

(Draft)

Sales and Purchase Agreement for FY20**

Okinawa Institute of Science and Technology School Corporation (hereinafter referred to as “OIST”) and TENUM (hereinafter referred to as “Seller”) shall conclude a sales and purchase agreement, as follows.

1. Title: Purchase of *****, details of which may be described in the specification (hereinafter referred to as the “Specification”) attached hereto (hereinafter referred to as the “Subject Matter”)
2. Contract Amount: ***** yen (Breakdown: as per set forth in the quotation as attached hereto (hereinafter referred to as the “Quotation”))
3. Contract Deposits: Exempted
4. Trade Terms: DDP OIST
5. Packing: Export standard packing
6. Transshipment: Not allowed
7. Partial Shipment: Not allowed
8. Delivery Site: Site designated by the Specification within OIST (1919-1, Tancha, Onna-son, Kunigami-gun, Okinawa, Japan)
9. Delivery Due Date: MMMMM DD, 20**
10. Inspection: Done by OIST
11. Payment: T/T remittance by the end of the month following the month of the acceptance

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In witness whereof, OIST and Seller have caused this Agreement to be executed in duplicate and each party shall retain one copy thereof.

MMMMM, DD, 20**

OIST: 1919-1, Tancha, Onna-son, Kunigami-gun, Okinawa
Okinawa Institute of Science and Technology School Corporation

Kenta Ogawa, Senior Manager of Procurement & Supplies Section

Seller: *****

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(Purpose of Agreement)

Article 1: Pursuant to the provisions of the terms and conditions of this Agreement, the Specification and related documents attached hereto and provided by OIST, and the Quotation (hereinafter referred to as the “Specifications, etc.”), Seller shall sell, and OIST agrees to purchase the Subject Matter, for the Contract Amount set forth in the premises of this Agreement.

2. Seller shall deliver the Subject Matter by the designated Delivery Due Date to the designated Delivery Site, as stipulated in the cover page hereof.

(Documents to be submitted)

Article 2: Seller shall compile any necessary documents pursuant to the Specifications, etc., and submit such documents to OIST by the date designated by OIST for OIST’s approval.

(Procedures required by public/governmental offices)

Article 3: Seller shall perform any necessary procedures required by public/governmental offices, etc. (if any), for performance of this Agreement at its own cost.

(Use of patents, etc.)

Article 4: Seller shall take full responsibility for the clearing rights (such as acquisition of license) of any patent rights, copyrights (including rights under Sections 27 and 28 of the Copy Right Act of Japan), utility model rights, design rights, and any other intangible/intellectual property rights held by a third party in the course of execution and performance of this Agreement and for the purpose of OIST’s exploitation of the Subject Matter, and shall defend, indemnify, and hold OIST harmless in this regard. Seller shall immediately notify OIST in writing if any claim made in connection with this Agreement by a third party.

(Confidentiality)

Article 5: OIST and Seller shall (i) not disclose any non-public information (hereinafter referred to as the “Confidential Information”) of the other party obtained in the course of execution and/or performance of this Agreement to any third party, and (ii) take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own non-public information of similar importance. OIST and Seller shall not use such Confidential Information of the other party for purposes other than performing this Agreement. Provided the information which falls on any of the following items shall not be included as the Confidential Information:

- (a) Information which the party who receives the Confidential Information (hereinafter referred to as the “Receiving Party”) can prove that it was in the Receiving Party’s possession at the time it was disclosed;
- (b) Information which was in the public domain at the time it was disclosed;
- (c) Information which entered the public domain subsequent to the time it was disclosed to the Receiving Party through no intent, fault or breach of this Agreement of the Receiving Party;
- (d) Information which was rightfully acquired by the Receiving Party through a third party without obligation of confidentiality;

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- (e) Information which was developed by the Receiving Party independently without access to any Confidential Information disclosed to the Receiving Party;
- (f) Information which was agreed with the other party who discloses the Confidential Information (hereinafter referred to as the “Disclosing Party”), in writing, of publication or disclosure of information; or
- (g) Information which is requested for disclosure by a valid order of a court or law; provided in such case the Receiving Party shall notify the Disclosing Party of such request.

2. The provisions of this article shall survive for five (5) years after the expiration of this Agreement.

(Investigation etc.)

