

(Draft)

Service Agreement for FY20**

Okinawa Institute of Science and Technology School Corporation (hereinafter referred to as “OIST”) and ***** (hereinafter referred to as “Provider”) shall conclude a service agreement (hereinafter referred to as the “Agreement”), as follows.

1. Title: *****
2. Contract Amount: ***** yen (Breakdown: as per set forth in the quotation as attached (hereinafter referred to as the “Quotation”))
3. Contract Deposits: Exempted
4. Services Details: As per set forth in the specifications attached (hereinafter referred to as the “Specification”) hereto (hereinafter referred to as the “Services”)
5. Contract Term: From Contract Date to MMMMM DD, 20**

(Draft)

In witness whereof, OIST and Provider 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

*****, Senior Manager of Procurement & Supplies
Section

Provider: *****

(Draft)

(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.”), Provider shall perform the Services during the prescribed performance period (hereinafter referred to as the “Performance Period”) for the Contract Amount set forth in the premises of this Agreement.

(Documents to be submitted)

Article 2: Provider 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.

2. OIST may request from Provider the submission of documents with regards to the performance of the Services and/or Deliverables (defined in the Article 31) of the Services on a necessity basis.

(Procedures required by public/governmental offices)

Article 3: Provider 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: Provider 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 Copyright 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 Services rendered hereunder, and shall defend, indemnify, and hold OIST harmless in this regard. Provider shall immediately notify OIST in writing if any claim made in connection with this Agreement by a third party.

(Confidentiality)

Article 5: OIST and Provider 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 Provider 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

(Draft)

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;
- (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.

(Investigations, etc.)

Article 6: OIST, as it deems necessary, may investigate, request the report of or demand the progress and the details of Provider's performance of obligations under this Agreement and/or the Provider's records, books, etc. related to its performance of obligations.

(Warranty for non-performance)

Article 7: In the event that OIST finds that Provider's performance has been undertaken imperfectly due to any unconformity of the Specifications (hereinafter referred to as the "Unconformity") in the performance or a failure to exercise the care of a good manager (hereinafter referred to as the "Non-Performance of Work") or in the event that OIST finds that the details of Provider's performance do not conform to the Specifications, etc. or to OIST's instructions, Provider shall, when OIST makes a demand to Provider for complete performance or the rectification thereof by notifying Provider within one year from the time when OIST become aware of the Non-Performance of Work or Unconformity, act at its own cost and responsibility in accordance with said demand. However, this shall not be applicable when said Non-Performance of Work or non-conformity is due to causes attributable to OIST. In that case, the stipulation in the proviso of Paragraph 1, Article 562 of the Civil Code of Japan shall not be applied.

2. In the event the Unconformity is discovered during the periods specified in the

(Draft)

preceding paragraph, OIST may request Provider to correct the Unconformity or reduce the Contract Amount. Or instead of or in addition to the remedies described in the previous sentence, OIST may charge Provider compensations for damages caused by the Unconformity and the delay penalty pursuant to Paragraph 3 of Article 20 of this Agreement.

(Changes in Specifications, etc.)

Article 8: OIST may change the Specifications, etc. or suspend or cancel this Agreement until the completion of the Services as set forth in Articles 15 and 16.

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

(Supply of goods)

Article 9: There may be occasions when, pursuant to the Specifications, etc., OIST supplies Provider with required goods for the performance of this Agreement free of charge and at the time required.

2. Provider shall use the goods supplied (hereinafter referred to as the “Supplied Goods”) with the care of a good manager and shall return the Supplied Goods by the due date designated by OIST.

(Use of facilities and equipment)

Article 10: When Provider uses OIST’s facilities and equipment (hereinafter referred to as the “Facilities, etc.”) pursuant to the Specifications, etc., OIST shall prepare the required Facilities, etc. at the time required and shall cooperate in the performance of this Agreement. In this event, Provider must act with the care of a good manager and in accordance with OIST’s instructions and regulations relating to management, safety, etc. pertaining to the Facilities, etc. prescribed by OIST.

