Attachment 2

**AGREEMENT TEMPLATE**

Concluded on … 2021 in Ożarów Mazowiecki, Poland, by and between:

**VIGO System S.A.** with its registered seat in Ożarów Mazowiecki, Poland, a company incorporated under the laws of Poland, 129/133 Poznańska Street, 05-850 Ożarów Mazowiecki, Poland, entered into the Register of Entrepreneurs of the National Court Register maintained by the District Court for the Capital City of Warsaw in Warsaw, XIV Commercial Division of the National Court Register, under KRS no. 0000113394, having NIP no. 5270207340, REGON no. 010265179, with share capital of PLN 729,000.00 (fully paid),

hereinafter referred to as: “VIGO” or “Contracting Party”, represented by:

* Łukasz Piekarski – Member of the Management Board

and

* …………………..

hereinafter referred to as: “Contractor”,

VIGO and the Contractor shall be individually referred to as “Party” and jointly as “Parties”.

Considering that the Contractor has won the bid tender procedure conducted by VIGO on a fair trade basis, i.e. submitted the best offer in response to the Request for Proposal No. SDM-WS/43 of 20th February 2021 (hereinafter referred to as: "Offer" and "Request for Proposal"), and the offer was chosen by VIGO, Parties concluded the following agreement:

**§1**

**Subject of the Contract**

1. Under this agreement the Contractor shall provide, within the scope of its business activity, a service of SIMS depth profiling for chosen elements (O, Si, Zn, As, Al, C, P, In, Ga) in the epi-layer structures, necessary for a comprehensive implementation by the Contracting Party of a project named “Production technology of innovative epitaxial structures for photonics and VCSEL laser devices” as part of the Path for Mazovia / 2019 competition, application number: MAZOWSZE / 0032 / 19 Agreement of November 21, 2019, No. MAZOWSZE / 0032 / 19-00 concluded with the National Center for Research and Development, and VIGO shall pay renumeration to the Contractor.
2. **Detailed purview of the subject of the order:**

* 20 depth profiles of III – V semiconductors epi-layers;
* thickness need to be analyzed up to 10 µm;
* analysis of potential segregation of matrix atoms and contaminations at the interfaces with in-depth resolution of 1 nm;
* lateral analysis of the homogeneity of the interfaces with in-depth resolution of 2 nm.

|  |  |
| --- | --- |
| Action type | Parameter/Function |
| Thickness analysis | - up to 10 µm |
| Analysis of potential segregation of matrix atoms and contaminations at the interfaces | - characterization of the interfaces with in-depth resolution of 1nm |
| Lateral analysis of the homogeneity of the interfaces | - profiling with in-depth resolution of 2nm |

1. **SIMS depth profiling contains 20 separate depth profiles of epi-layers structures delivered by the Ordering Party.**
2. The Contractor shall provide to the Contracting Party, in the term indicated in §3 section 1 and 2, the results of the subject of the Contract in the form of report of performed analysis, in form of an Excel or txt. data, sent to an e-mail address: [wstrupinski@vigo.com.pl](mailto:wstrupinski@vigo.com.pl).

**§2**

**Statements and Parties’ liabilities**

1. The Contractor declares, that he has got acquainted with technical and legal conditions of the subject of the Contract and he possess experience and qualifications necessary for proper performance of the Contract and the Contractor undertakes to perform the Contract with due diligence.
2. The Contractor undertakes to maintain due diligence while performing the subject of the Contract. The Contractor shall be obliged to repair any damage resulting from non-performance or undue performance of the Contract, unless the damage results from circumstances, for which the Contractor is not at fault.
3. The Contracting Party shall be obliged to cooperate with the Contractor when it comes to perform the Contract and to provide any information necessary for proper provision of the service.
4. The Contractor shall keep the Contracting Party informed, providing all information connected with performing of the Contract.

