

Agreement No.

Concluded on in Warsaw, by and between the State Treasury - Civil Aviation Authority, with its registered seat in Warsaw, 02-247 Warsaw, 2 Marcina Flisa Street, hereinafter referred to as the 'Employer', represented by:

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and

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entered into

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represented by:

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hereinafter referred to as the 'Contractor'.

In result of the public procurement procedure under the open tender, carried out pursuant to Article 39 of the Act of 29 January, 2004 - Public procurement law (Journal of Laws of 2010, No. 113, item 759 as amended), hereinafter referred to as the PPP, the agreement of the following content was hereby concluded:

§ 1

1. The subject-matter of the agreement is:

a. Granting the license by the Contractor to the Employer, on conditions of the license provided by the manufacturer or any authorized reseller for temporary use of software along with exam tests verifying knowledge of English language of the aviation personnel according to the following requirements:

- 1) ICAO – International Civil Aviation Organization specified in the Manual on the Implementation of ICAO Language Proficiency Requirements, published in 2010, Doc 9835, AN/453,
- 2) COMMISSION REGULATION (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council,

- 3) COMMISSION REGULATION (EU) No 805/2011 of 10 August 2011 laying down detailed rules for air traffic controllers' licenses and certain certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council,
constituting the Aviation Personnel Examination System - exam module verifying knowledge of English language, hereinafter referred to as the **SEPL-ET software** by the Employer and license for use the accompanied documentation to carry out the exams in the estimated number of 1 200 by the Civil Aviation Authority examiners within the entire duration of the agreement,
 - b. Performing installation, deployment and configuration of SEPL-ET software on the Civil Aviation Authority servers by the Contractor, specifications of the SEPL-ET software constitutes Appendix 1 to this agreement (Detailed description of the object of contract - Appendix 1 to the ToR),.
 - c. Carrying out trainings of the examiners, evaluators and SEPL-ET software administrators by the Contractor, according to detailed description of the object of contract (Appendix 1 to the ToR0 and offer of (Appendix 3 to the ToR). The trainings will be held in the seat of the Employer and include at least hours for each of the groups mentioned herein,
 - d. Updating SEPL-ET software by the Contractor along with documentation provided with this software within the entire duration of the agreement.
2. The subject-matter of the agreement specified in § 1(1)(a), (b), (c) shall be delivered not later than within 30 calendar days from the day of signing thereof by both parties.
3. This agreement terminates:
 - a. Upon 3 years from signing thereof or
 - b. Prior to the expiry of the period referred to in § 1(3)(a), upon exhausting of total value of remuneration for performance of the Agreement stipulated in § 3(1).
4. The Contractor states hereby, that all commissioned works will be delivered with due diligence in a manner ensuring the Employer the use of SEPL-ET software in compliance with the purpose of the agreement - i.e. effective and technically faultless carrying-out of exam tests within the entire duration of the agreement..
5. The Contractor states hereby that it has sufficient knowledge, skills and experience as well as technical, human and economic resources necessary to deliver the subject-matter of this agreement.
6. Acceptance of the installed SEPL-ET software as well as its deployment and configuration will be made under the acceptance protocol for the subject matter of the

agreement (template acceptance protocol constitutes Appendix 3 to the agreement) signed by both parties upon prior control of proper operation thereof.

7. Controlling proper operation of SEPL-ET software shall be commenced within 2 working days from the day of notifying of acceptance readiness by the Contractor and be completed within up to 5 working days starting from the day of commencement of control tests by the Employer. Notifying the acceptance readiness to the Employer shall be made in writing or via e-mail at the provided address of the Employer. The date of receiving the notification by the Employer shall be decisive.
8. Controlling proper operation of the SEPL-ET software shall be made by the representatives of the Contractor in presence of the designated employees of the Employer.
9. Shall the Employer fail to commence control of proper operation of the SEPL-ET software within 2 working days from the date of receiving acceptance readiness notification from the Contractor or fail to complete the control within 5 working days from the acceptance commencement - from the reasons at the side of the Employer, the Contractor is authorized to unilateral signing of the acceptance protocol.
10. Shall in the course of performing control tests any incorrectness in SEPL-ET software operation be stated, the time limits for performance of control tests, referred to in § 1(9), shall be suspended upon the errors are corrected, whereas upon resumption of this time limits, the parties have at least 2 working days for performing further control tests.

