

Attachment No 4 to SWZ

Contract No/260/2023

Concluded on between:

Świętokrzyskie Oncology Center, an Independent Public Health Care Facility in Kielce, based in Kielce, ul. Artwińskiego 3 (code no.: 25-734), REGON: **001263233**, NIP: **959-12-94-907**, registered in the National Court Register - in the register of other social and professional organizations, foundations and independent public health care facilities under number 0000004015, kept by the District Court in Kielce, 10th Commercial Division of the National Court Register and registered in the register of medical entities under the number 00000014611 kept by the Voivode of the Świętokrzyskie Voivodeship, hereinafter referred to as the "**Ordering Party**" in the content of the contract, on whose behalf the following acts:

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and

[ProteoGenix SAS](#)

based in [19, rue de la Haye 67300 Schiltigheim France](#), ul., (code number:), REGON:, NIP: [FR2744473717](#), registered in [RCS Strasbourg 03 B 124](#)..... hereinafter referred to as the "**Contractor**", on whose behalf the following acts:

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The parties unanimously declare that the contract was concluded on the terms set out in the Act of September 11, 2019 - Public Procurement Law on the basis of the winning procedure in the basic mode, variant one of on the terms specified in the procedure.

The parties concluded an agreement as follows:

§ 1

Subject of the contract

1. The subject of the contract is **the preparation and delivery of a domain recognizing the CD19 antigen using phage display technology for the Department of Genetic Engineering as part of the CAR-NET project**, in accordance with the description of the subject of the order indicated in Annex 1 to the contract, constituting its integral part.
2. The Ordering Party entrusts and the Contractor accepts for performance the subject of the contract specified in section 1.
3. The contract is concluded for a period of **1 month** from the date of signing the contract.
4. The specification of the terms of the order together with the annexes and the Contractor's offer constitute an integral part of this contract.

§ 2

Delivery

1. The Contractor undertakes to deliver the entire product range referred to in § 1 once within **±2 months** from the date of conclusion of the contract, i.e. by:
 - a. at the expense and risk of the Contractor,

- b. transport of the Contractor to the Ordering Party on working days, i.e. from Monday to Thursday from from ~~7.00 to 14.00~~, on Fridays ~~until 12.30~~.
- The Contractor undertakes to unload the goods by its own employees, and if the Contractor uses the services of transport companies, by an employee of this company from the car to the Genetic Engineering Plant of ŚCO in Kielce.
 - If the Contractor fails to deliver the order and an urgent purchase is necessary, the Ordering Party will purchase the missing goods from another supplier, ~~charging the Contractor with the price difference between the contract price and the purchase price from another supplier.~~
 - The Ordering Party shall provide the necessary organizational conditions enabling access of the Contractor's employees to the Ordering Party's premises - to the extent necessary to perform this contract.
 - ~~If damage to the goods occurs during transport, the Contractor is responsible for the damage.~~
 - ~~The quantity and quality of the delivery will be accepted by an employee of the Genetic Engineering Department of ŚCO in Kielce.~~
 - ~~The person responsible for the implementation of the contract on the part of the Ordering Party is~~ tel.

§ 3

Quality requirements

- The Contractor guarantees high quality of the delivered products that are the subject of the contract.
- The Contractor guarantees that the delivered subject matter of the Agreement will comply with the requirements set by the Ordering Party contained in the SWZ and annexes.
- The Contractor is not liable for any defects in the subject of the contract resulting from improper conduct of the Ordering Party, i.e. conduct inconsistent with the manufacturer's instructions.
- The Contractor ensures that he will deliver complete products of a high quality standard.
- The delivered goods must have labels enabling identification of the products.
- ~~At the request of the Ordering Party, the Contractor, within 7 days from the date of receipt of the written request, is obliged to submit marketing authorizations for the subject of the order issued by the competent Minister of Health, the Council or the European Commission, if required.~~

