
9. For the service provided in the period from the date of acceptance of the Object of the Contract referred to in Clause 3.1.1 above (phase I) until 31 December 2018 – in the amount of ………………………. (say: …………………………………………) PLN net plus the VAT at the rate of ….., i.e. ……………. PLN (say: ………………………………………………..) PLN gross, on the basis of an invoice issued not earlier than on the date of commencement of the service,
10. For the service provided in the period from 1 January 2019 until 30 September 2024 – in the amount of ………………………. (say: …………………………………………) PLN net plus the VAT at the rate of ….., i.e. ……………. PLN (say: ………………………………………………..) PLN gross, on the basis of partial invoices issued for semi-annual periods.
11. The remuneration shall be in each case payable within 21 days from the date of delivery of the duly issued invoice to the registered office of the Contracting Authority.
12. The Contracting Authority shall pay the remuneration by wire transfer to the Contractor's bank account indicated in the invoice.
13. The payment shall be deemed made on the date on which the Contracting Authority's bank account is charged.
14. The Contracting Authority does not consent to the assignment of amounts payable under this Contract.

**§ 9**

**Statutory and contractual warranty**

1. The Contractor shall grant a statutory warranty covering physical and legal defects and a contractual warranty covering physical and legal defects until 31 December 2024 for the object of the contract. The period of the statutory and contractual warranty shall commence on the unqualified acceptance date of phase III of the Contract.
2. In the contractual warranty period, the Contracting Authority shall require the Contractor to provide warranty service. The warranty service shall be provided 24 hours a day, 7 days a week, in Polish or in English.
3. The contractual warranty shall cover:
4. functioning of the System in accordance with the Description of the Object of the Contract, which constitutes Attachment no. 2 hereto,
5. the Contractor's obligation to update the software free of charge
6. fixing errors in the System;
7. The Contractor shall not be liable under the contractual warranty or law or liable for damages for any results of the operation of the System in conditions of irregular operation of the IT system caused by defects in the Contracting Authority's hardware.

**§ 10**

**Liquidated damages**

1. If works contemplated in the given phase of the Time Schedule referred to in Clause 3.1 above are submitted for acceptance by the Contractor following the deadline for completion set forth in the Time Schedule for reasons on the part of the Contractor, the Contracting Authority shall charge liquidated damages from the Contractor amounting to 0.1% of the net contract value per each started business day of delay.
2. In the case of a failure to meet the agreed deadline for the re-submission to the Contracting Authority of a product phase free from irregularities for reasons on the part of the Contractor, the Contracting Authority shall charge liquidated damages from the Contractor amounting to 0.2% of the net Contract value per each business day of such delay.
3. The liquidated damages referred to in Clauses 10.1 and 10.2 above shall be first deducted from the Contractor's remuneration or from the Contract performance bond.
4. In the case of rescission of this Contract by the Contracting Authority pursuant to the provisions of the Contract for reasons on the part of the Contractor, the liquidated damages referred to in Clauses 10.1 and 10.2 above due for the delay until the date of rescission shall be due to the Contracting Authority as liquidated damages for rescission of the Contract by the Contracting Authority for reasons on the part of the Contractor.
5. The Contractor shall be liable for delay in performing the obligation to complete repairs in a timely manner, which shall be understood as the Contractor assuming liability on a risk basis, from which it may exonerate itself only through proving that the repair was not completed within the deadline for reasons on the part of the Contracting Authority or for reasons of force majeure:
6. The Contracting Authority shall charge liquidated damages from the Contractor for a failure to fix a critical error within the deadline set forth in the DOC in the amount of 700 PLN per each started hour of delay.
7. The Contracting Authority shall charge liquidated damages from the Contractor for a failure to maintain uptime levels in accordance with the provisions of the DOC. In the case of uptime level below 99,5% - in the amount of 3000 PLN per each started percentage point of insufficient uptime.
8. The Contracting Authority shall charge liquidated damages from the Contractor in the case of a breach of the rules of personal data protection or a breach of the rules of personal data processing - in the amount of 1000 PLN per each count of breach.
9. The Contracting Authority shall charge liquidated damages from the Contractor in the case of a breach of the confidentiality rule set forth in Clause 12.1 below - in the amount of 0.3% of the net contract value per each count of breach. These liquidated damages shall not aggregate with other liquidated damages stipulated in this Contract.
10. The Contracting Authority shall charge liquidated damages from the Contractor in the amount of 20% of the net contract value in the case of rescission of the Contract for reasons on the part of the Contractor.
11. The total amount of liquidated damages charged by the Contracting Authority under Clauses 10.1, 10.2, 10.5, 10.6 and/or 10.8 may not exceed 35% of the total net remuneration due to the Contractor under this Contract.
12. The Contracting Authority reserves the right to seek damages in excess of the amount of the liquidated damages stipulated in this Clause 10, up to the amount of the actual damage incurred, pursuant to the provisions of the Civil Code.

