



Modification of September 1, 2022. to the Inquiry No. DZ/16/08/2022 dated August 24, 2022.

Inquiry no. DZ/16/08/2022

Wrocław, 1<sup>st</sup> September, 2022

**LETTER OF INQUIRY No. DZ/16/08/2022**

***for the purchase of the upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual with maintenance service for the implementation of the AGEMERA project No. 101058178 - Agile Exploration and Geo-modelling for European Critical Raw materials funded under the Horizon Europe programme (HORIZON-CL4-2021-RESILIENCE-01) funded by the European Commission.***

**DETAILED DESCRIPTION OF THE SUBJECT MATTER OF THE CONTRACT**

**I. ORDERING PARTY:**

|   |   |
|---|---|
| <b>KGHM CUPRUM sp. z o.o. - Centrum Badawczo - Rozwojowe<br/>(Research and Development Centre)</b><br>Gen. Wł. Sikorskiego street 2-8, 53-659 Wrocław, Poland |   |
| REGON: 930093846<br>VAT Number: 8960001770<br>Tel. +48 71 78 12 201,<br>Fax +48 71 34 43 536<br><br>kghmcuprum.com<br>kghm@kghmcuprum.com                     | <b>Contact person for the request:</b><br><b>Alicja Niedziela</b><br><a href="mailto:Alicja.Niedziela@kghmcuprum.com">e-mail: Alicja.Niedziela@kghmcuprum.com</a> |

**II. MODE AND RULES**

1. The Ordering Party pursuant to Article 4 of the Act of 11 September 2019 - Public Procurement Law (Journal of Laws of 2021, item 1129, as amended, hereinafter:

*THIS PROJECT HAS RECEIVED FUNDING FROM THE EUROPEAN UNION'S HORIZON EUROPE RESEARCH AND INNOVATION PROGRAMM UNDER GRANT AGREEMENT NUMBER 101058178*



"PZP Act"), is not an entity obliged to apply it, therefore, the subject contract follows the principle of fair competition.

2. The Offer selection process shall conform to the Horizon Europe qualification of expenses, and the main principle cost eligibility in Horizon 2020 is that your suppliers be chosen in compliance with the "best value for money" rule.

### III. PLACE OF PUBLICATION OF THE LETTER OF INQUIRY

Publication of the Letter of inquiry on the Ordering Party's website:  
<https://kghmcuprum.com/przetargi/> and sending it to a minimum of 3 potential Tenderers.

### IV. SUBJECT OF THIS INQUIRY

Common Procurement Vocabulary (CPV):

**72262000-9**- Software development services  
**48000000-8** - Software packages and information systems

#### Description of the subject matter of the contract

The subject of this Inquiry is the **purchase and delivery of 1 (one) upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual for the numerical analysis of geotechnical and geomechanical objects with maintenance service for the implementation of the AGEMERA project No. 101058178 - Agile Exploration and Geo-modelling for European Critical Raw materials funded under the Horizon Europe programme.**

- 1) Upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual with maintenance service should meet the following requirements:
  - a) PC version, with perpetual license.
  - b) Software compatible with Windows 8.1 or higher versions of the operating system.
  - c) Lifetime version of the software.
  - d) Enable stability analysis of geotechnical objects using LEM (Limit Equilibrium Method) and FEM (Finite Element Method),
  - e) Analysis in static, pseudo-static and dynamic loading system,
  - f) Ability to import model geometry from .dxf files.
  - g) Access to trainings, tutorials and technical documentation of the software.
  - h) Graphical analysis and review of results.
  - i) 12-months of technical support after the purchase of the software.

#### Necessary requirements for the Tenderer:

- The Tenderer shall provide the Ordering Party with the delivery of the software at the purchase price.
- The Ordering Party requires that the Tenderer, together with the subject matter of the contract, provide complete technical documentation for the contract and other documents, if required by the Ordering Party or applicable provisions of law.



- The Tenderer shall be liable for the correct, damage-free delivery of the subject matter of the contract.
- The Tenderer shall provide technical support service for a minimum of 12 months from the conclusion date of the agreement.

## V. PRICE OFFER

1. The offer should include a full price offer. The price taking into account all costs related to the execution of the subject matter of the contract, which will have to be borne by the ordering party, in particular VAT, excise tax, if under separate regulations the sale of goods is subject to these taxes, as well as other fees and government levies (including custom duty), the cost of delivery, transportation and unloading. The price to be evaluated will be the total price including all elements of contract performance for each part.
2. In particular, the delivery shall take place according to DDP conditions (Incoterms 2020).
3. The Ordering Party shall allow the Offer to be submitted in Polish zloty (PLN) or in foreign currency (to the second decimal place). The Offers submitted in foreign currency will be converted at the average exchange rate announced by the National Bank of Poland as of the date of the Offers opening. An invoice issued in a foreign currency will be converted to PLN and paid in accordance with the accounting principles applicable in the Republic of Poland.
4. When evaluating the Offers, the Ordering Party shall take into account the total amount of funds it will be obliged to spend for the execution of the contract - i.e. the gross amount also including value added tax as well as custom duty and excise tax, if they are due under separate regulations. Foreign Tenderers, who, under separate regulations, are not required to pay VAT in Poland, only indicate the price with a 0% VAT rate. When evaluating Offers on the price criterion, the Ordering Party, for the purpose of comparing these Offers, will add to the Offer price of foreign Tenderers the amount of VAT and custom duty (if applicable - foreign Tenderers from outside the European Union) that the Ordering Party would be obliged to pay to the appropriate tax office in accordance with applicable regulations.