§ 4

Płatności i ceny

- For the performance of the contract, the Ordering Party will pay the Contractor the price: EUR 39 780 (in words: thirty-nine thousand seven hundred and eighty euros).
- The price of the subject of the contract includes its value, all taxes specified by law and other costs related to the implementation of the contract listed in § 2, including transport costs to the registered office of the Ordering Party.
- Payment for the performance of the subject of the contract will be made on the basis of a VAT invoice after the protocol acceptance of the correct performance of the subject of the contract, within ~~.....~~ 30 days from the date of issuing the invoice to the Ordering Party. The payment date should be entered on the VAT invoice.
- Electronic invoices sent to the e-mail address: finanse@onkol.kielce.pl will be accepted.
- The Ordering Party authorizes the Contractor to issue an invoice without the signature of an authorized person.
- If, as a result of the implementation of the contract, the Ordering Party becomes liable to tax under tax regulations on goods and services, the amount of VAT due will be settled with the tax office by the Ordering Party in accordance with applicable regulations. If the Contractor adds undue VAT to the net remuneration, the Ordering Party will reduce this remuneration by the amount of VAT that it is obliged to settle instead of the Contractor under the provisions on tax on goods and services.
- The Contractor undertakes to fulfill the statutory obligation to indicate the tax due in the VAT return
- for issued invoices covered by the Agreement in question. Moreover, the Contractor declares that the origin of the goods that are the subject of the contract is legal and, according to his knowledge, he does not participate in chains of transactions aimed at extorting VAT from the state budget.

Z komentarzem [V1]: Prepayment is required.

§ 5 Complaints

1. If a defect is found in the subject of the Agreement during the warranty period, the Contractor will be obliged to replace the defective product with a defect-free one free of charge within 10 business days of receiving the complaint (submitted by phone and confirmed by e-mail).
2. Upon receipt of the goods, the ordering party checks the quantitative compliance with the invoice. Filing a quantity complaint by the Ordering Party is tantamount to non-delivery of the goods.
3. Quality complaints will be reported by the Ordering Party immediately after identifying quality defects of the product.
4. The costs of settling quantitative and qualitative complaints shall be borne by the Contractor.
5. Failure to respond to the submitted complaint and fail to comply with its requirements within the deadline specified in section 1 entitles the Ordering Party to engage other legal or natural persons (so-called substitute performance) in order to deliver the goods in accordance with this contract. The costs of the so-called substitute performance will be charged to the Contractor in the amount of the difference between the costs of substitute performance (including transport, unloading and other costs necessary for the proper performance of the subject of the contract) and the purchase costs under the concluded contract.

Z komentarzem [V2]: Could you give us the framework of what can be considered as defective?
Thank you.

§ 6 Contractual Penalties

- ~~1. The Parties agree on liability for non-performance or improper performance of contractual obligations in the form of contractual penalties in the following amounts:
 - ~~a. in the event of withdrawal from the contract for reasons attributable to the Contractor, the Contractor will pay the Ordering Party a contractual penalty of 10% of the net price,~~
 - ~~b. in the event of delay in the performance of the subject of the contract for reasons attributable to the Contractor, the Contractor will pay the Ordering Party a contractual penalty of 2% of the net price for each day of delay.~~~~
- ~~2. The Contractor's total and total liability for contractual penalties, regardless of the legal basis for claiming these penalties, is 20% of the net price.~~
- ~~3. The payment of contractual penalties does not release the Contractor from the obligation to perform the contract. The Ordering Party reserves the right to deduct any contractual penalties due from the remuneration due to the Contractor. The Ordering Party will notify the Contractor in writing about the deduction.~~
- ~~4. The Ordering Party has the right to claim compensation exceeding the agreed amounts of contractual penalties~~
- ~~5. on general rules.~~
- ~~6. The Ordering Party has the right to demand interest on late payment of contractual penalties.~~

§ 7 Withdrawal from the Agreement

1. Zamawiający może odstąpić od umowy:
 - 1) w terminie 30 dni od dnia powzięcia wiadomości o zaistnieniu istotnej zmiany okoliczności powodującej, że wykonanie umowy nie leży w interesie publicznym, czego nie można było przewidzieć w chwili zawarcia umowy, lub dalsze wykonywanie umowy może zagrozić podstawowemu interesowi bezpieczeństwa państwa lub bezpieczeństwu publicznemu;
 - 2) jeżeli zachodzi co najmniej jedna z następujących okoliczności:
 - a. dokonano zmiany umowy z naruszeniem art. 454 uPzp. i art. 455 uPzp,
 - b. Wykonawca w chwili zawarcia umowy podlegał wykluczeniu na podstawie art. 108 ustawy Pzp,
 - c. Trybunał Sprawiedliwości Unii Europejskiej stwierdził, w ramach procedury przewidzianej w art. 258 Traktatu o funkcjonowaniu Unii Europejskiej, że Rzeczpospolita Polska uchybiła zobowiązaniom, które ciążyą na niej na mocy Traktatów, dyrektywy 2014/24/UE, dyrektywy 2014/25/UE i dyrektywy 2009/81/WE, z uwagi na to, że Zamawiający udzielił zamówienia z naruszeniem prawa Unii Europejskiej.
2. Odstąpienie od umowy powinno nastąpić w formie pisemnej pod rygorem nieważności i powinno zawierać uzasadnienie.