Article 6: OIST, as it deems necessary, may investigate, request the report of or demand the progress and the details of Seller’s performance of obligations under this Agreement and/or the Seller’s records, books, etc. related to its performance of obligations.(Changes in Specifications, etc.)

Article 7: OIST may change the Specifications, etc. or suspend or cancel this Agreement until the completion of handover of the Subject Matter pursuant to Article 11.

- 2. Upon changing the Specifications, etc. or suspending or cancelling this Agreement, OIST shall agree with Seller in writing, through discussion, on the Contract Amount, the Delivery Due Date, and other conditions stipulated herein.
- 3. If Seller finds that it would be difficult to deliver the Subject Matter under conditions stipulated in the Specifications, etc., or if it is necessary for any other technical reasons, or if Seller has any question about the contents of the Specifications, etc., Seller shall promptly make proposals for changing the Specifications, etc. and discuss the matter with OIST.

(Changes in Contract Amount)

Article 8: If any conditions for determining the Contract Amount are changed due to any of the following reasons after the execution of this Agreement, OIST and Seller may agree to change the Contract Amount and other ancillary conditions:

- (1) Establishment, revision, or abolishment of tax laws and other legislations and regulations;
 - (2) The Contract Amount has become significantly unreasonable in the light of socially accepted norms due to price changes, caused by major economic fluctuations and other reasons that cannot be attributable to Seller.
 - (3) Changes in the Specifications, etc., according to Article 7 Paragraph 1 or Paragraph 3 thereof; or
 - (4) Implementation of a proposal based on the additional request of OIST has an impact on prices.
- 2. The parties agree that the changes of the Contract Amount stipulated in the preceding paragraph shall preferably be conducted collectively in writing, rather than individually, without changing the Contract Amount each time through consensus between both parties.
 - 3. In the event in which the necessity to raise the Contract Amount arises pursuant to Paragraph 1 above, it may be raised to the extent permitted under OIST’s budgetary measures.

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(Submission of delivery slip, etc.)

Article 9: Seller shall submit a delivery slip and relevant documents designated by the Specifications etc. (hereinafter referred to as the “Delivery Slip, etc.”) to OIST without delay upon delivery of the Subject Matter. Provided, if the multiple and partial deliveries are permitted by the Specification, etc. and related documents supplied by OIST, the Seller shall submit the Delivery Slip for each delivery without delay.

(Acceptance inspection)

Article 10: Within ten (10) business days from the date of receipt of the Delivery Slip etc. in the preceding article, OIST shall undertake an acceptance inspection of the Subject Matter pursuant to this Agreement, the Specifications, etc. and regulations pertaining to inspections prescribed by OIST.

2. The acceptance inspection stipulated in the preceding paragraph shall be attended by Seller. However, when Seller is not present at the inspection, OIST may still conduct the acceptance inspections alone and notify Seller of the results.
3. Seller shall not enter any area of the OIST premises unnecessarily to perform the acceptance inspection described in the preceding paragraph or to perform other obligations stipulated in this Agreement, or accompany other unnecessary personnel to perform the obligations stipulated in this Agreement.

(Handover)

Article 11: The handover of the Subject Matter shall be deemed to have been completed when Seller is informed that the Subject Matter has passed the acceptance inspection stipulated in the preceding article through attendance to the acceptance inspection or notification from OIST.

2. Seller shall be liable for any damage, defects, etc. detected in the Subject Matter, i) prior to passing or during the acceptance inspection stipulated in the preceding article; or ii) according to the applicable provisions of the Trade Terms, whichever comes earlier. Notwithstanding the foregoing, if the damage is attributable to OIST’s intentional or grossly negligent acts, this does not apply.
3. The property rights of the Subject Matter shall all vest in OIST at the completion of handover described in the preceding paragraph and Seller shall take the necessary procedures for the Subject Matter.

(Repairs)

Article 12: If any defect is detected in all or part of the Subject Matter, as a result of the inspection stipulated in Article 10, Seller shall, at its own cost and responsibility, immediately repair or modify the Subject Matter, or deliver a replacement to OIST by the date designated by OIST (hereinafter referred to as the “Repairs, etc.”).

2. In the case of the Repairs, etc. stipulated in the preceding paragraph, the provisions of Articles 10, 11, 12 and 15 shall apply mutatis mutandis to the handover of the Subject Matter and the collection of the delay penalty, etc.