§ 2

1. The persons participating in the delivery of the contract being the subject-matter of this agreement are as follows:
 - at the side of the Employer:
 - 1) Tomasz Grzegorzcyk – Director of the Aviation Personnel Department,
 - 2) Zygmunt Cal – IT Division Head,
 - at the side of the Contractor:
 - 1) Project Manager -
 - 2)
2. Each change of the persons designated in § 2(1) within the entire duration of this agreement shall require notifying the other party in writing and be effective from the day of receiving of this notification by the other party. This change shall constitute no amendment to this agreement.

§ 3

1. Total remuneration value for performance of the agreement may not exceed EUR (say:.....) increased by the applicable VAT rate in force.
2. Remuneration specified in § 3(1) includes total amount due, which the Employer is obliged to pay to the Contractor for performance of the subject-matter of the agreement specified in § 1(1) within the period of 3 years, including all remunerations and fees, in particular remuneration for granting a license for using software and documentation, remuneration for installation, deployment and configuration of SEPL-ET software, its updating, maintenance, servicing and trainings as well as any other fees related to the performance of the subject-matter of the agreement.
4. Remuneration, referred to in § 3(1) shall be paid in installments on the dates agreed by the parties. Amount of individual installments shall be determined proportionally to the number of exams carried out using the SEPL-ET software based on periodic report drawn-up at least on quarterly basis by the Contractor and approved by the Employer. For the purposes of calculating the amount of individual installments it is assumed that the amount of remuneration for carrying-out a single exam is Remuneration for carrying-out the exam shall be paid subject to no errors and other technical failures during the exam.
5. The Employer assumes that within the entire duration of the agreement, app. 1200 exams shall be carried out using the SEPL-ET software. This number is of estimate nature and shall constitute no obligation of the Employer to carry out 1200 exams within this agreement.
6. The parties shall make settlements in EUR.
7. Any and all payments shall be made by the Employer via bank transfer on the bank account of the Contractor:
Bank account no.:.....
within 14 calendar days from the day of receiving VAT invoice by the Accounting Division of the Civil Aviation Authority.

§ 4

1. The Contractor obliges itself to provide the Employer with documentation of the SEPL-ET software, including in particular description of safety rules and regulations, documenting the system's confidentiality, specifying the rules of updating the exam test to ensure its compliance with the requirements stipulated in § 1 of this agreement for the entire duration thereof, use of the system by each group of the SEPL-ET software users

(i.e. administrators, examiners, evaluators), provided that such documentation should also include the requirements in the area of teleinformatic infrastructure.

2. The Contractor shall grant the Employer with the license for use the documentation, referred to in § 4(1); this license includes the right to copy documentation in the scope indispensable to use software by the Employer as well as administrators, examiners and evaluators within the entire period of the agreement.

§ 5

1. In the event of any delay of the delivery date of the subject-matter of the agreement specified in § 1(2) thereof:
 - a. Not exceeding 14 calendar days - the Contractor shall pay the contractual penalty amounting to 1% of the agreement value (specified in § 3(1)) per each day of delay to the Employer.
 - b. Exceeding 14 calendar days - the Contractor shall pay the contractual penalty amounting to 20% of the agreement value (specified in § 3(1)) per each day of delay to the Employer. If this is the case, the Employer reserves its right to immediately terminate the agreement by fault of the Contractor. In such case the Contractor shall receive remuneration for already delivered part of the agreement.
3. Contractual penalties, referred to in § 5(1)(a) and (b) shall not accumulate i.e. in the case, in which on conditions provided for in this agreement, the delay in delivery of the agreement specified in § 1(2) exceeds 14 calendar days - only the contractual penalty specified in § 5(1)(b) shall be due.
4. Payment of contractual penalty, referred to in § 5(1) shall not deprive the Employer the right to seek remedy for damages in the entire value thereof by claim for damage transferring the value of contractual penalty.
5. Contractual penalty shall be paid within the period not exceeding 14 calendar days from the day of providing by the Employer of a document (note) stating the imposition of contractual penalty. The Contractor is obliged to notify the Employer in writing on accepting the note. The Employer shall reserve its right to deduct the contractual penalty from remuneration due to the Contractor.
6. The provisions of § 5(1) shall not apply in the event, in which the delay in delivery of the subject-matter of the agreement was beyond the control of the Contractor.

