

**Appendix 1 to the Competition Regulations**

**TERMS OF REFERENCE,  
TO BE INCORPORATED IN THE PUBLIC PROCUREMENT CONTRACT**

The Principal hereby states the Terms of Reference which shall be incorporated in the Public Procurement Contract, concluded as a result of single-source contract negotiations with the author of a selected competition design pursuant to article 214 item 1 pt. 4 of the Public Procurement Act of 11 September 2019 (Journal of Laws of 2019, item 2019, as amended).

**SECTION I  
SUBJECT OF CONTRACT**

1. The Parties hereby agree on a fee payable for the completion of the Subject of Contract referred to in § 1 to the lump sum of : ..... gross (in words: ..... ). The gross sum shall include the VAT tax rate determined in accordance with the effective provisions of the Act on value added tax or in accordance with pertinent international agreements and regulations governing this tax (if applicable). The gross sum shall also include (if applicable) all other fiscal costs (e.g. withholding tax, etc., regulated by pertinent international agreements and regulations (e.g. the double taxation treaty, etc.).
  
2. The Parties have divided up, i.e. prepared the Design documentation and documentation on design author's supervision of the Investment, based on the winning competition design (according to the definition of the Competition Regulations) for the Investment project titled "Construction of the European Film Center CAMERIMAGE (ECFC), including land development, site utilities and necessary technical and communication infrastructure required for the building to function according to its intended purpose", hereinafter the Subject of Contract into individual Phases:
  - 1) **Phase I: Development of multidisciplinary concept** for the Investment, taking into account the post-competition recommendations of the Competition Jury and the Principal, necessary arrangements and settlements applicable to this phase, made with pertinent authorities, institutions and individuals, as well as other participants of the process, particularly the Principal and any persons specified by them, development of preliminary price lists and cost estimates for the Investment. In this Phase of the Contract, the Designer shall be also obligated to develop or obtain, at their own cost, all and any pre-design studies, as necessary, such as: studies, conceptual works, research, expert assessments, and particularly a map for design purposes, geo-technical documentation, a survey of buildings and non-building structures and land development, and, if required, also environment protection study.
    - a) Completion date: ... **months** from the effective date of the Contract, that is **until** .....
    - b) **Fee: up to 15% of the gross lump-sum fee**, as specified in section 1, i.e. .... in words: .....

- 2) **Phase II: Development of a building permit design** including land development, a demolition plan and, if applicable, a design for the reconstruction of utilities and technical infrastructure, with obtaining all decisions, permits, approvals, consents, exemptions, additional design studies, auxiliary studies, tests, expert assessments, opinions which are deemed necessary for this design phase according to pertinent regulations.
- a) Completion date: ... **months** from the effective date of the Contract, that is **until**  
.....
- b) **Fee: up to 30% of the gross lump-sum fee**, as specified in section 1, i.e.  
..... in words: .....
- 3) **Phase III: Obtaining a building permit** and a statement of the absence of objections to any works which do not require a building permit decision (if this is required by law), together with the handover of the approved building permit design.
- a) Handover date: ... **months** from the effective date of the Contract, that is **until**  
.....
- b) **Fee: up to 5% of the gross lump-sum fee**, as specified in section 1, i.e.  
..... in words: .....
- 4) **PHASE IV - Development of detailed design** within the scope of the Building Permit Design, the demolition plan and/or the design for the reconstruction of utilities and technical infrastructure, as well as the development of a Detailed design for interior finishing and design, Technical Specifications for the Execution and Acceptance of Works, Bills of Quantities, Investor's Cost Estimates (separately for individual industries), and a Summary Statement of Costs, Fire Safety Instructions and a Fire Scenario (if required by law),
- a) Completion date: ... **months** from the effective date of the Contract, that is **until**  
.....
- b) **Fee: up to 40% of the gross lump-sum fee**, as specified in pt. 1, i.e.  
..... in words: .....
- 5) **Phase V: Design author's supervision\***
- a) Completion date: in the course of construction, from the commencement date of construction based on the building permit, until a final occupancy permit for the finished building is obtained, but no longer than ... months.
- b) **Fee: up to 10% of the gross lump-sum fee**, as specified in pt. 1, i.e.  
..... in words: .....
3. Documentation (according to the definition provided in the Competition Regulations), which shall comprise all formal, legal and design documents listed in section 2 and other, as deemed necessary for the execution of the Subject of Contract, must comply with pertinent regulations effective as of the Documentation submission day and must enable the execution of the following construction works (Investment Implementation):
- a) construction of the European Film Center CAMERIMAGE building in Toruń, including an underground multi-bay garage to its fully-finished state.