(Payment of the Contract Amount)

Article 13: Upon completion of the handover of the Subject Matter and if OIST agrees its necessity,

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within three (3) business days from the completion day of the handover, Seller shall ask OIST for payment of the Contract Amount, by submitting of the duly executed invoice.

2. After completion of the handover pursuant to Article 11, OIST shall pay the invoiced amount to Seller by the end of next month from the date on which OIST accepts the invoice prescribed in the preceding paragraph.
3. If OIST fails to pay the invoiced amount by the end of the period stipulated in the preceding paragraph, Seller may claim the penalty interest charge at the stipulated rate of in the Act on Prevention of Delay in Payment under Government Contracts, etc. (Act No.256 of 1949) for the amount in arrear for the number of days from the date following the end of the payment period until the date on which the payment is completed. However, if the failure of payment is due to any Act of God or other unavoidable circumstances, the period in which such circumstances exists shall not be included in the period of payment delay.

(Setoff)

Article 14: In the event OIST is entitled to any damage compensations from Seller or has any other credits to Seller, even if they are not payable yet, OIST may set off its payment amount pursuant to this Agreement or other agreements and any other monetary debts to Seller against those credits.

(Extension of Delivery Due Date and delay penalty)

Article 15: When Seller is unable to complete the handover of the Subject Matter by the end of the Delivery Due Date stipulated herein due to any Act of God or other causes not attributable to Seller, Seller may request OIST to extend the Delivery Due Date by presenting the reasons in detail. In this case, OIST may approve the request if it is deemed appropriate to OIST.

2. In addition to the provision stipulated in the preceding paragraph, when Seller requests an extension of the Delivery Due Date, and when the delivery of the Subject Matter is expected to be available by a date deemed satisfactory by OIST, OIST may approve such request for extension at its own discretion.
3. In the event the Subject Matter is not delivered by the Delivery Due Date stipulated herein, Seller shall pay to OIST a delay penalty equivalent to one thousandth (1/1000) of the Contract Amount per day from the day following the Delivery Due Date until the completion of the handover, unless approved pursuant to the provisions of the preceding two paragraphs.

(OIST's right of cancellation)

Article 16: If any of the following occurs, OIST may cancel all or part of this Agreement by providing Seller a written notice:

- (1) Seller fails to perform all or part of this Agreement;
- (2) Seller fails to follow OIST's instructions hereunder, interferes with OIST's business operations, or commits any fraudulent act;
- (3) Application to commence Seller bankrupt, or any other similar proceedings has been filed with regard to, Seller's asset or Seller's credit standing has significantly deteriorated, or other causes have occurred to make OIST believe it to be difficult for Seller to accomplish the purpose of this Agreement, at OIST's sole discretion;

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(4) Due to Act of God or other causes that cannot be attributed to Seller, the delivery of the Subject Matter is deemed impossible, at OIST's sole discretion;

(5) Seller has requested cancellation of this Agreement for causes deemed reasonable to OIST;
or

(6) Due to internal affairs of OIST. (However, OIST shall compensate, through consultation with Seller, for damages (other than the loss of profit which should have been gained) caused by such cancellation.).

(Seller's right of cancellation)

Article 17: In the event that OIST breached its obligations of this Agreement, Seller may inform OIST of the breach and set reasonable period for OIST to cure the breach, in writing. If such breach is not cured by the end of the reasonable period, Seller may terminate the whole or portion of this Agreement.

(Penalty)

Article 18: In the event this Agreement is cancelled due to the causes attributable to Seller, i.e., pursuant to the provisions of Item (1), (2), or (3) of Article 16, OIST may charge Seller an amount equivalent to one tenth (1/10) of the Contract Amount as a penalty, in addition to actual damages to be compensated.

(Change of representative)

Article 19: In the event Seller has changed its representative or effected a sale of business, a merger or other significant operational matters, Seller shall promptly notify OIST of such changes.

(No commissioning to third party)

Article 20: Seller shall not commission all or part of the performance of this Agreement to any third party, without OIST's prior written approval. Any commission in violation thereof shall be null and void.

(No assignment of receivables)

Article 21: Without counterparty's prior written approval, OIST and Seller shall not assign any receivables and payables arising out of this Agreement to any third party, or have any third party succeed to them, or pledge or mortgage any properties manufactured or procured pursuant to this Agreement.