## VI. OFFER SELECTION CRITERIA, THEIR WEIGHT AND CALCULATION METHOD

1. The Ordering Party shall select the most advantageous Offer that obtains the highest number of points, based on the criteria established below, and shall sign an agreement (**as Attachment No.4**) with the selected Tenderer.
2. Point award procedure description:
  - a) The Ordering Party shall evaluate and compare only those Offers that are found to be in compliance with the provisions of law, in compliance with the terms and conditions set forth in this Letter of inquiry , and are not rejected for failure to meet the terms and conditions set forth in this Letter of inquiry ,
  - b) An offer may obtain a maximum of 100 points = 100%
  - c) The following criteria will be used by the Ordering Party in the selection of an offer:
    - **Criterion No. 1: Gross price for the entire subject matter of the contract - criterion weight of 100% (C)** (maximum of 100 points)



$$C = \frac{C_{min}}{C_{of}} \times 100 \text{ points}$$

where:  
C - number of points possible to obtain in the PRICE criterion  
Cmin - the lowest price among the Offers  
Cof - price of the examined offer

3. The Ordering Party reserves the right not to select any Offer or to cancel the procedure at any stage. Tenderers are not entitled to any claims on this account.
4. If the Tenderer, whose an Offer was selected, refuses to enter into an agreement, the Ordering Party may select the most advantageous Offer from among the remaining Offers.
5. The Ordering Party reserves the right to re-negotiate the submitted tenders before the final selection is made

#### VII. THE FORMAL CONDITION IN THE PROCEDURE :

Contract completion date: **maximum 21 days after signing the agreement**

Contract place of performance: KGHM CUPRUM sp. z o.o.  
Centrum Badawczo - Rozwojowe  
(Research and Development Centre)  
Gen. Wł. Sikorskiego Street. 2-8, 53-659 Wrocław,  
Poland

#### VIII. DESCRIPTION OF PREPARATION METHOD

Only an Offers completed on the Offer form in accordance with the template attached as **Attachment No. 1** and the required attachments to this Letter of inquiry will be considered. A minimum of 30-day period of validity of the Offer from the Offer opening date indicated in point IX is required. The tenderer may submit only one Offer for the entire subject matter of the contract

The Offer should include:

1. Costs related to the execution of the contract, made on the basis of all information contained in this Inquiry
2. Offer Form in accordance with the template attached as **Attachment No. 1** to this Inquiry (a scan of the filled and signed document),
3. Declaration of lack of personal and capital relations with the Ordering Party in accordance with the template constituting **Attachment No. 2** to this Inquiry (scan of the filled and signed document)
4. Tender declaration with the template attached as **Attachment No. 3** to this Inquiry (a scan of the filled and signed document)
5. The Offer should be in accordance with the description of the subject matter of the contract.



6. Significant Contract Conditions – **as Attachment No.4** (SCC - a scan provided with initials on each and every page and with a legible signature or stamp and signature of the person authorised to represent the Tenderer in the procedure, on the last page
7. The procedure shall take place in Polish and in English.
8. Power of attorney to represent the Tender during the procurement procedure, including offer submission.
9. The Offer form should be signed by a person authorized to represent the Tenderer, in accordance with the tenderer's registration document. If the documents are signed by an authorized representative, a power of attorney authorizing the signature must be attached to the Offer. Signatures must be affixed in such a way as to identify the signer. The authorization of the persons signing the Offer to sign it must directly result from the documents attached to the Offer
10. The Offer must be accompanied by a current copy of the appropriate register or central register and information on business activity (or information corresponding to the current copy of the appropriate register or central register and information on business activity), if separate regulations require entry in the register or registry; issued no earlier than 6 months before the deadline for submission of Offers.
11. If the Tenderer has a registered office or place of residence outside the territory of the Republic of Poland, instead of a current copy from the appropriate register or from the central register and information on business activity (or information corresponding to a current copy from the appropriate register or from the central register and information on business activity), it shall submit a document or documents, issued in the country in which it has a registered office or place of residence, confirming that it has not been liquidated or declared bankrupt, issued no earlier than 6 months before the deadline for submission of Offers. If such documents are not issued in the place of residence of a person or in the country where the Tenderer has its registered office or place of residence, they shall be replaced by a document containing a statement, also including persons authorized to represent the Tenderer, submitted before a competent judicial, administrative or business or economic self-government body of the country of residence of a person or the country where the Tenderer has its registered office or place of residence, respectively, or before a notary public, issued no earlier than 6 months before the deadline for submission of Offers.
12. A tax residency certificate for foreign entities (if applicable) must be attached to the Offer.
13. It is not allowed for the Tenderer to make any changes to the previously prepared content of the Offer after the deadline for submission.

#### **IX. PLACE, METHOD AND DEADLINES FOR SUBMITTING AN OFFER**

1. Offers can be submitted in the following ways:
  - a) electronically, in the form of scans of signed documents to: **przetargi@kghmcuprum.com**  
E-mail, should be titled: "*Offer for the purchase of the Geostudio software package upgrade service*"

**Deadline for submission of Offers: by 8<sup>th</sup> September 2022 by 08:00 a.m.**

**(date and time of receipt by the Ordering Party are decisive)**

2. Offers submitted after the deadline will not be considered.



## X. SETTLEMENT/SELECTION OF THE OFFER

The Offers will be opened on 9<sup>th</sup> of September 2022 at 08:30 a.m. The Tenderer of the selected Offer will be informed by e-mail about the completion of the procedure and the selection of its Offer.

The Tenderer may amend or withdraw its Offer before the Offer opening date. The last Offer submitted by the Tenderer will be considered in the Offer evaluation criterion. In the course of examining and evaluating Offers, the Ordering Party may require Tenderers to clarify the content of their Offers.

