

# **CONTRACT**

**between**

**The Institute of Applied Energy**

**and**

**OOOO**

**for**

**OOOO**

**OO OO, OO**

# Contract

This **service agreement** (hereinafter referred to as this “Contract”) is made on the day of ○○ ○○, ○○

**BETWEEN:**

○○○○

(“Contractor”)

**AND**

**The Institute of Applied Energy**, an organization existing under the laws of Japan, having its principal office at 14-2, Nishi-Shimbashi 1-chome, Minato-ku, Tokyo 105-0003, Japan

(“Owner”)

Now, therefore, the Owner and the Contractor (hereinafter individually be referred to as a “Party” and collectively referred to as “Parties”), and in consideration of the mutual promises set forth herein, hereby agree as follows:

(Scope of the Work, Contract Price and Related Details)

Article 1 The work entrusted by the Owner to the Contractor and accepted by the Contractor (hereinafter referred to as the “Work”) shall be as follows:

(1) Scope of the Work: As described in the consignment specifications separately prepared (including specification, design drawing, minutes of explanatory meeting for the entrusted work and outline chart, if any; hereinafter referred to as the “Specifications, etc.”)

(2) Period of the Work:

Starting date: ○○ ○○, ○○

Completion date: ○○ ○○, ○○

2 The Contract Price is fixed as \* \* \* \* \* yen.

However, the Contract Price will not include any consumption taxes related to transaction as set forth in Article 27.

(Guideline for Contract Execution)

Article 2 In executing this Contract, the Contractor shall faithfully perform the contractual duties prescribed in this Contract. In performing this Contract, the Contractor shall comply not only with the terms and conditions of this

Contract, but also with the fundamental principles of the world community (such as the abolishment of child labor and forced labor, and all other related principles), relevant laws and regulations, specifications and standards.

(Obligation to Complete the Work)

Article 3 In accordance with the descriptions in the Specifications, etc. and an operation plan, a safety plan and other documents as set forth in Article 11, the Contractor shall strictly comply with scheduled implementation period of the Work and faithfully perform and complete the Work in a proper manner.

(Mutual Cooperation)

Article 4 During the performance of or after the completion of the Work, if the Owner or the Contractor finds or detects a possibility of any accident, malfunction or other problems, either of the Parties shall immediately report to the other Party the details and conditions of such problems.

2 In addition to cooperation in implementing measures taken by the Owner to prevent expansion of such accident, malfunction or other problems as well as in restoration efforts by the Owner, the Contractor shall cooperate with the Owner in investigating the cause of such problems, developing preventive measures, explaining to those concerned and taking prompt actions.

3 For the costs required for the preceding paragraph, the cost share shall be decided through consultations between the Owner and the Contractor in consideration of the proportionate responsibility for the cause of such problems.

(Confidentiality)

Article 5 The “Confidential Information” mentioned herein shall mean the information specified in the following items (1) and (2) and at the same time designated as “confidential” whether it is disclosed in written form, orally, or as image, and irrespective of the type of the recording media such as paper, electronic media or other mode. However, with respect to the “Confidential Information” that is orally disclosed, the disclosing party shall inform the receiving party that the disclosed information is “confidential” by written notice stating that effect within 30 days of the disclosure.

(1) Trade Secret: Information of the Owner and the Contractor that is treated as a Trade Secret, that is useful for the business activities from a technical or business viewpoint, that is not publicly known, or that is designated as know-how.

(2) Personal Information: Information on private persons in possession of the Owner and the Contractor, which contains names, birth dates, and other data which could be used to identify a specific individual (including information that can be easily compared with other information and thereby identify a specific individual). However, notwithstanding this definition, email addresses possessed by the Owner or the Contractor shall be regarded as Personal Information.

2 “Necessary Measures” herein shall mean the creation of rules for the handling of Confidential Information, the conclusion of non-disclosure agreements with parties concerned, access management, information removal

restrictions, measures to prevent unauthorized external access, and any other security and management measures employed to eliminate information leaks or disclosure, and prevent loss or damage of information (including measures against information leaks by way of personal computers).