**§ 11**

**Contact persons**

1. The contact persons and persons responsible for the performance of the Contract, including the signing of Protocols, on the part of the Contracting Authority shall be:
2. …………………………email……………………tel……….,
3. …………………………email……………………tel……….,
4. …………………………email……………………tel……….,
5. …………………………email……………………tel………..
6. The contact persons and persons responsible for the performance of the Contract, including the signing of Protocols, on the part of the Contractor shall be:
7. …………………………email……………………tel……….,
8. …………………………email……………………tel……….,
9. …………………………email……………………tel……….,
10. …………………………email……………………tel………..
11. The appointment of other contact persons than those listed in Clauses 11.1 and 11.2 above shall require immediate notification of the other Party of such a change. The notification shall be made in writing. Until such time as the notification referred to in the preceding sentence is made, any correspondence duly delivered to the previous address of the contact persons shall be deemed duly delivered.
12. A change of the contact persons shall not require an amendment to this Contract.

**§ 12**

**Confidentiality**

1. During the term of this Contract and following its performance, termination or expiration for any other reason, the Contractor shall keep confidential and not disclose any information obtained from the Contracting Authority in connection with the performance of this Contract that pertain to the Contracting Authority's infrastructure and software currently used by the Contracting Authority and refrain from providing any third parties with any documents related to this Contract, irrespective of the medium on which they might be recorded.
2. The Contractor represents that it has and shall employ the means necessary to keep the confidentiality in accordance with the provisions of Clause 12.1 above.
3. The Contractor shall demand that its employees, counterparties and subcontractors comply with the confidentiality obligation in the scope set forth in Clause 12.1 above.
4. The business entity shall be liable for a breach of the confidentiality obligation by any of the persons referred to in Clause 12.1 above as for a breach by itself, irrespective of the reason.
5. The confidentiality obligation referred to in this Clause 12 shall not apply to any information:
6. that is publically available;
7. with regard to which the Contracting Authority has released the Contractor from the confidentiality obligation, with a proviso that such a release shall be made in writing or else be invalid;
8. that the Contractor has been ordered to disclose pursuant to generally applicable laws under a final and binding court decision or a final and binding decision of another public authority.

**§ 13**

**Rescission of the Contract**

1. The Contracting Authority shall have the right to rescind this Contract within 30 days from the Contracting Authority becoming aware of the occurrence of the following circumstances:
2. the Contractor has missed the deadline for the completion of phase III of the Contract by more than 30 business days; or
3. the Contractor has missed the deadline for the submission of the results of a phase for acceptance by 15 business days - the deadline for the rescission shall be 15 business days from the expiry of the above mentioned missed deadline; or
4. the Contractor has missed the deadline for the re-submission of the results of a phase for acceptance following the notification of irregularities by the Contracting Authority by 15 business days - the deadline for the rescission shall be 15 business days from the expiry of the above mentioned missed deadline; or
5. the Object of the Contract re-submitted for acceptance following the previous notification of irregularities by the Contracting Authority has incurable defects or the process of redress by the Contractor of the irregularities referred to in Clause 5.12 above does not bode well for the timely performance of the Contract; or
6. the liquidation of the Contractor's enterprise has commenced or the Contractor has been declared bankrupt; or
7. an attachment order is issued with respect to the Contractor's assets; or
8. a material change in circumstances has occurred as a result of which the performance of the Contract is no longer in the public interest, which could not have been predicted at the time of signing of the Contract (Section 145 of the Public Procurement Act)
9. The Contracting Authority shall have the right to terminate this Contract for reasons on the part of the Contractor, at any time and prior to the expiration of final deadline for the performance of the Contract if the Contractor:
10. has used any personal data entrusted to it by the Contracting Authority in a manner non-compliant with Clause 7 above,
11. has entrusted the processing of any personal data entrusted to it by the Contracting Authority to subcontractors without the Contracting Authority's written consent,
12. has not ceased, despite having been earlier requested to do so, to process improperly any personal data entrusted to it by the Contracting Authority,
13. issues a notification of its inability to continue to perform the provisions of this Contract pertaining to personal data processing.
14. A statement of rescission or termination of this Contract shall be made to the other Party in writing, or else be invalid.
15. A statement of rescission or termination of this Contract shall take effect upon its reaching the other Party so that it can familiarise itself with its content.