## XI. INFORMATION ON HOW THE ORDERING PARTY COMMUNICATES WITH TENDERERS

Form and principles of communication:

- 1) The Tenderer may electronically Letter of inquiry clarification of the content of the Letter of inquiry from the Ordering Party no later than 3 business days before the deadline for submission of Offers.
- 2) The Ordering Party reserves the right to leave any question received after this deadline unanswered.
- 3) The Ordering Party will make the contents of inquiries and clarifications (without disclosing the source of the inquiry) public on its website at <https://kghmcuprum.com/przetargi/> and notify Tenderers who have declared their interest in the procedure, as well as electronically notify Tenderers invited to submit an Offer. The Ordering Party will respond to questions asked by Tenderers no later than 2 business days before the deadline for submission of Offers.
- 4) In justified cases, the Ordering Party may, before the deadline for submission of Offers, amend the contents of the Letter of inquiry . The Ordering Party will make the change public on its website at <https://kghmcuprum.com/przetargi/> and will inform by e-mail the Tenderers to whom the Letter of inquiry was sent.
- 5) If, as a result of changes to the content in the Letter of inquiry , additional time is necessary to introduce changes in the Offers, the Ordering Party will extend the deadline for submission of Offers by informing about it on the website at <https://kghmcuprum.com/przetargi/> and will inform electronically the Tenderers to whom the Letter of inquiry was sent.

## XII. TERMS AND CONDITIONS OF PARTICIPATION IN THE PROCEDURE

The following Tenderers may compete for the award of this contract:

- a) those who are authorized to carry out specific activities or actions, if the acts require such authorization.
  - ✓ Fulfilment of the condition will be verified on the basis of: the tenderer's statement included in the contents of **Attachment No. 3** to this request;
- b) those who have the necessary knowledge and experience and have the necessary technical potential and people capable of performing the task.
  - ✓ Fulfilment of the condition will be verified on the basis of: the tenderer's statement included in the contents of **Attachment No. 3** to this request;
- c) those who are in a stable financial and economic situation that guarantees the performance of the subject contract.



- ✓ Fulfilment of the condition will be verified on the basis of: The tenderer's statement included in the contents of **Attachment No. 3** to this request;
- d) those against whom there are no liquidation or bankruptcy proceedings and those who are not in bankruptcy
  - ✓ Fulfilment of the condition will be verified on the basis of: the tenderer's statement included in the contents of Attachment No. 3 to this request;

Verification of the fulfilment of the aforementioned conditions for participation in the procedure will be made on the basis of the submitted statement constituting **Attachment No. 3** to this Letter of inquiry and copies of authorizations as well as other documents related to the subject matter of the contract. Signing the statement will be considered as confirmation that the terms and conditions for participation in the procedure are met. The Ordering Party will evaluate the fulfilment of the terms and conditions for participation in the procedure on a "meet-not-meet" basis

### **XIII. TERMS AND CONDITIONS FOR EXCLUSION FROM THE PROCEDURE**

Entities with personal or capital relations with the Ordering Party are excluded from participation in the procedure. Capital or personal relations are understood as a mutual relationship between the Ordering Party or persons authorized to incur liabilities on behalf of the Ordering Party or persons performing activities on behalf of the Ordering Party related to the preparation and execution of the procedure for the selection of the Tenderer, and the Ordering Party, consisting in particular of:

- a) participation in a company, as a partner in a civil law partnership or partnership;
- b) holding at least 10% of shares or stocks, unless a lower threshold is required by law
- c) serving as a member of the supervisory or management body, proxy, attorney,
- d) being married, in a relationship of consanguinity or affinity in the direct line, second degree of consanguinity or second degree of affinity in the collateral line, or in a relationship of adoption, custody or guardianship.

In order to confirm the fulfilment of the aforementioned terms and conditions, Tenderers will submit the appropriate statement found in **Attachment No. 2** to this Letter of inquiry

### **XIV. OFFER REJECTION**

1. In this procedure, an Offer will be rejected:
  - a. which is inconsistent with the contents of this Letter of inquiry , or
  - b. which is incomplete, i.e. it does not contain the documents and/or statements required by this Letter of inquiry (point VIII.) despite the Letter of inquiry for supplementation, or
  - c. which contains false information, or
  - d. in relation to which the Tenderer has not submitted explanations required by the Ordering Party as requested, or
  - e. with respect to which the Ordering Party has issued a Letter of inquiry for submission of documents referred to in point VIII of this Letter of inquiry , and the Tenderer has not responded to this request, in accordance with its contents,
  - f. which was modified after the deadline for submitting Offers,
  - g. which was submitted after the deadline for submitting Offers.



## **XV. CANCELLATION OF PROCEDURE**

1. The Ordering Party reserves the right to cancel this procedure at any stage without giving any reason, including, in particular, if:
  - a. no Offer was submitted which was not subject to rejection,
  - b. the price of the most favourable offer exceeds the amount that the Ordering Party may allocate to finance the contract,
  - c. the procedure have an irremovable defect preventing the conclusion of related-to-the-contract agreement that cannot be invalidated,
  - d. there has been a significant change in circumstances that makes the conduct of the procedure or the performance of the contract not in the public interest, which could not have been foreseen earlier.
2. In the event of cancellation of the procedure, Tenderers shall not be entitled to any claims against the Ordering Party.

