Annex no 6 to the RFQ

AGREEMENT [DRAFT]

 for the development, delivery and implementation of an innovative card and internet payment system for small and medium-sized companies (fintech)

concluded on ........................... .. in Tarnowskie Góry between:

Quicko Sp. z o. o. with its seat in Tarnowskie Góry (42-600 Tarnowskie Góry) at 49 Sienkiewicza Street, entered into the register of entrepreneurs kept by the District Court in Gliwice, 10th Commercial Division of the National Court Register under the number: 0000350151, NIP: 5213540295, having the status of a national payment institution with capital in the amount of PLN 706,500, paid in full, represented by:

…………………………………………. - ……………………………………….,

hereinafter referred to as the "Ordering Party";

and

... with its registered office in ..., at ..., entered into the register of entrepreneurs of the National Court Register, kept by ..., under KRS number ..., with NIP ..., the share capital of which is ...,

represented by

……………………………………….. – …………………………………….,

hereinafter referred to as the **"Contractor",**

The Ordering Party and the Contractor are hereinafter jointly referred to as the "Parties".

**WHEREAS:**

1. The contractor was selected in the contract award procedure conducted in accordance with the principle of competitiveness set out in the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020.

2. The contract will be implemented as part of the project entitled: "Implementation of an innovative system for card and internet payments for small and medium-sized enterprises (fintech)", co-financed by the European Regional Development Fund under the Regional Operational Program of the Silesian Voivodeship for 2014-2020, priority axis XIV. Corrective actions in the context of the COVID-19 pandemic - REACT-EU, action: 14.2 Investments in SMEs, grant agreement No: UDA.RPSL.14.02.00-24-05C3 / 20-00 of April 11, 2022.

**THE PARTIES CONCLUDE AN AGREEMENT WITH THE FOLLOWING CONTENT:**

**§ 1 Subject of the Agreement**

## The subject of the Agreement is the development, delivery and implementation of an innovative card and internet payment system for small and medium-sized enterprises (fintech), in accordance with the assumptions specified in the Inquiry No. 1 / VII / 2022 of ……………………. and in accordance with the Contractor's offer, constituting Annex No. 1 to the Agreement (hereinafter the "Contractor's Offer").

## The detailed scope of the service includes:

2.1. Building a system (backend) to manage users and payment services and integration with the administration panel, integration with the card transaction processing system, integration with the partner bank's system. The works are aimed at carrying out the service of the following elements:

* + 1. user registration with two-step verification
		2. logging useres with two-factor authentication
		3. password recovery by the user with the use of additional verification,
		4. collecting user data necessary for verification and their storage,
		5. user verification processes - KYC (Know Your Customer) compliant with the requirements of the law, in particular the Act on counteracting money laundering and financing of terrorism (i.e. Journal of Laws of 2022, item 593, as amended),
		6. user account parameterization in terms of types of payment accounts, fees,
		7. opening and closing payment accounts in various currencies,
		8. maintaining the current and accounting balance of payment accounts on the basis of ordered transactions and transactions from the partner bank via API (Application Programming Interface) or settlement packages,
		9. registering incoming payment transactions in line with Elixir, SEPA, and SWIFT sessions,
		10. ordering Elixir, SEPA, SWIFT, Tax Office, ZUS payment transactions with additional verification of performed transactions and the possibility of two-stage authorization of payment orders (authorization scheme),
		11. collecting the history of transactions performed, registration and update of the statuses of transactions made on the basis of integration with a partner bank or settlement packages,
		12. generating confirmations of individual transactions and account statements,
		13. providing a tool for managing users, users' KYC applications, accounts and transactions,
		14. providing a tool enabling active monitoring and transaction management, in particular in terms of regulations derived from the Act on counteracting money laundering and financing terrorism (Journal of Laws of 2022, item 593, as amended), the Act on Payment Services (i.e. Journal of Laws of 2021, item 1907, as amended) and the Act on banking law (i.e. Journal of Laws of 2021, item 2439 as amended)

2.2 Building a web application (frontend) enabling users to use from the functionality of payment accounts and transactions. The elements of the panel consist of:

* + 1. login view using a unique login and user password, additionally verified with a one-time password (two-factor login),
		2. password reset view,
		3. view of the registration form based on additional verification,
		4. the registration questionnaire for the user enabling the remote delivery of the documentation necessary to carry out the entrepreneur's verification processes in the form of a secure form with the possibility of sending attachments,
		5. view of payment accounts taking into account the currency of the account, the balance of funds available, the accounting balance, the list of recent operations and the ability to freely move between accounts,
		6. view of the full history of transactions, taking into account the type of transaction and its status with the possibility of filtering in terms of time, amount and transaction title,
		7. the ability to download a transaction confirmation and account statement,
		8. view of ordering bank transfers: between own accounts, between Quicko users and external ones: ELIXIR, SEPA, SWIFT, ZUS, Tax Office,
		9. view of the account of the account holder containing the user's data along with the possibility of editing the login data, and the exchange of documents (upload and download of documents).
1. The Contractor shall provide the Ordering Party with technical documentation (user manual).