- b) Full furnishing and fit-out of all interiors of the European Film Center CAMERIMAGE in Toruń, including interior design of the cinema auditoriums, full technical and technological equipment and fit-out including the necessary devices, furniture and other interior decor elements required for the building and its spaces to function as intended.
  - c) construction/development of landscaping elements and utilities, i.e.:
    - construction of a communication system (vehicle, pedestrian, bicycle) dedicated to the Investment, including a parking system for the Investment;
    - construction and/or reconstruction of utilities, connections, technical devices and other elements of infrastructure, necessary for the correct functioning and use of the Investment;
    - landscaping;
    - construction and deployment of outdoor furniture and equipment.
  - d) construction, deployment and upgrading of land development elements proposed by the competition concept and the multidisciplinary concept, taking all recommendations of the Competition Jury and the Principal into consideration.
4. Payment for design author's supervision (Phase V) shall be made every month in arrears, until the 10<sup>th</sup> day of each calendar month, in the amount of 1/24 of the total gross lump-sum fee for design author's supervision services, on the basis of an approved author's supervision service report. If the construction part of the Investment is completed before the official term of ... months, counted from the day referred to in item 2.5 a, the Design Company shall be entitled to the complete author's supervision fee.
5. The Designer shall have the right to issue VAT invoices for completed works after the final acceptance of each Phase of the Subject of Contract by the Principal, as confirmed by a signed acceptance report.
6. Payment of the Designer's fee shall be made by wire transfer to the bank account stated on the invoice, within 30 days from the date of receipt of a correctly issued invoice by the Principal and on the basis of an approved acceptance report for each Phase.
7. The date of debiting the Principal's bank account shall be construed as the date of payment.
8. As part of the contractual fee referred to in item 1, the Designer shall perform a single update of the investor's cost estimates concerning the execution of construction works at the request of the Principal, within 14 days from the date of pertinent request made by the Principal.

## **SECTION II DESIGN AUTHOR'S SUPERVISION**

1. The Designer undertakes to perform for the Principal all and any tasks related to multidisciplinary design author's supervision in the course of the Investment - until all

works are completed, successfully undergo final acceptance and the Investment has obtained an occupancy permit - these tasks shall include:

- 1) cooperation in the tender procedure for the selection of Investment contractor responsible for the execution of works, services and deliveries, through consultations of the Subject of Contract description and the Terms of Reference and by formulating answers to bidders' questions pertaining to the substantive contents of documents and design solutions,
  - 2) supervision of the compliance of technical, material and performance solutions applied in the course of Investment Implementation with the documentation and effective regulations, including the verification of material specification cards, shop drawings prepared by the construction contractor, and within the scope stated in the Documentation,
  - 3) elaborating on any design solutions depending on the needs, particularly when any design specifics included in the Documentation are unclear, incomplete or missing, including explanation of any doubts arising in the course of works to contractors responsible for construction works, services and deliveries,
  - 4) approval of substitute solutions relative to any materials and technologies stipulated in the Documentation in agreement with the Principal and the works contractor,
  - 5) anticipation of circumstances which would require the execution of additional, substitute and complementary works, or the discontinuation of works;
  - 6) participation in all Investment acceptance procedures, including interim acceptance and any acceptance required for obtaining an occupancy permit for the Investment;
  - 7) notification of the Principal and other participants of the construction process about any errors identified during construction, construed as deviations from Design Documentation.
  - 8) The Designer shall provide design author's supervision services on the as-needed basis, according to the progress of works, whenever requested by the Principal, the Site Manager or Supervision Inspector, with the stipulation that a relevant request must be made in writing, by e-mail, 5 days before the expected construction site visit, no more frequently than three times a month.
2. As part of their design author's supervision services, the Designer shall forthwith carry out all activities within the scope of design author's supervision, and shall forthwith visit the Investment site, not later than on the business day following the day of receipt of a pertinent request from the Principal.
  3. Regardless of Designer's obligations under item 1, the Designer shall be further obligated to visit the Investment site at every request of the Principal which exceeds the scope of the visits made under item 1. Such visits will be made at an additional charge.