## **XVI. ADDITIONAL INFORMATION**

1. The costs of participation in the procedure shall be borne by the Tenderers.
2. The lump sum price of the Offer should include all costs associated with the execution of the contract.
3. The Tenderer's remuneration shall be payable upon handover of the subject matter of the contract to the Ordering Party, confirmed by the signing by both parties of an Acceptance Protocol, a template of which is attached as Attachment No. 4 to this Letter of inquiry .
4. The Tenderer undertakes to keep confidential all information, content of documents relating to this procedure or of which it has acquired knowledge in connection with this procedure. The obligation referred to in the preceding sentence is not limited in time.
5. An agreement will be concluded with the selected Tenderer to execute the contract.
6. The Ordering Party requires that the offered subject matter of the contract be free of any physical and legal defects and brand new.
7. The Ordering Party does not allow partial or variant Offers.
8. If a defect is found that prevents the proper use of the subject matter of the contract. The Tenderer guarantees to replace the defective subject matter of the contract with a new one, free of defects, within 14 calendar days from the detection date.
9. The cost of transportation to the Ordering Party's premises and insurance shall be paid by the Tenderer.
10. The Ordering Party does not allow subcontracting part or all of the contract.
11. Terms of payment for the service provided – bank transfer 30 days.
12. The Ordering Party reserves the right to make changes, including as to the extension of the contract execution date, in the agreement concluded with the Tenderer who will be selected as a result of the conducted procedure. Any changes to the provisions of the agreement will be made in the form of a written annex, and may be made in particular due to:
  - Occurrence of objective causes beyond the control of the Ordering Party and the Tenderer affecting the subject matter of the Agreement,
  - The occurrence of circumstances resulting from force majeure,





- In the event that administrative procedures are prolonged beyond the periods specified in the relevant legislation for reasons beyond the control of the Parties,
  - Regulatory changes,
  - Amendments to the financing agreement that the Ordering Party will conclude with the Financing Authority, i.e. the European Commission;
  - Changes in the date of execution of the subject matter of the contract at the Letter of inquiry of the Ordering Party or for reasons beyond the control or justified by the Tenderer,
  - Changes in the date of payment;
  - Updating the data of the Tenderer and the Ordering Party by: change of company name, change of registered office address, change of legal form, etc.
13. The contract is awarded by means of a Letter of inquiry , observing the principles of competitiveness, efficiency, openness and transparency.
14. By submitting an Offer in the procedure, the Tenderer declares that both the Tenderer and its representatives as well as its actual beneficiaries within the meaning of the Act of 01.03.2018 on the prevention of money laundering and financing of terrorism (Journal of Laws of 2020, item 971, as amended) are not subject to economic sanctions, and acknowledges that before signing the agreement, verification will be carried out for presence on publicly available sanction lists.
15. By submitting an Offer in the procedure, the Tenderer declares that it shall comply with all applicable provisions of law on preventing, combating and responding to suspected or actual corrupt behaviour, and that it is familiar with the Anti-Corruption Policy of the KGHM Polska Miedź S.A. Group, the Code of Ethics of the KGHM Polska Miedź S.A. Group available on the website <https://kghm.com/en/tenders/anti-corruption-clause> and with the anti-corruption clause of KGHM CUPRUM sp. z o.o. - CBR available on the website <https://kghmcuprum.com/wp-content/uploads/2022/04/klauzula-antykorupcyjna-kghm-cuprum-sp-z-o-o-cbr.pdf>, which shall be binding on the parties.
16. In matters not regulated by the provisions of this Letter of inquiry , the provisions of the Civil Code shall apply.

**XVII. INFORMATION CLAUSE ON THE PROCESSING OF PERSONAL DATA BY THE ORDERING PARTY IN ACCORDANCE WITH ART. 13 GDPR APPLIED BY THE ORDERING PARTY FOR THE PURPOSE OF CONDUCTING THE PROCEDURE ON GRANTING A CONTRACT BY MEANS OF A LETTER OF INQUIRY**

In accordance with Article 13 of the General Data Protection Regulation of 27 April 2016 (OJ EU L 119, 4.5.2016), The Ordering Party informs that:

- 1) the controller of your personal data is KGHM CUPRUM sp. z o.o. – CBR, 53-659 Wrocław, Gen. Wł. Sikorskiego street 2-8, Poland
- 2) contact with the Data Protection Officer - [iod@kghmcuprum.com](mailto:iod@kghmcuprum.com)
- 3) Personal Data Controller processes:
  - a. Personal data of tenderers - in the case of submission of a tender by a tenderer who is a natural person - legal basis for processing: Article 6(b) GDPR and Article 6(c) GDPR - for the purpose of selection of a tender, conclusion and execution of an agreement, as well as fulfilment of other obligations incumbent on the Personal Data Controller under the provisions of law, in connection with its conclusion.
  - b. Personal data of persons representing the tenderer - legal basis for processing: Article 6(f)



- GDPR - legitimate interest of the Personal Data Controller to enable the tender selection, conclusion and execution of the agreement.
- c. Personal data of other natural persons designated by the tenderer to contact the ordering party - legal basis for processing: Article 6(f) GDPR - legitimate interest of the Personal Data Controller to enable the selection of a tender and execution of an agreement.
- 4) the recipients of your personal data will be only entities authorised to obtain personal data under the provisions of law
  - 5) Personal data will be kept until the time necessary for the execution and settlement of the agreement and necessary for the possible claims limitation period;
  - 6) provision of personal data is voluntary in order to conclude and perform an agreement linking the Ordering Party with the Contractor under this Letter of inquiry procedure, although refusal to provide such data will prevent cooperation between the aforementioned parties;
  - 7) with regard to personal data, decisions will not be made by automated means, pursuant to Article 22 GDPR;
  - 8) persons whose personal data will be provided to the Ordering Party in the course of this procedure have:
    - a) the right to access personal data concerning them;
    - b) the right to delete personal data concerning them, in the situations specified in Article 17(1) GDPR, subject to Article 17(3) GDPR;
    - c) based on Article 18 GDPR, the right to Letter of inquiry the controller to restrict the processing of personal data, subject to the cases referred to in Article 18(2) GDPR;
    - d) the right to object to the processing of personal data concerning them;-as long as the requests are not obviously unreasonable or excessive and are not limited or precluded by other laws;
  - 9) persons whose personal data will be provided to the Ordering Party in the course of the present procedure have the right to lodge a complaint with the President of the Personal Data Protection Office if any of those persons considers that the processing of personal data concerning them violates the provisions of the GDPR