**§ 14**

**Contract performance bond**

1. Prior to the signing of this Contract, the Contractor has provided a Contract performance bond amounting to 10% of the gross Remuneration, i.e. …………… PLN.
2. The purpose of the performance bond is to satisfy claims arising from non-performance or improper performance of the Contract.
3. The Contracting Authority shall reimburse to the Contractor 70% (seventy percent) of the Contract performance bond referred to in Clause 14.1 above within 30 (thirty) days from the date of signing of the final acceptance Protocol.
4. The outstanding amount securing statutory warranty claims shall amount to 30% (thirty percent) of the amount of the Contract performance bond referred to in Clause 14.1 above and shall be reimbursed no later than 15 (fifteen) days following the expiration of the statutory warranty period.
5. If the Contract performance bond has been provided in cash, the Contracting Authority shall reimburse it along with interest arising from the bank account agreement for the bank account in which such funds were kept less the bank account fees and the bank's commission fee for the wire transfer to the Contractor's bank account.
6. The Contracting Authority may satisfy its claims out of the performance bond in full or in part, depending on the circumstances, in order to reimburse any damage incurred as a result of non-performance or improper performance of the Contract by the Contractor, provided that the additional conditions for seeking liquidated damages or damages have been met, if stipulated in the Contract.
7. The above shall be without prejudice to the Contracting Authority's right to seek the satisfaction of its claims pursuant to generally applicable rules.

**§ 15**

**Amendments to the Contract**

1. The Contracting Authority does not expect significant amendments to the provisions of this Contract from the provisions of the bid, unless such amendments involve a change in the amount of the flat remuneration due to the Contractor, which may be changed in the following cases:
2. in case of change in the Value Added Tax (VAT) rate, as appropriate to the change introduced,
3. changes in the amount of minimum wage or minimum hourly pay rate based on provisions of the Act of 10 October 2002 on the minimum wage,
4. changes in the rules on social insurance or health insurance or the rate of social security or health insurance contributions

- if these changes will affect the cost of performance of the contract by the Contractor, according to which the Parties agree, that changes to the applicable laws referred to in items (2) and (3) of this paragraph shall apply to persons performing the Object of the Contract, and at the same time the Contractor shall demonstrate to the Contracting Authority that such changes affect the cost of performance of the Contract by the Contractor. For this purpose, the Contractor is entitled to apply to the Contracting Authority for a change of remuneration, submitting relevant documents confirming the validity of the submission of such a request. In such a case, the Contractor shall show in the submitted application and the documents attached thereto that the change of generally applicable law has a direct impact on the costs of performance of the Object of the Contract and the extent to which the change has affected the amount of the Contractor's remuneration.

In case of the change referred to in item 1), the gross remuneration of the Contractor will be changed in accordance with the introduced change in the rate of VAT on goods and services. In case of the change referred to in item 2), the remuneration of the Contractor shall be changed by the value resulting from the increase of the remuneration of the persons performing the Object of the Contract up to the amount of the current minimum wage, taking into account rates of social security or health insurance contributions of the amount of minimum wage. In the case of the change referred to in item 3), the remuneration of the Contractor shall be changed in accordance to the change of the social insurance and health insurance rules or shall be changed by the increase resulting from the increase of the social security and health insurance contributions of persons performing the Object of the Contract to the amount of currently viable rates of social security and health insurance contributions. In case of the change in the remuneration provided for in this paragraph, this change shall take effect from the date on which the changes in the generally applicable law, which caused this change, enter into force.

1. Any amendment to the Contract shall be made only with the consent of both Parties, to be expressed in writing in the form of an annex to this Contract or else be invalid.

**§ 16**

**Miscellaneous**

1. The Parties provide the following addresses for service of process:
2. to the Contracting Authority: Biblioteka Narodowa, al. Niepodległości 213, 02-086 Warsaw,
3. to the Contractor: ………………………………………………………….,
4. Each of the Parties shall notify the other Party promptly of any change of its address, or else any letter sent to its previous address shall be deemed duly served.
5. Any dispute that might arise in connection with the signing and/or performance of the Contract shall be resolved amicably by the Parties or, if amicable resolution cannot be reached, the dispute shall be submitted to the common court of law having venue over the registered office of the Contracting Authority.
6. Generally applicable provisions of law, in particular the provisions of the Public Procurement Act, the Civil Code, the Personal Data Protection Act and the Act on Copyright and Neighbouring Rights, shall apply to issues not governed hereunder.
7. The following attachments to the Contract shall constitute an integral part of the Contract:
8. Attachment no. 1 – a copy of the Contractor's bid form
9. Attachment no. 2 – Description of the Object of the Contract
10. This Contract has been made in two identical counterparts, one for each of the Parties.

For the Contracting Authority For the Contractor

……………………………………… ……………………………………………..