2. Provider shall not enter any area of the OIST premises unnecessarily for the performance of this Agreement, or accompany other unnecessary personnel to perform the obligations stipulated in this Agreement.

(Repair of Facilities, etc.)

Article 11: In the event that Provider, in the course of performance of this Agreement, soils, damages, loses or destroys (hereinafter referred to as “Damage, etc.”) OIST or third parties’ tools and materials, Facilities, etc. or the Supplied Goods, Provider shall immediately notify OIST and repair, supply substitute goods or indemnify OIST in accordance with the instructions of OIST. However, this shall not be applicable when

(Draft)

said Damage, etc. is due to causes attributable to OIST.

(Changes in Contract Amount)

Article 12: 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 Provider may agree to change the Contract Amount and other ancillary conditions:

- (1) Establishment, revision, or abolishment of tax laws or 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 Provider.
 - (3) Changes in the Specifications, etc., pursuant to Article 8 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 change the Contract Amount arises pursuant to Paragraph 1 above, it may be raised to the extent permitted under OIST's budgetary measures.

(Services Completion Report)

Article 13: When the Services are completed, Provider shall, without delay, submit to OIST the documents prescribed in the Specifications, etc. In the event the services completion report is made in installments, those respective portions shall be collected in monthly units and reports shall be made in a similar manner.

(Inspections)

Article 14: Within ten (10) business days from the date of receipt of the submitted documents prescribed in the preceding article, OIST shall undertake an inspection pursuant to this Agreement, the Specifications, etc. and regulations pertaining to inspections prescribed by OIST.

2. The inspection stipulated in the preceding paragraph shall be attended by Provider. However, when Provider is not present at the inspection, OIST may still conduct the inspections alone and notify Provider of the results.

(Completion of the Services)

Article 15: The Services shall be considered completed when, based on the result of the inspection prescribed in the preceding Article, OIST finds that the Services passed said inspection. In the event that the services completion report is made in installments,

(Draft)

the Services shall be deemed completed with respect to said portion at the time of OIST's acceptance against the said portion.

(Rectification)

Article 16: When (i) OIST, based on the result of the inspection prescribed in Article 14, does not find that all or a portion of the Services passed said inspection, and (ii) OIST makes a demand to Provider for complete performance of this Agreement or the rectification of such nonconformance, Provider shall act at its own cost and responsibility in accordance with the said demand.

2. In the case that Provider shall complete performance of this Agreement according to preceding paragraph, the provisions of Articles 15 and 20 shall apply mutatis mutandis to the completion of the Services and the collection of the delay penalty, etc.

(Intermediate payment)

Article 17: If (i) it is permitted by the Specification, etc. and related documents supplied by OIST, (ii) the Provider submitted the services completion report made in installments in accordance with the Article 13, and (iii) the partial completion of the Services have been accepted by OIST in accordance with the Article 15, Provider may notify OIST for Intermediate Payment, which is calculated in light of the partial completion of the Services, provided, amount of the Intermediate Payment shall not exceed the Contract Amount.

2. When OIST agreed the necessity of scheme according to the notice at the preceding article, Provider may request for payment for the Intermediate Payment by submitting the invoice to OIST.
3. After partial completion pursuant to Article 15, OIST shall make payment to Provider by the end of next month after the day of acceptance of the invoice prescribed at the previous paragraph.
4. Provider shall deduct the received amount pursuant to the paragraph above from the Contract Amount.

(Payment of the Contract Amount)

Article 18: OIST shall pay the Contract Amount to Provider as the compensation of the Services and the vesting of the Deliverables described at the Article 31. If it is permitted by the Specification etc., OIST may pay to Provider the actual expenses such as travel cost caused by the implementation of the Services other than Contract Amount based on the receipts etc. submitted from Provider that would evidence an occurrence of actual expenses and the amount.