#### APPENDICES:

- Attachment No. 1 – Offer form- Modification of September 1, 2022.
- Attachment No. 2– Statement of no capital or personal relations with the Ordering Party
- Attachment No. 3– Statement of compliance with the conditions for participation in the procedure
- Attachment No. 4 – Significant Contract Conditions - Modification of September 1, 2022.
- Attachment No. 5 - Template of the acceptance protocol

WICEPREZES ZARZĄDU

*Lech Szyszkowicz*

PROKURENT

*Anna Wróbel*



**Attachment No. 1 to the Inquiry No. DZ/16/08/2022 - Modification of September 1, 2022.**

|                           |       |
|---------------------------|-------|
| Full name of the Tenderer | ..... |
| Registered Office address | ..... |
| VAT number                | ..... |
| Registration number       | ..... |
| Tel.                      | ..... |
| E-mail:                   | ..... |
| Contact person            | ..... |

**ORDERING PARTY:**

KGHM CUPRUM Sp. z o.o.  
Centrum Badawczo - Rozwojowe  
(Research and Development Centre)  
Gen. Władysława Sikorskiego street,  
2-8, 53-659 Wrocław, Poland

**OFFER FORM**

In response to the Inquiry for the purchase of the upgrade service of the **Geostudio 2007 software package to Geostudio Max - Perpetual with maintenance service for the implementation of the AGEMERA project No. 101058178 - Agile Exploration and Geo-modelling for European Critical Raw materials funded under the Horizon Europe programme**

I hereby present the OFFER FORM:

**I. SUBJECT MATTER OF THE INQUIRY**

The subject matter of the contract is the purchase and delivery of 1 (one) upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual for the numerical analysis of geotechnical and geomechanical objects with maintenance service for the implementation of the AGEMERA project No. 101058178 - Agile Exploration and Geo-modelling for European Critical Raw materials funded under the Horizon Europe programme.

*THIS PROJECT HAS RECEIVED FUNDING FROM THE EUROPEAN UNION'S HORIZON EUROPE RESEARCH AND INNOVATION PROGRAMM UNDER GRANT AGREEMENT NUMBER 101058178*



**II. PRICE**

|  |  |
|--|--|
| <b>Net price for the entire subject matter of the contract</b>   | ..... , .....                                      |
| <b>Gross price for the entire subject matter of the contract</b> | ..... , .....                                      |
| <b>including VAT at ...%</b>                                     | .....  |
| <b>Expiration date of the OFFER FORM</b>                         | <b>30 days</b>                                     |
| <b>Payment term</b>  | <b>transfer 30 days</b>                            |
| <b>Contract completion date</b>                                  | <b>maximum 21 days after signing the agreement</b> |

**III. STATEMENTS**

I hereby declare that:

- 1) The prepared Offer form meets all the requirements specified in the Inquiry No. DZ/16/08/2022 dated 24th August 2022, **with subsequent modification** hereinafter referred to as the Inquiry.
- 2) I have read the Inquiry and, if my Offer form is selected, I undertake to sign an agreement at the time and place indicated by the Ordering Party and to carry out delivery and installation in accordance with the terms and conditions specified in the Inquiry.
- 3) I have sufficiently and necessarily familiarized myself with the detailed scope of the contract contained in the Inquiry and all information necessary to complete the contract. Unfamiliarity with the above condition cannot be the cause of additional financial claims.
- 4) I undertake to keep confidential any information obtained in the course of the procedure.
- 5) GDPR Information Clause  
In accordance with Article 13 of the General Data Protection Regulation of 27 April 2016 (OJ EU L 119, 4.5.2016) I inform you that:
  - a) the controller of your personal data is KGHM CUPRUM sp. z o.o. - CBR, 53-659 Wrocław, Gen. Wł. Sikorskiego street 2-8,
  - b) contact with the Data Protection Inspector - [iod@kghmcuprum.com](mailto:iod@kghmcuprum.com)
  - c) Personal Data Controller processes:
    - a. Personal data of tenderers - in the case of submission of an Offer form by a tenderer who is a natural person - legal basis for processing: Article 6(b) GDPR and Article 6(c) GDPR - for the purpose of selection of an Offer form, conclusion and execution of an agreement, as well as fulfilment of other obligations incumbent on the Personal Data Controller under the provisions of law, in connection with its conclusion.
    - b. Personal data of persons representing the tenderer - legal basis for processing: Article 6(f) GDPR - legitimate interest of the Personal Data Controller to enable the Offer form selection, conclusion and execution of the agreement.
    - c. Personal data of other natural persons designated by the tenderer to contact the ordering

*THIS PROJECT HAS RECEIVED FUNDING FROM THE EUROPEAN UNION'S HORIZON  
EUROPE RESEARCH AND INNOVATION PROGRAMM UNDER GRANT AGREEMENT  
NUMBER 101058178*