### **SECTION III COPYRIGHTS**

1. The Designer hereby declares that all moral rights and copyrights to the Documentation developed under the Contract (hereinafter referred to as "Works"), both in its entirety and in its individual parts created so far, shall not be limited in any way, and that they will be free of any third party rights and claims.

2. The Contractor hereby declares that the transfer of copyrights to the Documentation onto the Principal and the use of the Documentation by the Principal shall not infringe on any third-party rights, including copyrights and moral rights.
3. The Fee stipulated in the Contract shall also include the fee for the transfer of copyrights to the Documentation covered with the Subject of Contract onto the Principal and the fee payable by the Principal for the purchase of copies of the Works and the carriers, on which the Works have been fixed, as well as the fee for the purchase of the right to exercise and lease the exercise of derivative rights to the Works by the Principal, subject to the provisions of item 7.
4. As at the acquisition of individual Works by the Principal, and the payment of a designated part of the fee for individual parts of the Subject of Contract to the Designer under the Contract and pursuant to effective regulations, the Designer shall transfer onto the Principal all copyrights to individual Works within the scope of full management and disposal of the Works in the fields of exploitation stated in item 5, together with the right to exercise and license the exercise of derivative rights to the Works, subject to the provisions of item 7, without the need to submit separate statements of intent in this respect. As at the acquisition of copyrights to the Works, the Principal shall acquire all and any copies of the Works and the carriers, on which the Works were fixed, without the need to obtain separate statements of intent from the Designer.
5. The transfer of copyrights to the Works, i.e. to the complete Design Documentation as well as its individual elements, shall include the following fields of exploitation:
  - 1) use for any purposes related to the implementation of the Investment, including the implementation of the Investment based on the Documentation, followed by the operation of the Investment;
  - 2) production and multiplication of an unlimited number of copies of the Works using any technique, including print, reprography, the audiovisual technique, magnetic record, the digital and computer technique, on any carrier, in any scale, for the purposes of any media;
  - 3) with respect to the trading of the original or copies, on which the Works were fixed - marketing, lease or rent, entry to computer memory, transfer through a multimedia network, including on the Internet, placement and use as part of on-line publications;
  - 4) public performance, exhibition, display, reproduction, broadcasting and re-broadcasting, including on the Internet, by video or audio transfer, through a cable connection, a wireless station, through a satellite, as well as making the Works publicly available in such a way that everyone can have access to it from a place and at a time of their choice;
  - 5) placement and use in any materials published for the promotional purposes of the Principal or any entity designated by the Principal;
  - 6) executing foreign language versions;
  - 7) screening, public reproduction, marketing in the Internet and other data transfer techniques applied in telecommunication, IT and wireless communication networks in the country and abroad;
  - 8) development of compilations, amendments, adaptations, modifications to the Works created  
in performance of the Contract with the construction works contractor, and any use and disposal of Works thus amended, subject to the provisions of item 7;