- 3 The "Business Action" herein shall mean any action (including negotiations, consultations, requests, etc.) that involves the provision of information between the Owner and the Contractor.
- 4 The "Parties Concerned" herein shall mean the officers, employees (including temporary personnel), business connections (including agents, subcontractors, or those who possibly become subcontractors) and any other person involved in this Contract.
- 5 Either before or after the conclusion of this Contract, the Owner and the Contractor shall manage the Confidential Information related to this Contract with all reasonable care and implement necessary measures to prevent the divulging of Confidential Information in order to ensure the strict secrecy of the Confidential Information relating to the Contract. With regard to Personal Information, the Owner and the Contractor shall comply with the laws, etc. relating to the protection of Personal Information (including related rules and regulations, basic policy relating to the protection of Personal Information, and personal information protection guidelines).
- 6 Either before or after the conclusion of this Contract, the Owner and the Contractor may, to the extent necessary for the performance of the Work under this Contract, disclose to concerned parties the Confidential Information of the other Party, on the condition that the concerned parties assume the same confidentiality obligations as set forth in this Article.
- 7 Either before or after the conclusion of this Contract, the Owner and the Contractor shall not disclose or leak the Confidential Information of the other Party to any third party other than Parties Concerned. However, the Owner or the Contractor may disclose to a third party the Confidential Information of the other Party after obtaining written consent of the other Party, on the condition that the third party assumes the same confidentiality obligation as set forth in this Article, and only to the extent approved by the other Party. The Owner and the Contractor who are allowed to disclose such Confidential Information to a third party shall assume a direct responsibility to the other Party, if such third party violates the confidentiality obligations.
- 8 Either before or after the conclusion of this Contract, the Owner and the Contractor shall not use the Confidential Information of the other Party for any purpose other than the execution of this Contract.
- 9 If the Owner or the Contractor violates any provision prescribed in this Article and causes a loss to the other Party for reasons attributable to the violating Party, the violating Party shall compensate such loss and the Parties shall discuss in an attempt to determine the amount of the damages. In the event the consultations are not settled, the damaged Party may proceed to claim for damages.
- 10 Notwithstanding Paragraphs 7 and 8 of this Article, any provision in this Article shall not apply to any Trade Secret that falls under any of the following items (1) through (7) and any Personal Information that falls under item (6). Upon request from the disclosing party, the Owner and the Contractor shall determine the handling of disclosed information through mutual consultation.
  - (1) The information is already known publicly at the time of disclosure;

- (2) The information is already possessed properly by the Owner or the Contractor at the time of the disclosure;
- (3) The information that becomes publicly known after disclosure for reasons that cannot be attributable to fault of the Owner or the Contractor;
- (4) The information that is developed independently by the Owner or the Contractor without using the information disclosed by the other Party;
- (5) The information that is properly acquired by the Owner or the Contractor from a third party without assuming the confidentiality obligations;
- (6) The information is disclosed by way of report, explanation, submission as materials, etc. under law or by order or by other action of courts, governments or other public agencies;
- (7) The information that is required to be disclosed to a third party to repair, modify, inspect and maintain the Work Product that is acquired by the Owner through the execution of this Contract. In this case, the Owner shall disclose the information after the imposition of confidentiality obligation on the third party.

11 The Owner or the Contractor shall promptly take necessary actions upon reasonable request from the other party that the Confidential Information is to be returned, disposed or deleted.

12 This Article shall survive the termination of this Contract.

#### (Restricted Use of Personal Computers)

Article 6 Either before or after the conclusion of this Contract, in the execution of this Contract, if the Owner or the Contractor needs to use personal computer(s), the Owner or the Contractor shall observe each of the following items in order to prevent the leakage of information throughout the computer(s):

- (1) Not to use personal computers which are owned by individual employees;
- (2) Not to use personal computers where file-swapping software is installed;
- (3) Not to use personal computers where effective security (virus protection) is not installed.

2 If the Owner or the Contractor finds information leakage or notices a possibility of it, the Owner or the Contractor shall promptly notify the other Party.

#### (Prohibition on Accepting Outsourcing from a Third Party)

Article 7 When designated in the specifications, the Contractor, during the term of the Work prescribed in Article, must not accept the outsourcing from a third party or engage in jointly with a third party in the same or related work as the Work. Provided, however, that this shall not be applicable when the Contractor receives the prior written consent from the Owner.

#### (Prohibition on Subcontracting and Related Details)

##### Article 8

The Contractor shall not subcontract to a third party the whole or part of the Work entrusted by the Owner without prior written approval of the Owner.

- 2 If the Contractor wishes to obtain the approval under the preceding paragraph, the Contractor shall clearly indicate to the Owner the name and history of the subcontractor appointed by the Contractor (hereinafter referred to as the “Subcontractor”), part of the Work to be subcontracted and other necessary matters requested by the Owner.
- 3 The Contractor shall impose on the Subcontractor(s) or their personnel equivalent obligations to those assumed by the Contractor under this Contract. If the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors applies to works to be subcontracted, the Contractor shall comply with requirements of the same Act.
- 4 With regard to the acts of the Subcontractor(s) or their personnel, the Contractor shall assume full responsibility to the Owner in respect of this Contract and any other responsibilities arising in connection with the acts.