**§3**

**Term of performance of the Contract**

1. Term of performance: 5 months since the day of signing the Contract.
2. The Contract shall provide results of the subject of the Contract to the Contracting Party, in a form of report (Excel or txt. data), sent to the e-mail address indicated in §1 section 4 above, in the term of 5 working days from receipt of each particular structure or a group of structures.
3. The Contracting Party shall transfer all documents and information necessary to perform the subject of the Contract within 3 days from the day of signing the Contract.
4. The Contractor shall inform the Contracting Party immediately about all the circumstances that might have an impact on failure to perform his duties or that might have an impact on failure to comply with the time limit. Aforementioned information shall not relieve the Contractor of his responsibility for timely and due performance of the Contract.
5. Due performance of the Contract shall be confirmed with the acceptance protocol, attached as appendix 1.
6. In case of submitting comments on the subject of the Contract by the Contracting Party, the Contracting Party draws up comments in document form (scan of the writing), indicating the reasons, however not later than within 3 working days since delivery of the subject of the Contract. If in aforementioned term the Contracting Party would not submit any comments, the subject of the Contract shall be deemed to be approved.
7. In case referred to in section 6 above, the Contractor shall respond to comments submitted by the Contracting Party within 2 working days from the day of submitting the comments by the Contracting Party. Submitting comments by the Contracting Party shall not make the Contracting Party responsible for failure to comply with the time limit indicated in §3 section 2 above – the Contractor is the only one responsible for making the deadline, in particular, the Contractor shall pay contractual penalty for failure to comply with the time limit.

**§4**

**Renumeration**

1. For proper performance of the subject of the Contract in the term indicated in §3 above, the Contractor shall be paid with flat-rate renumeration for performance of one depth profile in the amount of: …………….. (in words: ……….), increased by the tax on goods and services – VAT, due at the day of issue of invoice.
2. The total renumeration for performing all the 20 depth profiles amounts to …………………. Increased by the tax on goods and services – VAT, due at the day of issue of invoice.
3. Renumeration shall be accounted monthly depending on the number of confirmed depth profiles. Payment of the compensation shall take place by a bank transfer to the bank account indicated by the Contractor in the term of 30 days from effective delivery of the invoice by the Contractor and confirming timely and proper performing of the subject of the Contract.
4. Renumeration, referred to in this paragraph, contains all the costs necessary for proper performance of the subject of the Contract, especially the Contracting Party shall not return any costs to the Contractor, made in purpose of proper performing of the Contract.
5. The Contractor shall not raise any claims connected with increasing of the renumeration, even if increasing of the costs was impossible to predict by the time of signing the Contract.
6. Effective delivery of the invoice shall be understood as delivery to the headquarters of the Contracting Party or sending the invoice to an e-mail address: [invoices@vigo.com.pl](mailto:invoices@vigo.com.pl).
7. In case of being an entity registered on the territory of the Republic of Poland the bank account of the Contractor shall be indicated in the register of entities licensed as VAT taxpayers, placed on the website: <https://www.podatki.gov.pl/wykaz-podatnikow-vat-wyszukiwarka>, under the pain of refusal of payment until the time of regulation of this provision.

**§5**

**Cession of right and responsibilities and copyrights**

1. Assignment of receivables requires approval of the Contracting Party in writing under the pain of invalidity.
2. Upon delivery to the Ordering Party, the Contractor transfers to the Contracting Party, as part of the remuneration paid, copyrights to the elements of the Subject of the Agreement, which could bear the features of works within the meaning of the provisions of the Act on copyright and related rights, created during the term of this contract.
3. The Contracting Party reserves the right to use all or a part of the subject of the Contract, which constitutes work, in every field of exploitation, with respecting individual rights of the Contractor, especially:
   * in terms of copying and multiplying of the content of the Contract – producing number of works with certain technology, including printing and digital technology;
   * in terms of trading the original or copies, on which the subject of the Contract is recorded – marketing, loaning, lease of the original or copies;
   * in terms of distribution of the subject of the Contract in other way than abovementioned – public performing, exhibiting, displaying, playing, broadcasting and rebroadcasting, as well as making the work available to the public in such a way that everyone can have access to it in a place and time chosen by them;
   * exercising dependent rights to the subject of the contract, including its modifications and adaptations.
4. As part of the remuneration, the Contractor transfers to the Ordering Party his proprietary copyrights along with the ownership of all copies on which they were recorded

**§6**

**Contractual Penalty**

1. In the event of non-performance or improper performance of the Agreement, the Party will inform the other Party about it, summoning it in a documentary form to the e-mail address provided in the Agreement for its proper performance within not less than 3 working days indicated in the request, under the pain of immediate termination of the agreement.