- 9) use of the Works modified according to item 8 to extend, rebuild, reconstruct, renovate, demolish and make any other changes to the Investment, either in whole or in part, as well as any other constructions, to which the Works or modified Works will apply.
  - 10) ordering the exercise of derivative rights from other entities, including sharing the Documentation with third parties to procure their supervision of the performance of works carried out thereunder, subject to the provisions of item 7;
  - 11) exploitation of the Investment image in fields listed in items 1-10).
6. The Designer hereby consents to the exercise and to licensing the exercise of derivative rights to the Works to the Principal - within a scope including any compilation of the Works (changes, modifications, adaptations or supplements to the Documentation) in every Phase of the design process and after it is completed, as well as management and disposal of the compilations within fields of exploitation specified in item 5, subject to the provisions of item 7.
  7. The Parties hereby agree that, if it is necessary to compile the Works, the Principal shall first request such compilation to be made by the Designer, by stating the scope and date of the compilation, and in the case of a compilation involving the need to make material changes, which could result in raising the contractual fee – the Principal shall enter into negotiations with the Designer in order to determine the Designer's fee, subject to changes or adaptations made to incorporate any recommendations of the Competition Jury or legal and binding decisions of an relevant authority, which shall be made by the Designer without an additional fee. The Parties shall determine the Designer's fee for the aforementioned compilations through negotiations conducted on the basis of Common Principles of Appraisal of Design Works - 2016.
  8. If the Designer refuses to perform a compilation of the Works or if the Parties fail to reach an agreement with respect to the terms and conditions of use of any compilations of the Works within 30 days from the date of an effective request made in this matter by the Principal or if the Designer has failed to perform such compilations of the Works within a deadline specified by the Principal, the Principal shall have the right to have such compilations of the Works performed by a third party.
  9. The Principal shall be entitled but not obligated to distribute or use the Works.
  10. The Work shall be covered with copyrights, which shall mean, among other things, that the method of executing construction works amended with respect to the Documentation, if implemented without the Designer's consent, shall release the Designer from the obligation to rectify any damage within the statutory warranty period within the scope, in which the changes made affected Designer's liability, and that the Principal shall not be entitled to use the Documentation to implement any other investment than the subject Investment.
  11. If any claims have been made against the Principal by third parties with respect to the management or disposal of the Works, in particular upon the infringement of copyrights and derivative rights, the Designer shall rectify any damage incurred in connection therewith, accept and satisfy all and any claims against the Principal in connection therewith, shall indemnify the Principal from any claims, proceedings, damages, liquidated damages and any other expenses incurred in connection with the management or use of the Works, and if these claims are satisfied by the Principal – to reimburse the Principal for any expenses incurred and rectify the damage.

12. If the Contract is partially terminated, the Principal shall acquire copyrights, including the right to exercise and license the exercise of derivative rights to those Works and their elements which were already accepted by the Principal until Contract termination; in this case, the Designer shall retain the right to a fee only for those elements of the Subject of Contract which were completed and accepted by the Principal.

**SECTION IV  
OTHER PROVISIONS OF THE FUTURE CONTRACT**

**1. Future provisions of the Contract shall not stipulate:**

- 1) Designer's liability for delays, unless this is justified by the circumstances or the scope of the contract;
- 2) liquidated damages charged from the Designer for any behavior which is not related, either directly or indirectly, with the Subject of Contract or its correct performance;
- 3) Designer's liability for any circumstances which are entirely attributable to the Principal;
- 4) the possibility of limiting the scope of the contract by the Principal without specifying the minimum value or services provided by the Parties.

**2. Future provisions of the Contract shall stipulate:**

- 1) the terms and conditions related to the payment of the fee;
- 2) the total maximum sum of liquidated damages which may be claimed by either Party;
- 3) if the Contract is entered into for a period exceeding 12 months:
  - a) the sum of liquidated damages charged from the Designer for any default in the payment or untimely payment of remuneration payable to the subcontractors in the event of a change to the fee referred to in article 439 sec. 5 of the Public Procurement Act,
  - b) the principles of changing the fee in the event of a change:
    - the value added tax rate and excise duties,
    - 2) the amount of the minimum remuneration for the works or the amount of the minimum hourly rate, established based on the provisions of the Act dated 10th October 2002 on the minimum remuneration for work - the principles of social security or health care, or the rates for social security or health care coverage,
    - the rates and rules for collections and payments to Employee Capital Plans referred to in the Act of 4 October 2018 on employee capital plans (Journal of Laws, item 2215 and of 2019, items 1074 and 1572)
    - if these changes will have an impact on the cost of the contract by the Designer.

**3. In the case of a Contract which stipulates the requirements of article 95 sec. 1 of the Public Procurement Act;**

1. The Contract shall include provisions on how to document employment and control of the

contractor's or subcontractor's compliance with employment requirements under a contract of employment and provisions on sanctions for non-compliance with the requirements referred to in art. 95 sec. 1 and 2 of the Public Procurement Act. In order to verify employment by the contractor or subcontractor on the basis of a contract of employment of persons performing the activities indicated by the Principal in the scope of the contract, the contract provides for the possibility of requesting by the Principal, in particular:

- 1) a statement from the hired employee,
- 2) statements by the contractor or subcontractor about hiring an employee under a contract of employment,
- 3) a certified true copy of the employment contract entered into with the hired employee,
- 4) other documents – containing information, including personal data, necessary to verify employment under a contract of employment, in particular the name and surname of the employee employed, the date of conclusion of the employment contract, type of employment contract and the scope of the employee's duties.