3. Odstąpienie od umowy nie powoduje utraty przez Zamawiającego prawa do żądania zapłaty kar umownych, ani nie pozbawia Zamawiającego uprawnień wynikających z nabytych licencji.

§ 8

Final Provisions

1. Without the consent of the entity creating the Ordering Party, the Contractor may not perform any legal action aimed at changing the creditor, in particular conclude a surety agreement in relation to the obligations of the Ordering Party.
2. The Contractor may not perform his obligations through third parties who, pursuant to Art. 108 of the Public Procurement Act are excluded from applying for public procurement. A culpable violation of the above-mentioned provisions constitutes the basis for the Ordering Party to withdraw from the contract.
3. In matters not regulated in this agreement, the following shall apply:
 - 1) relevant provisions of the Public Procurement Law together with implementing acts to this Act,
 - 2) relevant provisions of the Civil Code.
4. It is prohibited to change the provisions of the concluded contract in relation to the content of the offer on the basis of which the Contractor was selected, unless the Ordering Party provided for the possibility of making such a change in the contract notice or in the terms of reference and specified the conditions for such a change.
5. The contract may be changed in the following situations:
 - 1) changes in tax regulations regarding changes in the VAT rate. If a change in the VAT rate is introduced, the VAT rate, VAT value and gross value will change, the net value remains constant throughout the duration of the contract,
 - 2) occurrence of changes in generally applicable legal provisions to the extent affecting the implementation of the contract - in the scope of adapting the provisions of the contract to changes in legal provisions,
 - 3) delays in the implementation of the contract, if such a change is beneficial to the Ordering Party or is necessary for the proper implementation of the subject of the contract,
 - 4) changes in the name and legal form of the Parties - in terms of adapting the contract to these changes,
 - 5) occurrence of force majeure (force majeure - an event or combination of events objectively beyond the control of the Parties, which substantially and significantly impede the performance of part or all of the obligations arising from the contract, which the Parties could not have predicted and which they could not prevent or overcome and counteract by action with due diligence generally provided for civil law contractual relationships) - in terms of adapting the contract to these changes,
 - 6) in the scope of extending the deadline for completing the subject of the contract if, for organizational reasons, it was not possible to commence the execution of the order within the time specified by the Ordering Party,
 - 7) in the scope of changes to the subject of the contract and replacing it with a product of equivalent or higher quality, in the case of:
 - a. ceasing the production of the product covered by the contract, including a temporary suspension of production, making it impossible to meet the deadline for the execution of the contract, provided that the price of the product supplied as a replacement does not affect the remuneration for the contract and the Contractor proves that the product to be delivered the substitute is of equivalent or higher quality,
 - b. the manufacturer places a modified/improved product on the market, provided that this does not affect the remuneration of the contract,
 - c. for reasons resulting from the need to ensure compatibility or interoperability with the solutions used by the Ordering Party, if the lack of change may result in significant inconvenience on the part of the Ordering Party.
6. Any changes to the provisions of the contract may be made with the consent of both Parties expressed in writing under pain of invalidity of such a change, with the exception of a change in the VAT rate, which is effective on the date of entry into force of the relevant provisions. The Ordering Party provides for the following rules for carrying out the contract amendment procedure:
 - 1) the party requesting a change to the contract submits the request to the other party, including the scope of the change and justification,
 - 2) within 10 days, the party that received the request responds to its content, if necessary, presenting a different proposal as to the content of the change,
 - 3) no later than 30 days from the date of submission of the application, the parties will conclude an annex to the contract, if agreed, or complete the procedure for amending the contract if there are no grounds for changing the contract or the parties do not agree on the content of the annex.

7. The Contractor declares that it conducts its business in a responsible manner, complies with legal provisions, in particular provisions on counteracting corruption, money laundering and terrorism financing, provisions on compliance with employee rights, provisions on compliance with occupational health and safety rules, fire protection regulations, law competition protection, property protection regulations and environmental protection regulations, and exercises due diligence in verifying its employees, associates, subcontractors or persons with the help of whom it will provide deliveries to the ordering party, in the above scope.
8. If the ordering party reports any doubts regarding compliance with the above-mentioned rules by the contractor or his employees, associates, subcontractors or persons with the help of whom he will provide deliveries, the Contractor will take corrective actions to remove them.
9. Disputes arising from the implementation of this contract will be resolved by the court competent [for the registered office of the Ordering Party in Germany](#).
10. This agreement has been drawn up in two identical copies, one for each party.

Annexes to the contract:

- Annex No. 1 – Description of the subject of the order – offered parameters
- Annex No. 2 – Contractor's offer

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the **Ordering Party's** signature

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Contractor's signature