(Notification Obligation of Existing Industrial Property Rights, etc. relating to the Work)

Article 9 When falling under one (1) of the following Items prior to the implementation of the Work, the Contractor shall give notice to that effect to the Owner and shall receive confirmation of that from the Owner.

- (1) When preparing or submitting a patent, utility model right or design right application or when having registered such rights relating to inventions, devices or designs relating to the purpose of the Work or the details of the implementation of the Work
  - (2) When having already prepared or when preparing works, such as programs, relating to the purpose of the Work or the details of the implementation of the Work
  - (3) When already possessing or in the process of coming into the possession of know-how, such as non-public technical information, relating to the purpose of the Work or the details of the implementation of the Work
2. When the Owner receives from the Contractor the notification falling under Item 1 of the preceding Paragraph, the Owner may request from the Contractor the gratis disclosure of the applied right when after the application and, furthermore, prior to publication by relevant bulletin.
  3. When the Contractor knows that a third party falls under one (1) of the Items of Paragraph 1, the Contractor shall immediately give notice to that effect to the Owner.
  4. The Owner shall bear the same obligations with the Contractor prescribed in Article 5 in relation to the information notified or disclosed pursuant to the provisions of this Article.

(Safety and Prevention of Disasters)

Article 10 In performing the Work, the Contractor shall take necessary preventive measures to prevent occurrence of any accident causing damages to persons and facilities, environmental pollution and nuisance to general public (hereinafter collectively referred to as the “Disaster, etc.”). If any Disaster, etc. actually occurs, the Contractor shall use its best efforts to minimize damages caused by such Disaster, etc.

(Operation Plan and Safety Plan)

Article 11 When the Specifications, etc. require an operation plan, a safety plan or other documents, the Contractor shall, upon request of the Owner and without delay, prepare the order and schedule in which the steps of the Work

will be performed and work out the process of the Work or a safety plan for protecting environment, securing safety, and preventing disasters and obtain the Owner's confirmation.

(Supervisor)

Article 12 The Owner may appoint a supervisor for the performance of the Work.

2 The supervisor appointed by the Owner or the Contractor may, if deemed necessary, give instructions to the Contractor with respect to the process and performance of the Work.

3 The Owner shall give to the Contractor written notice on the name and contact information of the supervisor as well as written notice of change of the information pertaining to the supervisor.

4 If the Contractor deems the supervisor to be inappropriate in regard to the execution of its duties, the Contractor may request the Owner to take necessary measures by specifying the reasons therefor.

(Superintendent and Accident Prevention Manager)

Article 13 If the superintendent and accident prevention manager must be appointed under the Specifications, etc. for the performance of the Work, the Contractor shall appoint the superintendent and the accident prevention manager and ask for the Owner's ascertainment.

2 If the Owner deems the superintendent or the accident prevention manager to be inappropriate in regard to the performance of the duties, the Owner may request the Contractor to take necessary measures by specifying the reasons therefor.

3 The superintendent or the accident prevention manager may serve concurrently as the person in charge of the other duties, except where the assumption of such two posts is prohibited under the Specifications, etc.

(Loan of Information)

Article 14 The Owner shall timely lend at no charge to the Contractor technical information and materials which are deemed necessary and, furthermore, which can be provided for the implementation of the Work. The period of the loan and the terms and conditions of use, etc. shall be determined on each such occasion.

2. The Contractor shall appropriately manage the technical information and materials provided by the Owner and shall take thoroughgoing measures to ensure that such technical information and materials are not lost, destroyed, altered or leaked, etc.

3. The Contractor must not use or employ the technical information and materials lent by the Owner for purposes other than this Contract. Provided, however, that this shall not be applicable when the Contractor receives the prior written consent from the Owner.

4.. The Contractor shall promptly return to the Owner or destroy or delete the technical information and materials lent by the Owner pursuant to Paragraph 1 of this Article when falling under one (1) of the following Items.

- (1) When the Work is completed
- (2) When the period of the loan is over
- (3) Otherwise when the Owner requests the return due to reasonable grounds

(Furtherance of the Work)

Article 15 If the Contractor notices a possibility of delay in performing the Work, the Contractor shall immediately report to the Owner on the cause for such delay in detail.