**§2**

##### Completion date

1. **T**he contractor shall perform the works specified in § 1 no later than **by 30/06/2023.**
2. The date of performance of the Subject of the Contract is the date of signing by the Ordering Party, without reservations, of the Acceptance Protocol of the Subject of the Contract.
3. Acceptance of the Subject of the Agreement will consist in checking the compliance of the implemented Subject of the Agreement with the requirements and assumptions specified in the Inquiry, the Agreement and the Contractor's Offer.
4. For the effective and timely performance of the Agreement, the Contractor undertakes to inform the Ordering Party, without undue delay, of events and circumstances that may affect the change of the completion date. The Contractor and the Ordering Party undertake in good faith to plan and undertake actions aimed at avoiding delays in the performance of the Object of the Agreement.
5. Failure to meet the deadline for the performance of the contract for reasons attributable to the Contractor shall entitle the Ordering Party to charge a contractual penalty on the terms set out in §7 of this Agreement.

**§ 3 Remuneration**

1. For the full and correct performance of the subject of the Agreement referred to in § 1, the Contractor shall receive a net remuneration of PLN ......................................................... (say: ...................... .... PLN 00/100), increased by the VAT due in the amount of ........................... .. PLN (say: ................................. zlotys 00/100 ), which gives the gross amount of ……………………………………. PLN (say: ………………………………………… zlotys 100/00).
2. The remuneration is in accordance with the Contractor's Offer and includes all price-generating elements, resulting from the scope and method of implementation of the Object of the Agreement.
3. The remuneration will be paid by bank transfer to the Contractor's bank account indicated on the invoice. For the purposes of this Agreement, the date of payment shall be the date on which the Ordering Party's account is debited with the appropriate amount indicated in the transfer order.
4. The basis for issuing an invoice by the Contractor shall be the acceptance protocol signed by the Ordering Party without reservations.
5. The remuneration will be payable within 30 days from the date of receipt by the Ordering Party of a correctly issued invoice.

**§ 4 Partial payments**

1. The Ordering Party allows the possibility of partial payments at the request of the Contractor, on the basis of the partial acceptance protocol signed by the Parties without comments.
2. The value of the partial remuneration should correspond to the actually performed scope of works, which will be presented by the Contractor and confirmed by the Ordering Party.
3. The partial acceptance report should contain at least: the scope of the works performed, the date of the works performed and the amount of remuneration - confirmed and approved by the Ordering Party.
4. The final payment cannot be lower than 30% of the total remuneration referred to in § 3.

**§ 5 Performance of the Agreement**

1. The Ordering Party undertakes to cooperate with the Contractor, in particular through active cooperation in the scope of introducing corrections to the errors found by the Contractor, providing all information and providing access to all documentation necessary for the proper performance of the subject of the contract.
2. The Parties agree that for the purposes of implementing the Agreement, they will use electronic means to exchange correspondence in the form of sending e-mails each time bearing the name and surname of the person sending the message, without the need to sign the correspondence with a qualified electronic signature.
3. The Contractor guarantees that his services will be provided in a professional manner, according to appropriate knowledge and experience, with the utmost care and efficiency, and that he will perform the commissioned works in a timely manner and in accordance with the applicable legal status.
4. The Contractor shall be fully liable for his own and subcontractors' actions or omissions related to the performance of the Agreement, unless the damage was caused by force majeure or solely due to the fault of the Ordering Party or a third party.
5. The Contractor is not entitled to introduce any changes to the System without the written consent of the Ordering Party, in particular the Contractor undertakes not to make any changes to the databases in the production environment used by the Ordering Party.