§ 6

Pursuant to the provision of Article 145 PPP, in the case of presence of significant change of circumstances causing the performance of the agreement being not in public interest, which

was unpredictable as the agreement was concluded, the Employer may withdraw from the agreement within 30 calendar days from becoming aware of such circumstances. In such case the Contractor may claim for remuneration due for performance of the part of the agreement only and exclusively. Such remuneration will be paid within 14 calendar days from the date of submitting the statement of withdrawal from the agreement.

§ 7

1. Within the entire duration of the agreement, from the acceptance of subject-matter of the agreement, the Contractor guarantees proper operation of the SEPL-ET software, and in the event of identifying any defect or non-compliance of technical and exploitation parameters with the ones specified by the Employer in Appendix 1 to this Agreement (Detailed description of the object of the contract), the Contractor shall be obliged to remove them immediately, not later than within 48 hours from receiving such notification.
2. The Contractor shall be responsible before the Employer, subject to the provisions stipulated for in the Civil Code, for any damages, including expenditures, costs of proceedings and any other costs, including lost profits, provided that these result directly or indirectly from any defect or non-compliance of technical and exploitation parameters with the ones specified by the Employer in Appendix 1 to this Agreement (Detailed description of the object of the contract) or any delay in removing such defect or non-compliance.
3. Within the entire duration of this agreement, any defects in operation and exploitation of SEPL-ET software and non-compliance of technical and exploitation parameters with the ones specified by the Employer in Appendix 1 to this Agreement (Detailed description of the object of the contract) shall be removed by the Contractor at no charge.
4. Defects and non-compliance of technical and exploitation parameters of SEPL-ET software shall be reported to the Contractor at the provided email address, fax or telephone no. including brief description of the occurred defect and claim for repair. The Contractor shall oblige itself to accept the reports of defects or non-compliance Monday to Friday between 8.15 a.m. and 4.15 p.m. Any complaints shall be confirmed in writing, by fax or e-mail within 48 working hours. Contact address of the Contractor and Employer are specified in Appendix 4 to this agreement. Any change to address, e-mail address, fax or telephone number of the Contractor or Employer shall be effective from the moment of notifying the other party of this change in writing; such change shall constitute no amendment to this agreement.

5. The Contractor shall be obliged to respond to the report immediately upon becoming aware of this fact.
6. The guarantee shall cover no defects, which occurred by exclusive fault of the Employer, its employees and persons authorized by the Employer to use SEPL-ET software and defects occurred when using software incompatibly with rules and recommendations of the Contractor specified in the documentation provided to the Employer as well as by the persons not trained by the Contractor.
7. Time period necessary to restore complete operationability of SEPL-ET software may not exceed 2 working days from the day of receiving a report by the Contractor.
8. Upon removing SEPL-ET software defect, the Contractor obliges itself to update documentation and software re-installation within the period not exceeding 2 working days from defect removal as well as providing updated documentation to the Employer within this timeframe.