- party - legal basis for processing: Article 6(f) GDPR - legitimate interest of the Personal Data Controller to enable the selection of an Offer form and execution of an agreement.
- d) the recipients of your personal data will be only entities authorised to obtain personal data under the provisions of law
  - e) Personal data will be kept until the time necessary for the execution and settlement of the agreement and necessary for the possible claims limitation period;
  - f) provision of personal data is voluntary in order to conclude and perform an agreement linking the Ordering Party with the Supplier under this Inquiry procedure, although refusal to provide such data will prevent cooperation between the aforementioned parties;
  - g) with regard to personal data, decisions will not be made by automated means, pursuant to Article 22 GDPR;
  - h) persons whose personal data will be provided to the Ordering Party in the course of this procedure have:
    - ✓ the right to access personal data concerning them;
    - ✓ the right to delete personal data concerning them, in the situations specified in Article 17(1) GDPR, subject to Article 17(3) GDPR;
    - ✓ based on Article 18 GDPR, the right to request the controller to restrict the processing of personal data, subject to the cases referred to in Article 18(2) GDPR;
    - ✓ the right to object to the processing of personal data concerning them;-as long as the requests are not obviously unreasonable or excessive and are not limited or precluded by other laws;
  - i) persons whose personal data will be provided to the Ordering Party in the course of the present procedure have the right to lodge a complaint with the President of the Personal Data Protection Office if any of those persons considers that the processing of personal data concerning them violates the provisions of the GDPR
- 6) By submitting an Offer form in the procedure, I declare that I shall comply with all applicable provisions of law on preventing, combating and responding to suspected or actual corrupt behaviour, and that I am familiar with the Anti-Corruption Policy of the KGHM Polska Miedź S.A. Group, the Code of Ethics of the KGHM Polska Miedź S.A. Group available on the website <https://kgm.com/en/tenders/anti-corruption-clause> and the anti-corruption clause of KGHM CUPRUM sp. z o.o. - CBR available at <https://kgmcuprum.com/wp-content/uploads/2022/04/klauzula-antykorypcyjna-kgm-cuprum-sp-z-o-o-cbr.pdf>, which will be binding on the parties.
- 7) By submitting an Offer form in the procedure, I declare that both the Tenderer, its representatives and its actual beneficiaries within the meaning of the Act of 01.03.2018 on the prevention of money laundering and financing of terrorism (Journal of Laws of 2020, item 971, as amended) are not subject to economic sanctions, and I acknowledge that before signing the agreement, verification will be carried out for presence on publicly available sanction lists.

.....  
Place, date

.....  
signature and stamp of authorized  
person



**Attachment No. 4 to the Inquiry No. DZ/16/08/2022 - Modification of September 1, 2022.**

**SERVICE PURCHASE AND DELIVERY AGREEMENT No. KOPZ .../.../2022  
(No. DZ/16/08/2022)**

concluded on ..... **2022** in Wrocław, hereinafter referred to as the Agreement,  
by and between:

**KGHM Cuprum Sp. z o.o. - Centrum Badawczo-Rozwojowe (Research and Development Centre)** with its registered office at gen. W. Sikorskiego street 2-8, 53-659 Wrocław, Poland entered in the District Court in Wrocław, 6th Commercial Department of the National Court Register under the number KRS 0000100797, REGON 930093846, share capital PLN 17,329,000, including PLN 14,864,747 in cash, 2,464,253 in kind, represented by:

Mr. Radosław Pilut - President of the Management Board,  
Mr. Lech Szyszkowicz - Vice-President of the Management Board,

hereinafter referred to as the **Ordering Party**,  
and

.....  
represented by

.....

hereinafter referred to as the **Supplier**,  
hereinafter referred to collectively as the **Parties**, or individually as the **Party**,

**§ 1**

**SUBJECT MATTER OF THE AGREEMENT**

1. The subject matter of the agreement is the **purchase and delivery of 1 (one) upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual for the numerical analysis of geotechnical and geomechanical objects with maintenance service for the implementation of the AGEMERA project No. 101058178 - Agile Exploration and Geo-modelling for European Critical Raw materials funded under the Horizon Europe programme.**
2. Upgrade service of the Geostudio 2007 software package to Geostudio Max - Perpetual with maintenance service should meet the following requirements:





- a) PC version, with perpetual license.
  - b) Software compatible with Windows 8.1 or higher versions of the operating system.
  - c) Lifetime version of the software.
  - d) Enable stability analysis of geotechnical objects using LEM (Limit Equilibrium Method) and FEM (Finite Element Method),
  - e) Analysis in static, pseudo-static and dynamic loading system,
  - f) Ability to import model geometry from .dxf files.
  - g) Access to trainings, tutorials and technical documentation of the software.
  - h) Graphical analysis and review of results.
  - i) 12 months of technical support after the purchase of the software.
3. The Supplier undertakes to supply the service, which will have the appropriate approvals, technical approvals, certificates confirming their applicability in Poland.
  4. Along with the subject matter of the agreement, the Supplier shall provide all documents necessary for the use of the subject matter of the agreement, including guarantee, if required (by the Contracting Party or by law).

## § 2

### TERMS AND CONDITIONS OF IMPLEMENTATION

1. Delivery of the subject matter of the agreement shall take place within **21 days after signing the agreement.**
2. The date of execution of the subject matter of the agreement shall be the date on which the Parties sign the *Acceptance Protocol* of the execution of the subject matter of the agreement without reservations, which is attached as *Appendix No. 1* to the agreement.
3. The Supplier is obliged to notify the Contracting Party in writing of any event that may affect the non-performance of the subject matter of the agreement within the required time limit.
4. All circumstances, except those having the appearance of Force Majeure, accompanying or related to the performance of the Subject Matter of the Agreement, the Supplier has included in the deadlines for the performance of the Subject Matter of the Agreement.