2 If the Owner deems that there is a possibility of delay in the performance of the Work, based on the report referred to in Paragraph 1 of this Article or other information, the Contractor shall take appropriate measures for the furtherance of the Work in accordance with the instructions of the Owner.

3 All costs and expenses incurred for the measures referred to in the preceding paragraph shall be borne by the Contractor; provided, however, that if the delay in the performance of the Work is on account of a cause not attributable to the Contractor, the Parties shall consult with each other to determine the details.

4 For the purpose of this Contract, "causes/reasons not attributable to the Contractor" mean any act of God and any event of force majeure (including labor disputes such as strike (excluding those conducted by personnel of the Contractor), riots or other violence conducted by citizens or military, accidental fire or arson or explosion caused by a third party, and revision of laws, regulations, rules or ordinances by government).

(Instructions)

Article 16 The Contractor shall, if requested by the Owner, report to the Owner on the status of progress of the Work. If as a result the Owner deems that there is a possibility of delay in the performance of the Work, the Owner shall give necessary instructions to the Contractor.

(Change of Conditions and Related Details)

Article 17 The Contractor shall, when it has found while performing the Work a fact which falls under any one of the below-mentioned items, immediately notify the Owner thereof to ask for the Owner's ascertainment.

- (1) if anything indicated in the Specifications, etc. is not clear, does not correspond to each other, does not correspond to the actual conditions of the work site, or contains an error or an omission;
- (2) if the conditions of performance of the Work shown in the Specifications, etc., with respect to the restrictions on such performance and other matters, are different from those in reality;
- (3) if there has occurred a situation which hinders the performance of the Work but could not be anticipated.

2 The Owner shall, when ascertainment by it is asked for pursuant to the preceding paragraph or when it has found any fact mentioned in the items of the preceding paragraph, promptly conduct the investigation with the attendance of the Contractor; provided, however, that if the Contractor does not agree to such attendance, the Owner may conduct the investigation by itself.

3 The Owner shall, without delay after finishing such investigation, put in order the results of the investigation



(including any request to the Contractor for taking counter measures, if necessary) and notify the Contractor of such results.

- 4 If deemed necessary as the result of the investigation referred to in Paragraph 2 of this Article, the Owner shall change the content, and the Period of the Work.

(Change of Operation Plan, Safety Plan, or Other Documents)

Article 18 The Owner, if the necessity arises, may change the content and Period of the Work, method of implementation or other contract details.

- 2 The Owner, if necessity arises, may request the Contractor to change the operation plan, the safety plan, or other documents.

- 3 The Contractor may request the Owner for a change in any of the features mentioned in Paragraphs 1 and 2 of this Article for reasons of accident prevention or quality or for any other reasons not attributable to the Contractor.

- 4 The Contractor, when requesting the change in the Contract Price in accordance with the preceding paragraph, shall submit a written request to the Owner's division in charge of this Contract.

- 5 The change in accordance with Paragraph 3 of this Article may be made as long as the Owner acknowledges the necessity.

(Suspension and Halfway Termination of the Work)

Article 19 The Owner, if necessity arises, may suspend or terminate halfway the whole or part of the Work.

- 2 If such suspension or halfway termination of the whole or part of the Work has caused damages on the part of the Contractor for reasons attributable to the Owner, the Contractor may claim compensation for the damages from the Owner.

- 3 When the Owner pays the Contractor compensation for the damages pursuant to the Contractor's claim referred to in the preceding paragraph, the amount of such damages to be compensated for shall be determined upon mutual consultation between the Owner and the Contractor; provided, however, that the amount of such compensation shall not exceed the total Contract Price.

(Revision of Contract Price)

Article 20 In the case where the content of the Work and/or the safety plan, etc. have been changed in accordance with the provisions of Article 17, Paragraph 4 or Article 18 hereof, the Owner and the Contractor shall consult each other to agree on the revision of the Contract Price hereunder. However, if such change is attributable to the Contractor's fault, no revision of the Contract Price will be made.

- 2 In the case where the Work has been suspended or terminated halfway in accordance with the provision of Article 19, Paragraph 1 hereof, the Owner and the Contractor shall consult each other to agree on the revision of the Contract Price hereunder.

(Reports)

Article 21 When there are provisions concerning the submission of reports in the specifications, etc., the Contractor shall appropriately prepare records of the status of the implementation of the Work and, when the Work is completed, shall prepare a report compiling the status of the implementation of the Work and results thereof.