**§ 6**

## Partial acceptance protocol and final acceptance protocol

1. After completing the works specified in § 1 or part of these works, the Contractor shall notify the Employer of readiness to provide him with the partial acceptance protocol or the final acceptance protocol, respectively.
2. The contracting authority shall accept the partial / final report or submit comments to it within 3 working days of receiving the given report.
3. The Contractor will take into account the Ordering Party's comments or present the Ordering Party with written arguments indicating the impossibility of their introduction due to the proper functioning of the System, within 3 working days (or more subject to the Ordering Party's written consent).
4. The Parties will endeavor to take into account each other's comments in order to ensure the best functioning of the System.
5. If the Parties do not sign the partial / final acceptance protocol without comments, the partial / final remuneration will not be paid.
6. In the absence of any declaration on the part of the Ordering Party within the time limit referred to in paragraph 2, despite the prior call by the Contractor for acceptance, with a deadline not shorter than 14 working days, the Parties shall consider the acceptance protocol accepted.
7. The contract is considered duly performed upon the signing of the final acceptance protocol by the Ordering Party without any comments.

**§ 7 Contractual penalties**

1. In the event of a delay resulting from the fault of the Contractor in the performance of the obligations covered by the Agreement beyond the period specified in § 2 sec. 1, the Contractor shall pay a contractual penalty in the amount of 1% of the gross remuneration specified in § 3 sec. 1 for each day of delay started.
2. The maximum amount of the contractual penalties referred to in paragraph 1 may not exceed the total gross value of the order.
3. It is allowed to deduct the contractual penalties from the remuneration due to the Contractor.

**§ 7 Termination of the Agreement, withdrawal from the Agreement**

1. The Ordering Party may terminate the Agreement without a 30-day notice period in the event of a gross breach by the Contractor of his obligations under the Agreement and when, for reasons attributable to the Contractor, the performance of the subject of the Agreement loses its economic significance for the Ordering Party.
2. The Ordering Party may withdraw from the Agreement in whole or in part within 30 days from the date of becoming aware of a significant change in circumstances causing that the performance of the Agreement is not in the public interest, which could not be foreseen at the time of the conclusion of the contract, or further performance of the contract may threaten an essential interest of state security or public security. In this case, the Contractor is entitled to the remuneration due for the performance of part of the Agreement confirmed by the acceptance protocol signed by the Ordering Party without comments.
3. The Contractor may withdraw from the Agreement with a 30-day notice in the event of the Contracting Authority's failure to cooperate with the Contractor to the extent referred to in § 4 paragraph 1.
4. The declaration of termination or withdrawal from the Agreement shall be justified and in writing under pain of nullity.

**§ 8 Copyrights and related rights**

1. The Contractor declares that he will be entitled to proprietary copyrights and subsidiary rights to all works that will be created as a result of the performance of the Agreement.
2. As part of the remuneration referred to in § 3 sec. 1, on the date of signing the final acceptance protocol by the Ordering Party, the Contractor transfers to the Ordering Party the proprietary copyrights and the right to authorize the exercise of derivative copyrights to works created under the Agreement (hereinafter: Works), in the fields of use indicated in paragraph 3 below.
3. The transfer of proprietary copyrights and subsidiary rights to the Works covers the following fields of use:
	1. as regards the recording and reproduction of the Work - permanent or temporary reproduction of the computer program in whole or in part by any means and in any form,
	2. in the scope of disseminating the Work - dissemination, including marketing, lending or renting a computer program or a copy thereof,
	3. the copyrights to the Work other than the software, in particular to the Technical Documentation, are transferred to the following fields of use:
		1. in the field of recording and reproducing the Work - producing copies of the Work by any technique,
		2. in terms of trading in the original or copies on which the Work has been recorded - marketing, lending or renting the Work,
		3. in the scope of disseminating the work in a different way than in the previous point - public performance, exhibition, e.g. for presentation at a fair, display, playback, broadcasting via vision or audio and rebroadcasting, entering into computer memory and the Internet, and also making the Work publicly available in such a way that everyone can have access to it at a place and time chosen by them,
		4. in the scope of creating intellectual property objects based on the Work - using the Work to create a trademark and other industrial property objects and to create a separate work or combine with a separate work.
4. With the transfer to the Ordering Party of the right to authorize the exercise of derivative copyrights to the Works, the Ordering Party shall be given the exclusive right to authorize the exercise of derivative copyright.
5. With the transfer to the Ordering Party of the proprietary and subsidiary copyrights to the Work being the software, the proprietary and dependent copyrights to the Source Codes relating to the said software are transferred to the Ordering Party on the same terms.
6. The Contractor guarantees that the Works produced by the Contractor will not infringe intellectual property, including copyrights and related rights, or other rights of third parties.
7. The Contractor undertakes that in the event of a need to use from the subject of the Agreement in the fields of use other than those listed above, will transfer to the Ordering Party the proprietary copyrights and dependent rights to the subject of the Agreement, by way of a separate agreement, free of charge.
8. The Contractor undertakes that by performing the subject of the Agreement, he will not infringe any property rights and non-property third parties, and the created Works will be free from encumbrance with the rights of third parties.
9. The Contractor is responsible to the Ordering Party for any legal defects of the performed subject of the contract, in particular for any claims of third parties resulting from the infringement of intellectual property rights, including non-compliance with the provisions of the Act 30 of February 4, 1994 on Copyright and Related Rights ( Journal of Laws of 2017, item 880, as amended) in the course of the performance of the Agreement.
10. If a third party makes any claims in relation to the subject of the Agreement, the Ordering Party shall not recognize any claim and shall exercise due diligence in notifying the Contractor about this fact.
11. If the Ordering Party informs about any claims of third parties against the Ordering Party in connection with the subject of the Agreement, the Contractor will take steps to resolve the dispute and will incur all costs, including the costs of legal representation from the moment the claim is submitted and the costs of damages. In particular, if an action is brought against the Ordering Party for infringement of intellectual property rights, the Contractor will join the proceedings as a defendant, and if this is not possible, he will take a side intervention on the side of the Ordering Party.
12. If, as a result of a court decision, the Contractor will not be able to use the subject of the Agreement, the Contractor will immediately - at his own expense and risk - modify the subject of the Agreement or replace it with a new one, in such a way that it does not infringe the rights of third parties.
13. The ownership of the copies of the Works and the media on which the Works were recorded becomes the property of the Ordering Party upon signing the acceptance protocol by the Ordering Party.
14. The Contractor undertakes to ensure that persons who are entitled to personal copyrights to the Works, will not exercise their rights in a way that prevents the Ordering Party from using the rights to the Works.
15. For the avoidance of interpretative doubts, the Parties hereby confirm that none of the above provisions shall exclude:
16. Ordering Party's ability to claim compensation under the general principles of the Civil Code or to exercise the Ordering Party's rights under other acts,