**4. If the Contract is entered into for a period up to 12 months:**

1. The Contract shall include provisions concerning the principles of changing the Designer's fee in the event of a change to the prices of materials or costs related to the performance of the contract.
2. The Contract shall stipulate:
  - 1) the level of change of material prices or costs referred to in item 1, authorizing the Parties to the Contract to demand a change of the fee and the date of entry into force of the changed fee;
  - 2) the method of determination of a fee change:
    - a) using a link to a material price of cost change index, particularly to an index announced by the President of the Main Statistical Office or
    - b) by providing a different legal basis, in particular a list of material or cost types, for which any change authorizes the Parties to the Contract to demand a change of the fee;
  - 3) the method of determination of the impact of any change of costs on the cost to complete the subject of contract and a determination of the periods, in which the Designer's fee may be changed;
  - 4) the maximum level of change of the fee permitted by the Principal as a result of the application of provisions pertaining to changes in the fee.
3. A change of the price of materials or costs shall be understood as an increase in prices or costs, respectively, as well as their reduction relative to the price or cost adopted for the purpose of determining the Designer's fee stipulated in the offer.
4. A Designer whose fee was changed shall be obligated to change the fee payable to the subcontractor contracted to execute a specific batch of works, within a scope corresponding to the changes in the prices of materials or costs applicable to the subcontractor.

**5. Pursuant to the provisions of articles 436 and 439 sec. 1 and 2 of the PPA, the Principal shall accept the principles of amending the provisions of this Act in the**



**following scope:**

1. Changes to the fee in the following cases:
  - 1) changes to the value added tax rate and excise duties, with the stipulation that the net value of Designer's fee will not change, and the gross fee shall be calculated on the basis of the new regulations;
  - 2) change of the minimum hourly rate, with the stipulation that the fee payable to the Designer shall be modified accounting for the value of increase of total Designer's cost resulting from the increased hourly rates payable to those who are contracted to directly execute the subject of contract, up to the effective minimum hourly rate, considering all statutory charges on the sum of increase of the minimum hourly rate;
  - 3) change of the principles of social insurance or health insurance or the rate of social security or health contributions with the stipulation that the fee payable to the Designer shall be modified accounting for the value of increase of total Designer's cost the Designer shall be required to additionally pay in order to implement this change, maintaining the current net fees payable to all parties contracted to directly execute the subject of contract;
  - 4) the rates and rules for collections and payments to Employee Capital Plans referred to in the Act of 4 October 2018 on employee capital plans, with the stipulation that the fee payable to the Designer shall be modified accounting for the value of increase of total Designer's cost the Designer shall be required to additionally pay in the event of a change in regulations stating the principles for collections and basic payments financed by the employer to employee capital plans with reference to parties contracted to directly execute the subject of contract;
    - if these changes will have an impact on the cost of the contract by the Designer.
  - 5) change of costs related to performance of the subject of contract, with the stipulation that:
    - a) the level of change of the fee shall be determined on the basis of the minimum hourly rate index announced by the President of the Main Statistical Office, taking effect as of the beginning of the month following the month, in which the change was made;
    - b) change of the minimum hourly rate, with the stipulation that the fee payable to the Designer shall be modified accounting for the value of increase of total Designer's cost resulting from the increased hourly rates payable to those who are contracted to directly execute the subject of contract, up to the effective minimum hourly rate, considering all statutory charges on the sum of increase of the minimum hourly rate
    - c) the maximum fee change permitted by the Principal shall be 5% in total with respect to the gross fee.

The Principal shall admit the possibility of amending the concluded Contract in the form of a written annex made in accordance with article 455 of the PPA.