2. Upon completion of the Services and if OIST agrees its necessity, within three (3) business days from the completion day, Provider shall ask OIST for payment of the Contract Amount (or the balance of the Contract Amount, if the Intermediate Payment have been made), by submitting of the duly executed invoice. If the payment for the

(Draft)

actual expenses such as travel cost caused by the implementation of the Services is permitted by the previous Paragraph, Provider shall submit receipts etc. that would evidence an occurrence of actual expenses and the amount along with the invoice.

3. After partial completion pursuant to Article 15, OIST shall pay the invoiced amount to Provider by the end of next month from the date on which OIST accepts the invoice prescribed in the preceding paragraph.
4. If OIST fails to pay the invoiced amount by the end of the period stipulated in the preceding paragraph, Provider 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.

(Set-off)

Article 19: In the event OIST is entitled to any damage compensations from Provider or has any other credits to Provider, 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 Provider against those credits.

(Extension of the Performance Period and delay penalty)

Article 20: When Provider is unable to complete the Services within the Performance Period stipulated herein due to any Act of God or other causes not attributable to Provider, Provider may request OIST to extend the Performance Period 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 Provider requests an extension of the Performance Period, and when the completion of this Agreement 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 completion of this Agreement exceeds the Performance Period prescribed herein, Provider shall pay to OIST a delay penalty equivalent to one thousandth (1/1000) of the Contract Amount per day from the day following last day of the Performance Period until the actual date of completion, unless approved pursuant to the provisions of the preceding two paragraphs.

(OIST's Right of cancellation)

Article 21: If any of the following occurs, OIST may cancel all or part of this Agreement by providing Provider a written notice:

(Draft)

- (1) Provider fails to perform all or part of this Agreement;
- (2) Provider fails to follow OIST's instructions hereunder, interferes with OIST's business operations, or commits any fraudulent act;
- (3) Application to commence Provider bankrupt, or any other similar proceedings has been filed with regard to, Provider's asset, or Provider's credit standing has significantly deteriorated, or other causes have occurred to make OIST believe it to be difficult for Provider to accomplish the purpose of this Agreement, at OIST'S sole discretion;
- (4) Due to Act of God or other causes that cannot be attributed to Provider, the performance of this Agreement is deemed impossible, at OIST's sole discretion;
- (5) Provider 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 Provider, for damages (other than the loss of profit which should have been gained.) caused by such cancellation.).

(Provider's Right of cancellation)

Article 22: In the event that the obligations of this Agreement are breached due to the causes attributable to OIST, Provider may terminate all or part of this Agreement if Provider demands in writing that performance stipulating a reasonable period and there is no performance within that period.

(Penalty)

Article 23: In the event this Agreement is cancelled due to the causes attributable to Provider, i.e., pursuant to the provisions of Item (1), (2) or (3) of Article 21, OIST may charge Provider 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 24: In the event Provider has changed its representative or effected a sale of business, a merger or other significant operational matters, Provider shall promptly notify OIST of such changes.

(No commissioning to third party)

Article 25: Provider 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 26: Without counterparts' prior written approval, OIST and Provider 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.

(Draft)

(Subcontractor)

Article 27: Provider shall obtain OIST's prior written approval when having a subcontractor execute all or part of the performance of the Services hereunder.

2. In the event that Provider subcontracts pursuant to the provisions of the preceding Paragraph, the acts of the subcontractor shall all be deemed to be the acts of Provider.
3. Provider shall impose the same extent of obligations hereunder (including confidentiality detailed in Article 5) to the subcontractor. OIST may request to Provider submission of copy of service agreements etc. including non-disclosure agreement between Provider and the subcontractor.

(Damage compensation)

Article 28: Provider 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. Provider shall compensate for any damages 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. If any conflict with a third party arises out of or in connection with performance of this Agreement, OIST and Provider shall cooperate with each other to solve the problem.