§ 8

1. The Contractor states hereby that it is authorized under property copyrights to grant the Employer with the license for use SEPL-ET software and accompanying documentation - being the subject-matter of this agreement and that the granted license infringes no rights of any third persons.
2. The Contractor, within remuneration, referred to in § 3(1) of this agreement, as signed the acceptance protocol for the subject-matter of the agreement without reservations, provides the Employer with the license for using SEPL-ET software on conditions of the license granted by the manufacturer or authorized reseller. The license authorizes the Employer to use SEPL-ET software on its own behalf and needs in the areas and according to the rules specified in this Clause. The license covers also any corrections and updates developed by the manufacturers or authorized entity, within the entire duration of this agreement. To the rules and regulations of using software being the subject-matter of this agreement, the provisions of this agreement and of the act on copyrights and related rights shall apply.
 - 1) The license provided by the Contractor authorizes the Employer to use software on hardware owned or used by the Employer in the following areas of exploitation:
 - a) installed on the Civil Aviation Authority's servers,
 - b) use on workstations in the Examination Centers of the Civil Aviation Authority at the territory of the Republic of Poland and mobile devices (laptops) at the

territory of the Republic of Poland outside the seat of the Civil Aviation Authority and in the Examination Centers,

- 2) The license shall be effective upon signing the acceptance protocol for the subject-matter of the agreement for the period of three years upon exhausting the amount of remuneration specified in § 3(1) of this agreement.
- 3) The Employer states hereby that it shall grant no rights to use the license provided by the Contractors.
- 4) The Contractor confirms that it holds the rights to exploit the license and confirms that there are no obstacles to prevent granting a license authorizing to legal use of the software and accompanying documentation by the Employer, on conditions provided for in this agreement.
- 5) The Contractor shall relieve the Employer from any responsibility for any possible claims of any third parties occurred due to false statements contained in this agreement. In case of satisfying such claims by the Employer, the Contractor, on request of the Employer, shall reimburse the amount of paid claims and of any related expenditures, both direct and indirect, including costs of legal services, judicial proceedings, arbitration, etc. The Contractor may lessen remuneration due to the Contractor for this agreement by these costs.
- 6) The Contractor obliges itself to cover any damages covering the costs of installation, deployment and configuration of new software and training of employees of the Employer in the case, in which due to legal defects, the Employer is forced to cease using software being the subject-matter of this Agreement.
- 7) The activities provided for in Article 74(4)(1) and (2) of the Act of 4 February, 1994 on copyright and related rights (Journal of Laws of 2006, No. 90, item 631 as amended) shall require no consent of the Contractor in the area specified in Article 75(1) thereof.

§ 9

The Contractor and persons acting on its behalf in the area of delivery of the subject-matter of this agreement, are obliged to keep confidential any protected information pursuant to the legislation in force at the territory of the Republic of Poland in the meaning of the Personal data protection act (Journal of Laws of 2002, No. 101, item 926 as amended). The Contractor obliges itself to take any necessary measures to ensure that this information will be not revealed to any third persons without prior consent of the Employer, unless the obligation

of providing such information is requested by the authorized entity on the basis and in the scope specified by the provisions of law commonly in force.

§ 10

1. The Employer reserves its right to terminate the agreement in the case of failure to obtain the funds for this purpose from the state budget in the years 2014 - 2016.
2. Any amendments to this agreement shall be made in writing unless being null and void, subject to the conditions provided for in Article 144 PPP (Journal of Laws of 2013, No. 113, item 759 as amended).
3. The Employer shall allow for the amendments of the concluded agreement in the event of statutory change of VAT rate.
4. In addition, the Employer shall allow for an opportunity to amend the agreement in the scope resulting from changes to the exam tests requirements.
5. For the purposes of this agreement, working days shall be understood as the days from Monday to Friday.

§ 11

1. This agreement shall be governed by the law of Poland, including Public procurement law act, Civil Code and the Act of 4 February, 1994 on copyrights and related rights (Journal of Laws of 2006, No. 90, item 631 as amended).
2. Any disputes which may arise from the execution of this agreement shall be decided by the common court in Warsaw of local jurisdiction for the Employer.

§ 12

This agreement was drawn-up in three counterparts, two copies for the Employer and one for the Contractor.

Employer

Contractor

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Appendices to the agreement:

Appendix 1: Detailed description of the object of the contract (Appendix 1 to the ToR).

Appendix 2: Complete proposal form.

Appendix 3: Template acceptance protocol.

Appendix 4: Contact data of the Contractor and Employer.