**Att. 5**

**Agreement template**

concluded on …………………………………….. in Ożarów Mazowiecki, Poland, by and between:

1. 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/ Purchaser/Ordering Party**”), represented by:

- Łukasz Piekarski – Member of the Management Board;

and

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as: **“Contractor**”), represented by:

- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

VIGO and 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 competitive basis, i.e. submitted the best offer in response to the request for proposals of 28th January 2022 no. IGA-2\_22 (hereinafter referred to as: "**Offer**" and "**Request for Proposals**"), and the offer was chosen by VIGO.

Parties concluded the following agreement:

1. **Subject of the agreement**
   1. Under this agreement the Contractor shall provide, within the scope of its business activity, within a period referred to in point 2.1, a service of SIMS depth profiling for dopants and impurities and sufficient matrix elements in the epi-layer structures (hereinafter referred to as “Service”), in accordance with the specification and requirements resulting from the Inquiry and attachments to the Inquiry (Request for Proposals with attachments and the Offer with attachments constitute Appendix No. 1 to this contract), and VIGO undertakes to pay remuneration to the Contractor.
   2. Contractor shall be obliged to provide all permits, attestations or certificates required by law to perform the service – if it is necessary for proper performance of the service.
2. **Terms and conditions**
   1. Contractor shall provide the service **from the date of signing the contract until 31st December 2022.**
   2. **The Ordering Party will place partial orders. The Contractor will provide the results of performed service to the Ordering Party in a form of a report (in-depth profiles, excel or txt data), within 5 working days from the day of receipt of a sample.**
   3. The Contractor shall attach to the Reports their documentation or certificates and other documents required by law - if they are necessary and required for proper performance of the service.
   4. The deadlines specified in points 2.1 and 2.2 are reserved for the benefit of the Contractor. This means that the Contractor may - after prior consent of the Ordering Party – provide the service also before the expiry of the period.
   5. In the event of VIGO's reservations or comments to the provided service, VIGO shall present them to the Contractor who will be obliged, within the time limit set by the Ordering Party, to remove any non-compliance or defects. In such situation VIGO will, within 5 working days from the day of receipt of the report, in which non-compliance or defects have been found, draw up a preliminary protocol, in which VIGO's objections or comments to the Service will be specified (hereinafter referred to as: "Preliminary Protocol"). In case of drawing up the Preliminary Protocol, the Ordering Party will draw up an acceptance protocol (hereinafter referred to as: “Acceptance Protocol”) after the Contractor has removed any non-conformities or defects, in accordance with VIGO's reservations or comments.
   6. Filing the complaint regarding Service, and in particular signing by VIGO only Preliminary Protocol, does not create any VIGO’s responsibility for Contractor’s failure to meet lead time specified in point 2.1 or 2.2 above – keeping lead time – is Contractor’s sole responsibility. If Contractor does not meet the lead time, he shall be obliged to pay contractual penalty indicated in point 4 of this agreement.
3. **Remuneration and payments**
   1. Under this agreement VIGO shall pay the Contractor a remuneration in a total net amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_00/100)  
      (hereinafter referred to as “**Remuneration**”). Remuneration indicated above is a lump sum for a full execution of this agreement. Contractor is not allowed to claim for increase of Remuneration.
   2. **The remuneration shall be paid in parts, each time depending on the number of confirmed samples/units, on the basis of partial invoices, in proportion to the number of samples/units completed in a given order batch. Payment shall take place within 30 days from the day of invoice properly delivered to VIGO, by bank transfer to the bank account indicated by the Contractor on the invoice. The invoice must be delivered on the following address:** [**invoices@vigo.com.pl**](mailto:invoices@vigo.com.pl)**.**
   3. Remuneration due to the Contractor under this agreement, in cases when it results from an applicable provisions of law, shall be increased by VAT tax, in an amount applicable at the day of invoice’s issuance.
   4. In the case of entities registered in the territory of the Republic of Poland, the Contractor's bank account must appear on the list of entities registered as VAT taxpayers available on the website: <https://www.podatki.gov.pl/wykaz-podatnikow-vat-wyszukiwarka> under the pain of refusal to pay to until reaching compliance with this provision.
4. **Contractor’s responsibility and VIGO’s withdrawal right**
   1. Polish Civil Code applies to Contractor’s responsibility for the Service.
   2. In the case of delivery of the report after the deadline specified in point 2.2., the Ordering Party may charge the Contractor a contractual penalty in the amount of 0.1% of the total net Remuneration for each commenced day of delay - not more than 5%.
   3. In case of improper or untimely performance of the contract by the Contractor, the Ordering Party may withdraw from the contract instead of the activities provided for in point 4.2. The withdrawal will only take place for reasons attributable to the Contractor, excluding reasons for which he is not responsible, force majeure and random events. The right of withdrawal is exercised by a declaration submitted to the Contractor in writing or in a documentary form (to the e-mail address indicated in point 6 below), within 30 days from the date of the expiry of the deadline for the proper performance of the contract not met by the Contractor. Before submitting the declaration of withdrawal from the contract, the Ordering Party will request in writing or in the form of a scanned letter sent to the e-mail address indicated in point 6 for the proper performance of the contract, setting an appropriate deadline. As a result of submitting a declaration of withdrawal, this contract is treated as not concluded and the Contractor will pay the Ordering Party a contractual penalty of 5% of the total net Remuneration. In such case, the Contractor shall return the samples, which he has received from the Ordering Party.
   4. The Contractor agrees to deduct the contractual penalty thus calculated from the due remuneration.
   5. The payment of the contractual penalties referred to in point 4 does not preclude VIGO from seeking damages on general terms in excess of the contractual penalty.
5. **Permissible reasons for changing the contract**