(Warranty for non-performance)

Article 22: If the delivered Subject Matter does not conform with the Specifications or the contents of this Agreement (hereinafter referred to as "Unconformity"), OIST may request to Seller correction of the Subject Matter, delivery of a substitution of the Subject Matter or completion of the Subject Matter by receiving the missing or incomplete part(s) of the Specifications, by notifying Seller within one year from the time when OIST becomes aware of the Unconformity. However, the proviso in Paragraph 1 of Article 562 of the Japan Civil Code does not apply to this case.

2. In the case described in Section 1 of this Article, notwithstanding Paragraph 1 of Article 563 of the Japan Civil Code, OIST may immediately request, without any previous notice, certain deduction from the Contract Amount to compensate the Unconformity.

3. The remedy described in Section 2 of this Article shall not prevent OIST from exercising the

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right to request the delay penalty pursuant to Paragraph 3 of Article 15, the right of cancellation pursuant to Article 16, or the right to request the damage compensation pursuant to Article 23 of this Agreement.

(Damage compensation)

Article 23: Seller shall compensate for any damage suffered by OIST due to violation of this Agreement, unless the damage has been caused by the reasons attributable to OIST.

2. Seller shall compensate for any damage suffered by OIST or any third party due to performance of this Agreement, unless the damage has been caused by the reasons attributable to OIST.
3. Seller shall compensate for any damage caused by the Unconformity of the Subject Matter and suffered by OIST or any third party.
4. If any conflict with a third party arises out of or in connection with performance of this Agreement, OIST and Seller shall cooperate with each other to solve the problem.

(Penalty for corruption such as bid-rigging)

Article 24: If any of the following applies with respect to this Agreement, Seller shall pay to OIST a penalty equivalent to one tenth (1/10) of the Contract Amount, no later than the date specified by OIST.

(1) The Fair Trade Commission gives a cease and desist order or a payment order for a surcharge of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 1947) (hereinafter referred to as the “Anti-Monopoly Act”), to Seller or any trade association Seller belongs to and such order of the said act becomes final and binding, due to or arising out of the violation by Seller of the Anti-Monopoly Act. However, this provision shall not apply to any act that does not cause monetary damages to OIST as a result of the violation by Seller of any of the provisions of Article 19 of the Anti-Monopoly Act, such as the Unfair Price Cutting set forth in Paragraph 6 of the Designation of Unfair Trade Practices (Fair Trade Commission Public Notice No. 15 of 1982) based upon the provision of Paragraph 9 of Article 2 of the Anti-Monopoly Act, as evidenced by Seller and approved by OIST.

(2) The Fair Trade Commission provides Seller with notice of its decision not to give a surcharge payment order as set forth in Paragraph 7 of Article 7-3 or Paragraph 3 of Article 7-7 of the Anti-Monopoly Act.

(3) Seller (or any of its officers or employees if Seller is a corporation) is confirmed guilty in accordance with Article 96-6 of the Penal Code (Act No.45 of 1907), or Paragraph 1 of Article 89 or Paragraph 1-1 of Article 95 of the Anti-Monopoly Act.

2. Nothing in the preceding paragraph shall preclude OIST from filing a claim for the excess amount of damage if the actual damage amount incurred by OIST exceeds the amount of the penalty.
3. If any of the provisions of Paragraph 1 applies with respect to this Agreement, Seller shall promptly submit to OIST any and all related documents regarding such disposition.
4. If Seller fails to pay the penalty set forth in Paragraph 1 by the date specified by OIST, Seller

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shall pay to OIST penalty interest at the annual rate of five percent (5.0%) for the amount in arrear for the number of days from the date following the due date until the date on which the payment is completed.

5. OIST may immediately cancel this Agreement without any notice if OIST files a claim against Seller for the penalty pursuant to any of the provisions of Paragraph 1.