**6. Pertaining to Contract termination;**

1. The Principal shall have the right to terminate the Contract in the event of a material change in circumstances, in result of which the completion of the Contract is not in public interest, which could have not been reasonably foreseen at the time of entering into the Contract. The Principal shall have the right to terminate the Contract within 30 days of becoming aware of these circumstances.
2. If the Contract is terminated by the Principal due to circumstances referred to in article 456 sec. 1 of the Public Procurement Act, the Designer shall have the right to demand the payment of the fee payable for the completion of this part of the Contract. The fee shall be determined on the basis of a report determining the scope of activities completed by the Designer, the execution of which shall be confirmed in writing by the Principal.
3. The Principal shall also have the right to terminate the Contract for reasons attributable to the Designer if the Designer has performed under the Contract:
  - 1) without exercising due professional diligence,
  - 2) in breach of effective laws,
  - 3) against the provisions of the Contract,
  - 4) if the liquidated damages exceed the value stipulated in the Contract, or shall otherwise demand the Designer's fee to be proportionally lowered.
4. Contract termination shall take effect within 60 days from the date, on which the Principal became aware of the circumstances which justified termination, subject to the provisions of item 1 of this section.
5. If the Contract is terminated by either Party for reasons attributable to the Designer, the Designer shall only be paid for services which were duly completed until the termination date.
6. The Principal shall have the right to terminate the Contract with immediate effect:
  - 1) if the Designer committed a material breach of the Contract, i.e. in the event of
    - a) repeating acts of omission or negligence with respect to any activities required under the Contract,
    - b) failure to perform any activity which the Designer is obligated to perform under the Contract despite receiving a pertinent request from the Principal,
    - c) failure to adhere to ongoing recommendations issued by the Principal with respect to Designer's performance under the Contract.
  - 2) when the delay in the provision of a service required from the Designer hereunder exceeds 30 days.

## **7. Performance bond**

The Principal shall require a performance bond of up to 5% of the gross contractual fee.

## **8. Contract Schedule**

The Contract should specify a date, on which the Designer will commence performance under the Contract, and a completion date, on which all works included in the Subject of Contract shall be deemed completed.

## **9. Rights and obligations of the Parties.**

The Contract should specify the rights and obligations of either Party. The Contract should state that neither Party shall be held liable with the other Party for any default resulting from a Force Majeure event.

The Designer shall further undertake to exercise due professional diligence in all activities performed under the Contract, and to ensure that all equipment, including software (if applicable) used by them will be free of legal defects, i.e. its use by the Principal according to the Act will not infringe on any third party intellectual rights, including copyrights, patents or other regulatory requirements.

#### **10. Confidentiality.**

In the Contract, the Designer will undertake to maintain the confidentiality of all and any information (including any materials or data obtained from the Principal) obtained in connection with the performance of the Contract, either directly or indirectly, within the effective term of the Contract and within 5 years after the completion of the Subject of Contract. Furthermore, the Designer will undertake to not use any information referred to above in their activities which are not performed under this Contract (confidentiality clause).

For the avoidance of doubt, the Contract should state that all information concerning the Principal and obtained by the Designer, either directly or indirectly, in connection with the performance of this Contract, shall be treated as confidential and shall be classified as a business secret of the Principal's company.

The Contract shall also state possible exceptions to this rule. In particular, any disclosure of information, for which the Designer has obtained prior written consent of the Principal, otherwise becoming null and void, shall not be construed as a violation of the confidentiality obligation.

#### **11. Subcontracting.**

The Contract will stipulate that the Designer will have the right to subcontract a part of the Subject of Contract to subcontractors. The scope of works which may be subcontracted is included in Designer's offer. At the same time, the Designer will undertake to bear full responsibility with the Principal for all and any actions and omissions of the subcontractors hired to execute a part of works under the Contract. A subcontract shall not change the scope of obligations of the Designer with the Principal, nor may it lead to an increase in the Designer's fee. The Designer shall be responsible for the actions, omissions, misconduct and negligence of its subcontractors and the resulting failure to perform or improper performance of the Contract to the same extent as if they were their own actions, omissions, misconduct and negligence.

#### **12. Communication and material law.**

1. The Contract should specify the form of contact between the Parties in the effective term of the Contract. In particular, the Contract may indicate the contact persons with either Party.
2. The Contract shall be executed in Polish and shall be governed by the laws of Poland, and any disputes arising in connection therewith shall be resolved by Polish laws based on Polish procedures.

**The future Contract may include other provisions, which have not been listed above, as well as different provisions, if they are required to adapt the provisions of the future Contract to the negotiated conditions as well as changing laws and their interpretations.**