2. When the Contractor obtains know-how or information relating to the Work from a third party in the implementation of the Work, the Contractor shall note the relevant know-how or information in the report. When noting such matters, the Contractor shall give sufficient consideration to the manner in which these matters are set forth so that the rights of a third party are not infringed.

3. When the Contractor notes in a report know-how or information vesting in the Contractor or third party relating to the Work, the Contractor must indicate this on each page on which the know-how or information is set forth. Matters for which there is no indication to that effect shall be deemed the Work Products prescribed in Article 29.

4. Except when otherwise provided, the Owner shall bear the same obligations with the Contractor prescribed in Article 5 in relation to the know-how or information relating to the Work for which an indication has been made pursuant to the provisions of the preceding Paragraph.

(Inspection and Related Details)

Article 22 Upon completion of the Work, the Contractor shall submit to the Owner written notice thereof without delay.

2 When written notice of the completion of the Work has been submitted to the Owner, the Owner shall, without delay, conduct inspection on the object of the Work or ascertain the completion of the Work, with the attendance of the Contractor, in accordance with the Specifications, etc.

3 If the inspection or ascertainment referred to in the preceding paragraph has not been successful, the Contractor shall, in accordance with the instructions of the Owner, carry out necessary modifications at the expense of the Contractor on or before the date designated by the Owner and shall undergo the prescribed inspection or ascertainment again.

4 The Owner, if necessity arises, may inspect the object of the Work, even in the middle of the Work.

5 If the inspection referred to in Paragraph 2 of this Article has been successful, the Contractor shall immediately deliver the object of the Work to the Owner and the Owner shall accept it.

(Use before Completion of the Work)

Article 23 The Owner or a third party designated by the Owner, if necessity arises and after obtaining approval of the Contractor, may use all or part of the delivered Work Product free of charge before completion of the Work prescribed in Article 22. In this case, the Owner shall use the "Work Product" with the care of a good manager. The Contractor shall cooperate in the use by the Owner.

(Returning of Lent Equipment, Removing of Temporary Equipment and Related Details)

Article 24 After completion of the Work, or if it is impossible to carry out the Work, or if the Contract is terminated, the Contractor shall return the lent equipment and remaining articles supplied to the Owner by the date specified by the Owner and remove and clear up the temporary equipment, machine and tools, or materials, etc. for work from the place of Work. If they are not removed by the Contractor, the Owner may remove and dispose them at the expense of the Contractor, provided that the temporary equipment that the Owner approved to be remained would be exempt.

(Ownership of Trial Product)

Article 25 The ownership of materials, such as trial products or test objects, etc., (hereafter referred to as "Trial Products, etc.") acquired by the Contractor in respect to the implementation of the Work shall vest in the Contractor except when otherwise provided or when the submission to the Owner of such Trial Products, etc. is stipulated in the specifications.

2. The Contractor shall, at the Contractor's responsibility, dispose of by an appropriate method the Trial Products, etc. of the preceding Paragraph when the Work is completed.

(Payment of Contract Price)

Article 26 The Owner shall pay to the Contractor the Contract Price no later than the end of the month following the month in which the Contractor passed the inspection as referred to in Article 22, Paragraph 2 and the delivery as referred to in Article 22, Paragraph 5 was completed, or no later than the end of the month following the month in which the completion of the Work was ascertained.

2 If the Contractor has a debt payable to the Owner at the time of payment of Contract Price indicated in the preceding paragraph, the Owner and the Contractor agree to set-off such debt by the same amount against any payment obligation (including any debt which is not based on this Contract) owed to the Contractor by the Owner; provided, however, that this paragraph is not applicable if the Owner does not agree to use set-off for settlement of the debts.

(Payment of Consumption Taxes Related to Transaction)

Article 27 Regardless of whether the Contractor is a taxpayer or a business operator which is exempt from paying consumption tax under the Consumption Tax Act, the Owner shall, upon completion of the Work, pay the amount obtained by multiplying the amount referred to in Article 1, Paragraph 2 (or the revised amount if the Contract Price is revised under Article 20) by the tax rate prescribed in the Consumption Tax Act and the Local Tax Act. In this case, any fraction less than 1 yen shall be rounded down.

(Ownership of the Work Product)

Article 28 The ownership of the Work Product shall belong to the Owner from time to time on an “as is” basis in the performance of the Work. However, the Contractor shall store the Work Product with the care of a good manager until the delivery as referred to in Article 22, Paragraph 5 is completed, and shall bear any costs incurred for the storage.