(Elimination of Antisocial Forces)

Article 25: Seller represents and warrants the following to OIST:

- (1) Seller and any of its officers and employees do not belong to, are not, and are not affiliated with, an organized crime group, a members of an organized crime group, a companies or a group related to an organized crime group, corporate extortionist and/or any other anti-social forces (hereinafter referred to as the “Antisocial Forces”), and/or they have never belonged to and/or affiliated with the Antisocial Forces;
 - (2) Seller and any of its officers and employees do not provide the Antisocial Forces with any investment, loans, funds or services, and/or they do not do any business of any kind with the Antisocial Forces;
 - (3) Seller and any of its officers and employees do not have a socially criticized relationship with the Antisocial Forces; and
 - (4) Seller and any of its officers and employees do not make abusive or unreasonable demands beyond legal liability against OIST, and do not slander the reputation or damage the credibility of OIST and interfere with the operations of OIST, whether on behalf of itself or via a third party.
2. Seller shall promptly notify OIST of the fact of violation by Seller of any of the provisions of the preceding paragraph, if any.
 3. OIST may immediately cancel this Agreement without any notice if the violation by Seller of any of the provisions of the preceding paragraph is found to be true. Seller shall not be entitled to claim to OIST any damages, if any, caused by such cancellation hereunder.

(Protection of personal information)

Article 26: Seller shall be responsible on duty to follow descriptions in the Paragraphs 2 through 11 in this Article, when Personal Information (Paragraph 2, Article 2 of the Act on the Protection of Personal Information Held by Incorporated Administrative Agencies etc.) included in the information provided from OIST for the execution of this Agreement or the acquired information through conducting this Agreement.

2. Seller shall assign a responsible person, and properly protect the Personal Information provided from OIST for the execution of this Agreement or the Personal Information acquired through conducting this Agreement prescribed in the preceding paragraph (collectively hereinafter “Acquired Personal Information”) under the supervision of the responsible person.
3. Seller shall notify OIST the name and affiliation of the responsible person of the Acquired Personal Information by written document. This Seller’s duty shall also be applied when change of the responsible person.
4. Seller shall be responsible to have the responsible person of the Acquired Personal Information

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- to follow the descriptions in this Article and give proper educations for the persons conducting this Agreement to ensure necessary understanding and adherence.
5. Seller shall not make any actions as follows, excepting, legal necessity or preliminary approval from OIST by written document.
 - (1) Providing or sharing contents of the Acquired Personal Information to any of third parties (including the subcontractors when recommission).
 - (2) Any use, duplication, and manipulation of the Acquired Personal Information beyond the purpose of this Agreement.
 6. Seller shall implement necessary measures for preventing divulgation, consumption and/or prejudicing of the Acquired Personal Information and other measures for the proper governance of the Acquired Personal Information.
 7. When necessary, OIST may investigate at the office of the Seller regarding the proper governance of the Acquired Personal Information and prescribe the implementation of the necessary measures in the event of failure.
 8. Seller shall inform the necessary matters for protection of the Acquired Personal Information to the persons conducting this Agreement, such as prohibition of sharing with other parties or using for the unjustifiable purpose during one's tenure and after, etc.
 9. Seller shall return the Acquired Personal Information to OIST soon after completion of this Agreement or expiration of the Agreement, excepting separate prescription from OIST.
 10. Seller shall report OIST when an incident arose in divulgation, consumption and/or prejudicing of the Acquired Personal Information or other violations related to this Article and shall follow the prescription from OIST.
 11. The provisions of the Paragraph 5 shall survive after completion of this Agreement and/or expiration of the Agreement.

(Trade terms)

Article 27: The Trade Terms under this Agreement shall be governed and interpreted by the provision of the latest International Commercial Terms (INCOTERMS).

(Entire Agreement)

Article 28: This Agreement constitutes the sole and entire agreement and understanding among the parties with respect to the Subject Matter hereof, and supersedes and replaces all prior discussions, agreements and understandings, oral or written, of any nature between them related to its Subject Matter. (Governing Law and Resolution of conflict arising out of Agreement)

Article 29: This Agreement shall be governed by and construed in accordance with the laws of Japan, excepting the stipulation of Article 27. Stipulations in this Agreement shall be superior than the United Nations Convention on Contracts for the International Sale of Goods in case of conflict. In the case of any conflict between OIST and Seller concerning this Agreement, Naha District Court shall be designated as the court for the first instance having exclusive jurisdiction for such conflict.

(Severability)

(Draft)

Article 30: If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby.

(Matters not specified herein)

Article 31: Matters not specified in this Agreement shall be determined separately, as required, through good faith discussion between the parties.