

# Service Agreement for FY2015

(Draft)

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

1. Title: Service of Long pulse module power supply design
2. Contract Amount: \*\*\*\*\* yen (Breakdown: as per set forth in the quotation as attached as Exhibit B hereto (hereinafter referred to as the “Quotation”) attached hereto)
3. Contract Deposits: Exempted.
4. Special Provision: None
5. Services Details: As per set forth in Exhibit A attached hereto (hereinafter referred to as the “Services”)
6. Contract Term: From Contract date6+ to March 31, 2016
7. Other Terms and Conditions: None

In witness whereof, two copies of this Agreement shall be executed by both parties setting their hands and seals, each retaining a copy thereof.

MM, DD, 2015

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

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Kenta Ogawa, Manager of Procurement & Supplies  
section

Provider: \*\*\*\*\*

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(Purpose of Agreement)

**Article 1:** Pursuant to the provisions of the terms and conditions of this Agreement, OIST's specifications and related documents (hereinafter referred to as the "Specifications, etc.") as attached as Exhibit A hereto and/or provided by OIST, and the Quotation, Provider shall perform the Services during the prescribed performance period for the contract amount set forth in the premises of this Agreement.

(Documents to be submitted)

**Article 2:** Provider shall compile necessary documents (if any) pursuant to of OIST's 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 regard to the Product (hereinafter defined) of the Services on a necessity basis.

(Procedures for required by public offices)

**Article 3:** Provider shall perform procedures required by public 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 clearing rights (such as acquisition of license) of any patent rights (including rights under Sections 27 and 28 of the Copy Right Act of Japan), copyrights, 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 leak any secrets 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 secrets in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. OIST and Provider shall not use such secrets of the other party for purposes other than performing this Agreement.

(Supervision)

**Article 6:** Only within the scope of this Agreement and with regard to Provider's performance of obligation under this Agreement, OIST may investigate the state of progress and details of this Agreement or provide Provider with supervision or direction thereof as situation required.

(Rectification obligation when the details of the Services do not conform to the Specifications,

etc.)

**Article 7:** In the event that OIST finds that performance has been undertaken imperfectly (hereinafter referred to as the “Non-Performance of Work”) due to there having been a defect in the performance of this Agreement executed by Provider or due to a failure to exercise the care of a good manager or in the event that OIST finds that the details of the performance of this Agreement executed by Provider 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, 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.

(Changes in Specifications, etc.)

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

2. Upon changing the Specifications, etc., OIST shall discuss the contract amount, the contract term, and other conditions stipulated herein with Provider.
3. If Provider finds it difficult to perform this Agreement as stipulated in the Specifications, etc., or if required 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 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 (hereinafter referred to as the “Supplied Goods”) supplied 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.

(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’s 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 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 conclusion 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 turned out 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; or
  - (3) Changes in the Specifications, etc., pursuant to Article 8 Paragraph 1 or Paragraph 3 thereof.
  - (4) Implementation of a proposal based on the 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 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 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 shall 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, the Services shall be deemed completed with respect to said portion.

(Rectification)

**Article 16:** When 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 when 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 said demand.

2. In the case that Provider shall complete performance of this Agreement according to preceding paragraph, the Article 15 and Article 19 shall apply mutatis mutandis to the completion of the service and collection of delay penalty, etc.

(Payment of price and penalty interest)

**Article 17:** Following completion of the Services pursuant to the preceding two Articles, OIST shall pay its price during the period from the date on which OIST receives Provider's duly executed invoice to the end (inclusive) of the following month.

2. If OIST fails to pay the price by the end of the period stipulated in the preceding paragraph, Provider may claim penalty interest at the annual rate of 2.9% 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 Act of God or other unavoidable circumstances, the period in which such circumstances exist shall not be included in the period of payment delay.

(Set-off)

**Article 18:** 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 19:** When Provider is unable to complete the Services within the performance period stipulated herein due to 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 shall approve the request if it is deemed appropriate by OIST.

2. In addition to the provision stipulated in the preceding paragraph, when Provider request 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 a 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 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 20:** If any of the following occurs, OIST may cancel all or part of this Agreement by providing Provider a written notice:

- (1) Provider fails to perform all or part of this Agreement without due cause;
  - (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 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 by OIST, at OIST'S sole discretion;
  - (5) Provider has requested cancellation of this Agreement for causes deemed reasonable by OIST; or
  - (6) Due to internal affairs of OIST, such as change of policy of Government etc.
- (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 21:** In the event that the obligations of this Agreement are breached due to causes attributable to OIST, Provider may terminate all or a portion of this Agreement when Provider demands in writing that performance stipulating a reasonable period and there is no performance within that period.

(Penalty)

**Article 22:** In the event this Agreement is cancelled pursuant to the provisions of Item (1), Item (2) or Item (3) of Article 20, OIST may charge Provider an amount equivalent to ten one hundredths (1/10) of the contract amount as a penalty, in addition to actual damages to be compensated.

(Change of Representative)

**Article 23:** In the event Provider has changed its representative, effected a transfer of business, a merger or other significant operational matters, Provider shall promptly notify OIST of such changes.

(No commissioning to third party)

**Article 24:** 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 25:** Without OIST's prior written approval, 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. Any assignment, succession, pledge or mortgage in violation thereof shall be null and void.

(Subcontractor)

**Article 26:** Provider shall obtain OIST's prior written approval when having a subcontractor execute all or a portion 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.

(Damage compensation)

**Article 27:** Provider 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 reasons attributable to OIST.

2. 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 28:** 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 set forth in Paragraph 1 of Article 49 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") or a payment order set forth in Paragraph 1 of Article 50 of the Anti-Monopoly Act, to Provider or any trade association Provider belongs to and such order or a trial decision as set forth in Paragraph 4 of Article 66 of the said act becomes final and binding, due to or arising out of the violation by Provider of Article 3 or Article 19 of the Anti-Monopoly Act, or the violation by such trade association Provider belongs to of Item 1 of Article 8 of the said 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 18 or Paragraph 21 of Article 7-2 of the Anti-Monopoly Act.
- (3) OIST punishment for Provider (or any of its officers or employees if Provider is a corporation) is confirmed in accordance with Article 96-6 of the Penal Code (Act No.45 of 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 damage amount actually 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 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 29:** 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 or any other anti-social forces (hereinafter referred to as the “Antisocial Forces”), or they have never belonged to 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 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 Product)

**Article 30:** The product (hereinafter referred to as the “Product”) such as patents, copyrights, utility model rights, design rights or any other intangible property rights which 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 Product.

(Protection of personal information)

**Article 31:** In performance of this Agreement, Provider shall observe laws and codes for protection of personal information, recognize the importance of protecting personal information, and take all reasonable measures not to infringe on any personal rights or benefits upon handling any personal information.

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

**Article 32:** 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.

(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.

2. Notwithstanding the preceding paragraph for performance of this Agreement, special provisions, other than the provisions stipulated herein, may be established in writing by mutual agreement (hereinafter referred to as “Special Provisions”).
3. In case of any discrepancy between any Special Provisions and those stipulated herein, such Special Provisions shall prevail.

(Severability)

**Article 34:** 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 35:** Matters not specified in this Agreement shall be determined separately, as required, through good faith discussion among the parties.