## § 3

### ACCEPTANCE

1. Place of the agreement execution (delivery):  
**KGHM Cuprum Sp. z o.o. Centrum Badawczo – Rozwojowe  
(Research and Development Centre)  
Sikorskiego 2-8 street, 53-659 Wrocław, Poland**
2. Acceptance of the subject matter of the agreement will be made by drawing up an acceptance protocol of the execution of the subject matter of the agreement, which is attached as *Appendix No. 1* to the agreement. The basis for signing the protocol is



considered to be the fulfilment by the Supplier of all obligations under the agreement, including the issuance of documents provided for in the agreement.

4. If defects are found during acceptance, the Contracting Party shall have the following rights:
  - 1) if the defects are removable, the Contracting Party may:
    - a) demand that the defects be removed within the time limit set by it,
    - b) refuse acceptance until the defects are removed, and in this case the date of "completion of the subject matter of the agreement" will be the date of signing the protocol of quantitative and qualitative acceptance of the subject matter of the agreement without reservations,
  - 2) if they are not removable - demand delivery of the subject matter of the agreement without defects, setting an additional period for this purpose to the Supplier, or withdraw from the agreement for reasons attributable to the Supplier. The setting of an additional deadline does not stop the calculation of contractual penalties for improper performance of the agreement on time.
5. Liability for the realized delivery, from the moment of delivery until the end of acceptance of the subject matter of the agreement by the Contracting Party (i.e. writing a protocol of quantitative and qualitative acceptance without reservations) shall be borne by the Supplier.
6. The activities carried out during the acceptance, as well as the deadlines set for the removal of defects, will be included in the protocol of quantitative and qualitative acceptance of the execution of the subject matter of the agreement, signed by authorized representatives of the Parties, participating in the acceptance of the subject matter of the agreement.
7. The Supplier shall notify the Contracting Party of the fact that the defects have been removed in writing/by e-mail in order to accept the subject matter of the agreement to the extent previously disputed.
8. If the Supplier refuses to remove the defects or does not remove them within the period set by the Contracting Party, or the circumstances indicate that it will not be able to remove them within that period, the Contracting Party shall have the right to have the defects removed by a third party at the expense and risk of the Supplier. For this reason, the Contracting Party does not lose its rights under the guarantee provided by the Supplier.

#### § 4

#### TERMS OF PAYMENT

1. The price on the basis of which the Contracting Party selected the offer is:
  - a) net value:  
(in words , 00/100 )
  - b) VAT amount :  
(in words, 00/100):
  - c) **gross value**:  
(in words: , 00/100)





*Settlements between the Contracting Party and the Supplier shall be made in Polish zloty (PLN) at the average exchange rate of the National Bank of Poland (NBP) from the day preceding the date of issuance of the invoice (applies to foreign Suppliers).*

2. The remuneration referred to above shall include all costs for the performance of the Subject Matter of the Agreement or a part thereof, in accordance with the material scope, including any customs duty, excise tax and shall apply to the performance of the subject matter of the agreement under the terms of Incoterms DDP.
3. The remuneration for the subject matter of the agreement will be paid by transfer to the account indicated by the Supplier, within 30 days from the date of receipt of a properly issued invoice. The day of payment shall be understood as the day on which the Contracting Party's bank account is debited.
4. The Supplier shall include on the VAT invoice the full name and address of the Contracting Party in the wording indicated in the introduction to the Agreement.
5. The basis for issuing an invoice is the signing by both parties of the Acceptance Protocol which constitutes Appendix No. 1 to the agreement, with no comments.
6. The Contracting Party reserves the right to pay the remuneration due for the performance of the Agreement under the split payment mechanism (Split payment) provided for in the provisions of the Value Added Tax Act. In addition:
  - a. The Supplier declares that the bank account indicated in the Agreement:
    - i. is an account that allows payment under the split payment mechanism referred to in sec. 4 above, as well as
    - ii. is an account included in the electronic list of entities maintained from 01 September 2019 by the Head of the National Tax Administration, referred to in the Value Added Tax Act (hereinafter: List).
  - b. In the event that the Supplier's bank account does not meet the conditions set forth in subsection a) above, the delay in making payment within the deadline specified in the Agreement, resulting from the Contracting Party's inability to make payment of remuneration using the split payment mechanism or to make payment to an account included in the List, shall not constitute grounds for the Supplier to claim any interest from the Contracting Party, as well as any other compensation/contractual penalties/damages/claims for making untimely payment. Such delay shall also not constitute grounds for termination or withdrawal from the agreement.
7. The Contracting Party informs that it is a registered active VAT taxpayer with a tax identification number: 896-000-17-70.
8. The Supplier declares that it is a registered active VAT taxpayer with a tax identification number: .....



## **§ 5**

### **ASSURANCES, RIGHTS, OBLIGATIONS AND LIABILITY OF THE SUPPLIER**

1. The parties hereby confirm that the relevant provisions of the Civil Code will apply to issues related to the set-off of receivables.
2. In the event that the Supplier, as a result of improper performance of the Agreement, causes additional costs to the Contracting Party or in the event of damage to the Contracting Party, the Contracting Party shall be entitled to withhold payment to the Supplier until such costs or the extent of the damage are determined and paid for, without then being in delay.

## **§ 6**

### **GUARANTEE AND WARRANTY**

1. The Supplier shall be liable for physical and legal defects in the subject matter of the Agreement found during acceptance and for defects revealed after acceptance. The Supplier provides a 12-month guarantee starting from the date the representatives of the parties sign a protocol of final acceptance of the completed work.
2. During the guarantee and warranty period, the Supplier undertakes to remove any defects found within 14 days from the date of their effective notification or any other date indicated by the Contracting Party and confirmed in writing by the Contractor.
3. The Supplier authorizes the Contracting Party to remove the defects at the Supplier's expense in case of failure to meet the deadline for removal of defects, without losing the right to guarantee and warranty.
4. Warranty rights will be exercised according to the rules set forth in the Civil Code.