**5.1 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:**

5.1.1. The changes are not significant within the meaning of the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020;

5.1.2. There will be a change in generally applicable laws to the extent that affects the performance of the Order, unless such change was known at the time the offer was made;

5.1.3. It is necessary to change the way of fulfilling the obligation, if such a change is necessary for the proper performance of the contract;

5.1.4. In the course of performance of the contract, there will be an objective need to prepare the Service or perform the service, the performance of which will be agreed between the Parties, necessary (necessary) for the proper performance of the Order, which the Parties did not provide in the Description of the subject of the Order;

5.1.5. It is necessary to change the date or scope of the contract in the event of circumstances or events preventing the performance of the contract within the prescribed period, which were beyond the control of both parties (i.e. force majeure and the state of the pandemic described in points 7 and 8 of the Agreement;

5.1.6 it is 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. Solutions that meet the Ordering Party's requirements to a greater extent from the point of view of maintenance costs, functionality, quality or utility should be regarded as more favorable for the Ordering Party;

5.1.7. the change does not change the nature of the contract and the following conditions have been met cumulatively:

(i) the need to amend the contract is caused by circumstances that 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,

5.1.8. The contractor to whom the contracting authority awarded the contract is to be replaced by a new contractor:

(i) based on the contractual provisions referred to in Contract;

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

(iii) As a result of the Purchaser's assumption of the Contractor's obligations towards its subcontractors,

5.1.9. the change does not change the nature of the contract and the total value of the changes is lower than the EU thresholds within the meaning of Art. 3 Public Procurement Law (Journal of Laws of 2019, item 2019 and Journal of Laws of 2020, item 288, as amended), and at the same time less than 10% of the order value originally specified in the contract.

5.1.10. In other cases permitted by the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020 section 6.5.2 point 20.

1. **Communication**
   1. Parties hereby declare that communication between them connected with the execution of this agreement shall be made in written and/or electronic form, to the following addresses:
      1. for VIGO:

Klaudia Jachimowicz, e-mail [kjachimowicz@vigo.com.pl](mailto:kjachimowicz@vigo.com.pl)

written form: 123/133 Poznańska Street, 05-850 Ożarów Mazowiecki, Poland;

* + 1. for Contractor:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_email: \_\_\_\_\_\_\_\_\_\_\_\_written form: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. Force Majeure

7.1. The parties agree that they will not bear the consequences of partial or total non-performance of their obligations under the Agreement, caused by force majeure. Force majeure shall be all events that cannot be foreseen or prevented at the time of the conclusion of the Agreement and which neither Party will have influence on, in particular: flood, fire, earthquake and other natural disasters.

7.2. The party for which there was an inability to perform the obligations caused by force majeure is obliged to: notify the other Party in writing about the occurrence of force majeure within 3 (three) working days from the moment of its occurrence, present a document confirming the occurrence of force majeure, issued by a competent authority, 30 (thirty) days from the moment of its occurrence (if the issue of such a document is possible).

7.3. Failure to notify or notify in a timely manner about the occurrence of force majeure, or failure to provide appropriate documents confirming the occurrence of force majeure, deprives the Party of the right to rely on it.

7.4. If the force majeure lasts for a period of at least 60 days, then regardless of the fact that the deadline for implementation will be extended, the Parties may proceed with the renegotiation of the Agreement in order to adapt it to the circumstances.