or

1. claiming liability for other reasons specified in the Agreement, in particular § 8.
2. Payment of the remuneration referred to in § 3 sec. 1 of the Agreement, exhausts the Contractor's claims for the transfer to the Ordering Party of proprietary copyrights, subsidiary rights and ownership of copies of the Works.

**§ 9 Settlement of disputes**

Any disputes arising from the implementation of the Agreement, the Parties will try to settle amicably. In the event of disagreement, the competent court for resolving disputes will be the court competent for the seat of the Ordering Party

**§ 10 Information protection**

1. Information within the meaning of the Agreement is any information, documents or data provided to the Contractor by the Ordering Party, obtained by the Contractor in connection with the performance of the Contract and produced by the Contractor for the purposes of the Contract.
2. The Contractor may process the information entrusted to him by the Ordering Party only for the duration of the Agreement.
3. The Contractor undertakes to keep secret all information and methods of securing information, both during the term of the Agreement and after its expiry or termination.
4. The Contractor is obliged to apply all the necessary technical and organizational measures to protect the processing of information, and in particular should secure the information against disclosure to unauthorized persons, removal by an unauthorized person, processing in violation of the provisions of the Agreement, change, loss, damage or destruction.
5. The Contractor undertakes to exercise the utmost diligence in order to secure the information obtained in connection with the performance of the Agreement against unauthorized access, dissemination or transfer to third parties.
6. The Contractor is obliged to ensure the performance of information security obligations, in particular regarding the confidentiality of information, also by his employees and persons with whom he performs the Agreement. Responsibility for the breach of the above obligation rests with the Contractor. Any breach of information security, in particular the disclosure of any information during the term of the Agreement, entitles the Ordering Party to withdraw from the Agreement.
7. The Contractor may disclose information only to persons who need it to perform the tasks entrusted to them and only to the extent that they must have access to it for the performance of the Contract.
8. Persons performing the Agreement on behalf of the Contractor are required, prior to commencing the performance of the subject of the Agreement, to sign a confidentiality statement, the specimen of which is attached as Annex 2 to the Agreement. The signed declaration should be delivered to the Ordering Party prior to the performance of the services.

10. The Contractor shall be fully liable, both towards third parties and the Ordering Party, for damages resulting from improper performance of information obligations.