(Penalty for corruption such as bid-rigging)

Article 29: If any of the following applies with respect to this Agreement, Provider 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 Provider or any trade association Provider belongs to and such order of the said act becomes final and binding, due to or arising out of the violation by Provider 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 Provider 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 Provider and approved by OIST.
- (2) The Fair Trade Commission provides Provider 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) Provider (or any of its officers or employees if Provider is a corporation) is confirmed guilty in accordance with Article 96-6 of the Penal Code (Act No.45 of

(Draft)

1907), or Paragraph 1 of Article 89 or Item 1 of Paragraph 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, Provider shall promptly submit to OIST any and all related documents regarding such disposition.
4. If Provider fails to pay the penalty set forth in Paragraph 1 by the date specified by OIST, Provider 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 Provider for the penalty pursuant to any of the provisions of Paragraph 1.

(Elimination of Antisocial Forces)

Article 30: Provider represents and warrants the following to OIST:

- (1) Provider and any of its officers and employees do not belong to, are not, and are not affiliated with an organized crime group, a member of an organized crime group, a company 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) Provider 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) Provider and any of its officers and employees do not have a socially criticized relationship with the Antisocial Forces; and
 - (4) Provider 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. Provider shall promptly notify OIST of the fact of violation by Provider 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 Provider of any of the provisions of the preceding paragraph is found to be true. Provider shall not be entitled to claim to OIST any damages, if any, caused by such cancellation hereunder.

(Vesting of the Deliverables)

(Draft)

Article 31: The deliverables (hereinafter referred to as the “Deliverables”) such as patents, copyrights, (including rights under Sections 27 and 28 of the Copy Right Act of Japan), utility model rights, design rights or any other intangible property rights, as well as any tangibles and their property rights, which would newly arise in relation to the performance of the Services shall all vest in OIST and Provider shall, in accordance with OIST’s request, take the necessary procedures for the transfer of the Deliverables.

2. Provider shall not wield the moral right of an author to OIST regarding the Deliverables.

(Protection of Personal Information)

Article 32: Provider 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 the Services or the acquired information through conducting the Services.

2. Provider shall assign a responsible person, and properly protect the Personal Information provided from OIST for the execution of the Services or the Personal Information acquired through conducting the Services prescribed in the preceding paragraph (collectively hereinafter “Acquired Personal Information”) under the supervision of the responsible person.
3. Provider shall notify OIST the name and affiliation of the responsible person of the Acquired Personal Information by written document. This Provider’s duty shall also be applied when change of the responsible person.
4. Provider shall be responsible to have the responsible person of the Acquired Personal Information to follow the descriptions in this Article, and give proper educations for the persons conducting the Services to ensure necessary understanding and adherence.
5. Provider 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 the Services.
6. Provider shall implement necessary measures for preventing divulgence, 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 Provider regarding the proper governance of the Acquired Personal Information and prescribe the implementation of the necessary measures in the event of failure.
8. Provider shall inform the necessary matters for protection of the Acquired Personal

(Draft)

Information to the persons conducting the Services, such as prohibition of sharing with other parties or using for the unjustifiable purpose during one's tenure and after etc.

9. Provider shall return the Acquired Personal Information to OIST soon after completion of the Services or expiration of the Agreement, excepting separate prescription from OIST.
10. Provider shall report OIST when an incident arose in divulcation, 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 the Services and/or expiration of the Agreement.

(Entire Agreement)

Article 33: This Agreement constitutes the sole and entire agreement and understanding among the parties with respect to the Services hereof, and supersedes and replaces all prior discussions, agreements and understandings, oral or written, of any nature between them related to the Services.

(Governing Law and Resolution of conflict arising out of Agreement)

Article 34: This Agreement shall be governed by and construed in accordance with the laws of Japan. In the case of any conflict between OIST and Provider concerning this Agreement, Naha District Court shall be designated as the court for the first instance having exclusive jurisdiction for such conflict.

(Severability)

Article 35: 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 outside of this Agreement)

Article 36: Matters not specified in this Agreement shall be determined separately, as required, through good faith discussion between the parties.