2. The Party has the right to terminate the Agreement and charge a contractual penalty amounting to 5 % of the total gross remuneration referred to in § 4 sec. 2, in the event of non-performance of the contract in the manner referred to in paragraph 1.

3. The Party shall pay a contractual penalty in the amount of 0,5% of the total gross remuneration specified in § 4 sec. 2 of this Agreement for each day of delay in the performance of the obligation resulting from the timely performance of the contract in a manner stipulated in the contract, unless the delay results from circumstances for which the Party is not responsible - no more than 5 % of the gross remuneration.

4. The Ordering Party reserves the right to deduct contractual penalties from the remuneration due to the Contractor.

5. The Ordering Party retains the right to claim supplementary compensation in excess of the reserved contractual penalties, on general principles specified in the Civil Code.

**§7**

**Withdrawal from the Contract**

1. Regardless of the provisions provided for in § 6, in the event of a significant change in circumstances resulting in the performance of the contract not being in the significant interest of the Ordering Party, and which could not be foreseen at the time of concluding the contract, the Ordering Party may withdraw from the contract within 7 days of becoming aware of these circumstances.

2. In the case referred to in par. 1 The contractor may only demand remuneration due for the performance of a part of the contract.

**§8**

**Amendments to the Contract’s content**

1. The Ordering Party provides for the possibility of changing the concluded contract in relation to the content of the offer, on the basis of which the Contractor was selected, in the following cases:

1) there will be a change in generally applicable legal provisions in the scope affecting the performance of the Order, unless such a change was known at the time of submitting the offer;

2) it is necessary to change the method of performance of the obligation, provided that such a change is necessary for the proper performance of the contract;

3) in the course of the contract performance, an objective need to prepare a product or service will arise, the implementation of which will be agreed between the Parties, necessary (necessary) for the proper performance of the Order, and which the Parties did not provide in the Description of the subject of the Order;

4) it is necessary to change the date and scope of the contract in the event of circumstances or events preventing the performance of the contract within the prescribed period, over which both parties had no influence;

5) it was possible to use newer and more favorable technological or technical solutions for the Ordering Party than those existing at the time of signing the contract. The solutions meeting the requirements of the Ordering Party to a greater extent in terms of maintenance costs, functionality, quality or usability should be treated as more favorable for the Ordering Party;

6) the change does not change the nature of the contract and the following conditions are jointly met:

(i) the need to amend the contract is caused by circumstances which the Ordering Party, acting with due diligence, could not foresee,

(ii) the value of the change does not exceed 50% of the value of the Order originally specified in the contract,

7) The economic operator to whom the awarding entity has awarded the contract is to be replaced by a new economic operator:

(i) on the basis of contractual provisions contained in the Agreement;

(ii) as a result of a merger, division, transformation, bankruptcy, restructuring or acquisition of the existing Contractor or its enterprise, provided that the new contractor meets the conditions for participation in the procedure, there are no grounds for exclusion and does not entail any other significant changes to the contract,

(iii) as a result of the Ordering Party taking over the Contractor's obligations towards its subcontractors

**§9**

**Parties’ Representatives**

1. The person responsible on the part of the Ordering Party for the performance of this contract is: ...................
2. The person responsible on the part of the Contractor for the implementation of this contract is: ..................
3. The persons mentioned in section 1 and section 2 are entitled to agree on the forms and methods of performing the subject of the contract, provide the necessary explanations and information, and take other necessary actions necessary for the proper performance of the subject of the contract.

**§10**

**Final Provisions**

1. In matters not covered by the provisions of this contract, the provisions of Polish law shall apply, including the Civil Code and the Act on Copyright and Related Rights.
2. Any disputes that may arise from this contract will be settled by the court competent for the seat of the Ordering Party.
3. The contract was drawn up in two identical copies, one for each party.

Contracting Party Contractor

Łukasz Piekarski,

Member of the Management Board