## **§ 7**

### **CONTRACTUAL PENALTIES**

1. In the event of non-performance or improper performance of the Agreement by the Supplier, the Contracting Party shall be entitled to contractual penalties:
  - a) for withdrawal from the Agreement by the Contracting Party for reasons attributable to the Supplier, in the amount of 10% of the net contractual remuneration referred to in § 2 sec. 1,
  - b) for untimely execution of the delivery in the amount of 0.5% of the net contractual remuneration referred to in § 2 sec. 1, for each started day of exceeding the contractual deadline for its execution,
  - c) for violation of the obligation of confidentiality referred to in § 11 sec. 1 in the amount of 15% of the net contractual remuneration, for each violation.
2. If the damage exceeds the amount of the reserved contractual penalties, the Parties may claim supplementary damages. If the damage is caused by reasons other than those specified above, the Parties may seek compensation under the general rules of the Civil Code.



3. The contractual penalty shall be payable within 7 days from the date of receipt of the penalty payment request.
4. In the event of damage exceeding the amount of the reserved contractual penalties, the Contracting Party may claim supplementary damages. If the damage is caused by reasons other than those specified above, the Contracting Party may seek compensation under the general rules of the Civil Code.
5. The Supplier agrees to deduct the amounts of calculated contractual penalties from the remuneration to which it is entitled under this agreement.

### § 8

#### PERSONS LIABLE FOR THE EXECUTION OF THE AGREEMENT

1. The person authorized to supervise the execution of the subject matter of the agreement on the part of the Contracting Party, including participation in acceptance activities, is **Krzysztof Fuławka**, email: [Krzysztof.fulawka@kghmcuprum.com](mailto:Krzysztof.fulawka@kghmcuprum.com), tel. number +48 785 464 130
2. The person authorized to supervise the execution of the subject matter of the agreement on the part of the Supplier, including participation in acceptance activities, are - each individually (one person):
  - a) ....., email: .....@....., tel. number +48
  - b) ....., email: .....@....., tel. number +48
3. Change of persons and contact details indicated in sec. 1 and 2 above, shall be effective upon written notification of it to the other Party and does not require the form of an annex to the Agreement.

### § 9

#### INFORMATION CLAUSE ON THE PROCESSING OF PERSONAL DATA

The Supplier declares that, in accordance with Article 13 of the Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, has been informed that:

1. The Controller of its personal data, including the data indicated in § 1 sec. 5, is the Contracting Party, registered address: Gen. Władysława Sikorskiego 2-8 street, postcode: 53-659, Wrocław, tel. number (071) 781 22 01;
2. The Contracting Party will process the following categories of personal data: name and surname, address, telephone number, e-mail address,
3. the Data Protection Officer can be contacted via email: [iod@cuprum.wroc.pl](mailto:iod@cuprum.wroc.pl),
4. personal data is processed for purposes arising from the legitimate interests exercised by the Contracting Party (the basis for processing), which are: ensuring proper performance of the Agreement, protection of confidential information,
5. the provision of personal data is voluntary, except that the provision of personal data is a condition for allowing the performance of the tasks specified in the Agreement;



6. personal data will be processed during the period of performance of the agreement, taking into account the provisions on limitation period, and will be stored for a period of 3 years, unless for other reasons storage is necessary, including tax regulations;
7. data will be disclosed to members of the bodies, employees of the Contracting Party, the company KGHM Polska Miedź S.A. and entities and their employees providing legal, financial, accounting and IT services,
8. its rights in relation to the Contracting Party are: the right to request access to its personal data, their rectification, erasure or restriction of processing, and to object to the processing of personal data on the basis of and in connection with the exercise of the indicated legitimate interest for reasons related to your particular situation, as well as the right to data portability - the Data Protection Officer at the Contracting Party may be contacted regarding the exercise of rights;
9. has the right to lodge a complaint with the President of the Personal Data Protection Office in the event that the controller is found to have violated data protection regulations;
10. no automated decisions will be made as a result of the processing, including in the form of profiling

#### **§ 10 FINAL PROVISIONS**

1. The Supplier undertakes to keep confidential all information relating to the performance of the Agreement, in particular data, documents and information received from the Contracting Party. The obligation included in this section shall be effective from the date of conclusion of the Agreement for a period of 10 years after its execution, expiration, dissolution or withdrawal.
2. Any disputes arising out of the interpretation or performance of the subject matter of the Agreement shall be attempted to be resolved amicably by the Parties, and in matters that cannot be resolved by negotiation, the competent authority shall be the Court with jurisdiction over the Contracting Party's registered office.
3. Unless otherwise provided in the Agreement, any changes or additions to the Agreement shall be made in writing in the form of an annex acceptable by both Parties, otherwise being null and void.
4. Dissolution of the agreement, its termination or withdrawal from the agreement shall be made in writing otherwise being null and void.
5. In matters not regulated by the Agreement, the relevant provisions of Polish law, in particular the Civil Code, shall apply.
6. The Contracting Party declares that it has the status of a large entrepreneur within the meaning of the provision of Article 4(6) of the Act of 08 March 2013 on Prevention of Excessive Delays in Commercial Transactions (Journal of Laws of 2019, item 118, as amended).
7. The Appendices constitute an integral part of the Agreement.
8. The Agreement was drawn up in two counterparts, with one copy for the Contracting Party and one copy for the Supplier.



Appendices:

1. Template of the acceptance protocol

**SUPPLIER:**

**CONTRACTING PARTY:**

.....

.....