11. The Contractor is obliged to immediately notify and report to the Ordering Party about unauthorized disclosure or sharing of information or about breach of confidentiality of information:

1. To the e-mail address: kontakt@quicko.pl

12. The Contractor undertakes, after the completion of the Agreement, to return to the Ordering Party all information, along with the carriers, and in the event of the Contractor recording the information - to remove this information from the media, including backup copies, and to destroy all documents and data that can be reconstructed in full. or parts, information. The Contractor shall submit to the Ordering Party an appropriate written statement on this occasion.

13. The Contractor may not duplicate, disseminate, use for purposes not related to the performance of the Agreement and disclose information to third parties without obtaining the above-mentioned written consent of the Ordering Party, unless such information has already been made public or is not publicly available. The above obligation does not apply to the Contractor's and subcontractor's specialists, as long as such has been previously agreed with the Ordering Party, however, the Contractor may provide information to specialists only for the purpose of performing the Agreement.

14. The Contractor is fully responsible for keeping the above-mentioned confidentiality information by the persons with whom he performs the contract.

15. The contractor is obliged to:

1. ensure control over what information, when, by whom and to whom is provided, especially when it is transmitted via data teletransmission,
2. ensure that the persons referred to in point 1, kept secret the information and the methods of its security.

**§ 11 Zmiany umowy**

1. A change to the contract in relation to the content of the offer submitted by the Contractor after its conclusion is allowed, provided:
	1. the changes will be beneficial for the Ordering Party or
	2. circumstances occurred that could not be foreseen at the time of the conclusion of the Agreement or
	3. there are new technical or organizational solutions that the Ordering Party intends to use or
	4. there has been a change in the provisions of European Union or national law affecting the performance of the contract
2. The contracting authority provides for the possibility of making changes to the provisions of the concluded contract. The conditions of the above-mentioned changes:
	1. change of the service to a better quality while maintaining the identity of the subject of the contract;
	2. change of parameters of the subject of the contract due to technical or technological progress (e.g. withdrawal from the market of devices or components),
	3. change of the order completion date if, for reasons beyond the control of the parties, it will not be possible to perform the order within the assumed time,
	4. changes to the terms and terms of payment if these changes result from reasons beyond the control of the Contractor or the Ordering Party;
	5. change in the method of contract performance for reasons beyond the control of the Contractor, including those resulting from the decision of the institution financing the implementation of the project under which the contract is awarded, obliging the Ordering Party to introduce changes to the project resulting in the need to amend the contract with the Contractor;
	6. other changes that do not change the nature of the contract, provided that the following conditions are jointly met:
		1. the need to amend the contract is caused by circumstances which the Ordering Party, acting with due diligence, could not foresee
		2. the value of the change does not exceed 50% of the order value originally specified in the contract.
3. Failure to meet the original deadline for reasons other than those mentioned above will result in charging a contractual penalty referred to in § 7 of this contract.

**§ 12 Final provisions**

1. Any changes and additions to the Agreement, its termination, termination with the consent of both Parties or withdrawal from it will be made in writing under pain of nullity.
2. The Contractor may perform the subject of the Agreement in cooperation with third parties, however, provided that such entity accepts all the conditions specified in this Agreement.
3. The Contractor may not transfer the receivables to third parties or entities without the prior written consent of the Ordering Party. Any assignment of receivables without such consent is ineffective for the Ordering Party
4. For the purposes of the Agreement, the Parties agree that whenever the agreement refers to working days, it should be understood as the days of the week falling from Monday to Friday from 8.00-16.00, excluding public holidays.
5. The invalidity or inability to enforce any provision of the Agreement shall not affect the validity or the possibility of enforcing the performance of the remaining provisions of the Agreement. In the event of such nullity or impossibility of enforcing performance, the Parties shall do everything possible to achieve or lawfully produce the same economic objectives or effects that were to be achieved or caused by the invalid or impossibility to enforce the provision.
6. During the performance of the subject of the Agreement, the Contractor shall be liable as for his own actions for any acts or omissions of his employees or other persons to whom the Contractor will entrust, with the consent of the Ordering Party, the performance of activities related to the performance of the Subject of the Agreement.
7. The contract is governed by Polish law.
8. This Agreement, together with the Annexes which form an integral part thereof, constitute the entire agreement between the Parties, superseding to the greatest extent possible any previous written or oral agreements relating to the subject matter of this Agreement.

 Attachments:

* Annex No 1 – Contractor’s offer
* Annex No 2 – Confidentiality clause
1. The contract was drawn up in two identical copies, one for the Ordering Party and one for the Contractor.

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| --- | --- |
|  Ordering Party | Contractor |

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