7.5. If the talks undertaken by the Parties do not lead to the establishment of a common position and negotiation of appropriate contractual terms within 1 month, each Party will have the right to withdraw from the Agreement. The declaration of withdrawal should be submitted within 30 (thirty) days from the date of the expiry of the period referred to in the previous sentence.

7.6. If the Agreement is terminated in accordance with the provisions of this paragraph, the Contractor shall receive the payment for the work actually performed. The parties do not cover losses resulting from the termination of the Agreement in accordance with this point. due to force majeure.

1. State of the Pandemic

8.1. The Contractor declares that he is aware of the COVID-19 pandemic ("Pandemic") and its possible consequences for the performance of this Agreement, and therefore declares that he has sufficient personal, material and organizational resources to perform this contract in accordance with its provisions , including in particular according to the terms stipulated in the contract.

8.2. Each Party to the Agreement shall immediately notify the other Party of the impact of the circumstances related to the occurrence of the Pandemic on the proper performance of this Agreement, if such an impact has occurred or may occur ("Notification").

8.3. The parties will be obliged to attach to the Notification information indicating the impact of the circumstances related to the occurrence of the Pandemic on the performance of the Agreement, the contracts confirm this impact by attaching to the Notification the information referred to in the first sentence, statements or documents that may relate in particular to:

1) the absence of employees or persons performing work for remuneration on a basis other than the employment relationship who participate or could participate in the performance of the contract;

2) decisions issued by the Chief Sanitary Inspector or the provincial sanitary inspector acting under his authority, or other competent state authorities in connection with counteracting the Pandemic, obliging the Contractor to take specific preventive or control actions;

3) orders issued by voivodes (governors) or decisions issued by the Prime Minister or other competent state authorities related to counteracting a Pandemic, in accordance with the relevant regulations;

4) suspension of deliveries of Service, Service components or materials, difficulties in accessing equipment or difficulties in providing transport services;

5) the circumstances referred to in points 1-4, to the extent that they relate to the subcontractor or further subcontractor.

8.4. The contracting authority may request additional statements or documents confirming the impact of circumstances related to the occurrence of the Pandemic on the proper performance of this contract.

8.5. The Ordering Party, on the basis of the statements or documents referred to above, shall provide the Contractor with its position within 14 days from the date of their receipt, along with the justification regarding the impact of the above-mentioned circumstances on its proper performance. If the Ordering Party has received further statements or documents, the deadline is counted from the date of their receipt.

8.6. The Ordering Party, after finding that the circumstances related to the occurrence of COVID-19, referred to above, may or affect the proper performance of the contract, may, in consultation with the Contractor, amend the contract, in particular by:

1) change of the date of performance of the contract or its part, or temporary suspension of the performance of the contract or its part,

2) change in the manner of performing deliveries and services.

1. **Final provisions**
   1. Transferring Contractor’s rights and/or duties resulting from this agreement to any other person or entity requires for its effectiveness prior written VIGO’s consent. Unless the consent in question is made in writing, the transfer shall be null and void.
   2. Attachment number 1 – Request for Proposals and its attachments as well as the Offer and its attachments, constitutes an integral part of this agreement.
   3. This contract has been prepared in accordance with Polish law and is governed by Polish law, without taking into account the regulations concerning the conflict of laws. Any disputes related to the conclusion or performance of this contract shall be submitted to the exclusive jurisdiction of Polish courts.
   4. Any disputes resulting from a conclusion or execution of this agreement shall be resolved amicably. If the dispute in question cannot be resolved amicably, it shall be submitted to the court applicable for VIGO.
   5. If this agreement has been concluded in Polish and English language version, and if there is any discrepancy between these language versions, Parties hereby declare that the Polish version shall prevail.
   6. This agreement has been prepared in two identical copies, one for each Party.

|  |  |
| --- | --- |
| For VIGO:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Łukasz Piekarski, Member of the Management Board | For Contractor:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Annex 2**

**Acceptance Protocol Form**

To the contract of ................................. 2022

drawn up on ……………………………………….

THE CONTRACTING PARTY:

……………………………………………

Name and surname of the representative:

representative:

1. ………………………………………

2. ………………………………………

3. ………………………………………

This protocol confirms that the Contractor has properly provided the service for the benefit of the Ordering Party, consisting of:

……………………………………………………………………….

The transferred Subject of the Agreement is complete / incomplete in accordance with the provisions of the Agreement.

1. Provision of the service on time YES / NO

2. Comments on the provision of the service YES / NO

Comments: ………………………………………………………………………………………………………………………………

This protocol confirms that the Contractor has complied with the obligations specified in the contract.

**FOR THE CONTRACTING PARTY**