(Vesting of the Work Product)

Article 29 The results (hereafter referred to as the "Work Product") newly acquired in the process and results of the Work shall vest in the Owner.

2. All fruits newly acquired in the process and results of the Work such as such as patents, utility model rights and design rights (hereafter referred to as “Industrial Property Rights” ) relating to the creation of inventions, devices and designs (hereafter referred to as “Inventions, etc.” ) and the right to receive such rights, copyrights and rights neighboring thereto (hereafter collectively referred to as “Copyrights, etc.”) relating to works and otherwise rights, etc. relating to the created or discovered products, structures, data, know-how, algorithms and theorems shall be included in the Work Product of the preceding Paragraph.
3. Rights prescribed in Article 27 (rights of translation, adaptation, etc.) and Article 28 (right of the original author in the exploitation of a derivative work) of the Copyright Act shall be included in Copyrights, etc. of the preceding Paragraph. Additionally, the provisions relating to the Industrial Property Rights, the rights to receive these and the copyrights, etc. of this Agreement shall, even after the termination of this Agreement, continue in full force and effect for the period that the relevant rights relating to the Work Product are protected.
4. The provisions of this Article shall not be applicable when otherwise provided for by the Owner and the Contractor.

(Protection of Industrial Property Rights)

Article 30 Either before or after the conclusion of this Contract, either Party shall be obliged to exercise due care not to interfere with patent, utility model right, design right and trademark (hereinafter referred to as "Industrial Property Rights") of third parties for reasons attributable to its own fault, and not to cause any dispute between the right holder and the other Party.

- 2 The Contractor shall investigate any possible infringement of third party Industrial Property Rights and report to the Owner the details (right number, name of the invention, right holder, and other related information).
- 3 If disputes against such right holders arise in violation of Paragraph 1 of this Article, the Owner and the Contractor shall settle any and all matters relating to them on their own. If either Party considers it necessary for the settlement of disputes, it shall cooperate with the other Party, and give instructions, as necessary.
- 4 Either before or after the conclusion of this Contract, the Owner and the Contractor shall be obliged to discuss in advance with the other Party the handling of any new invention, idea, or design created with the use of the other Party's Confidential Information obtained during the course of the performance of this Contract, and shall not acquire or commercialize a patent, utility model right, or design right without obtaining consent from the other

Party.

5 If the Owner or the Contractor violates this Article and causes damage to the other party for reasons attributable to its own fault, the party causing such damage shall compensate for the damage, and the amount of compensation shall be determined through mutual consultation between the Owner and the Contractor. Even if the consultation should fail, such claim for damage may be made.

(Moral Rights of Author)

Article 31 With respect to works relating to the Work Product, the Contractor agrees in advance to the following Items even when the moral rights of author vest in the Contractor.

(1) The Owner may at its discretion modify the Work Product

(2) The Owner may at its discretion publish the Work Product in an indicated name of its discretion

(3) The Contractor shall not publish the Work Product without obtaining the consent of the Owner

2. When a subcontractor is involved in the preparation of works, such as programs, etc., the Contractor shall obtain the prior consent of the subcontractor concerning the Items of the preceding Paragraph. The Contractor prescribed in Item (3) of the preceding Paragraph shall be replaced with the subcontractor.

3. The provisions of this Article shall not be applicable when otherwise provided for by the Owner and the Contractor.

(Application and Registration of Industrial Property Rights and the Registration of Copyrights)

Article 32 When the Owner makes an Industrial Property Rights application for Inventions, etc. pertaining to the Work Product, the Contractor shall cooperate with in the procedures from the Owner's application up to registration. Additionally, this shall be similarly applicable when the Owner undertakes the registration of works, such as programs, etc.

2. The terms and conditions at the time of the Contractor's cooperation of the preceding Paragraph shall be determined based on discussions between the Owner and the Contractor on each such occasion.

3. Matters relating to foreign applications shall be determined based on discussions between the Owner and the Contractor on each such occasion.

(Contractor's Claims relating to the Work Product)

Article 33 The Contractor may request from the Owner a license of the Industrial Property Rights, copyrights and know-how (hereafter collectively referred to as the "Industrial Property Rights, etc.") pertaining to the Work Product. The terms and conditions, such as licensing fees, shall be determined based on discussions between the Owner and the Contractor.

2. The provisions of this Article shall not be applicable when otherwise provided for by the Owner and

the Contractor.

(Claims of Work Product related Rights)

Article 34 When the Owner requires the implementation or use of Industrial Property Rights, etc. (hereafter referred to as "Related Industrial Property Rights, etc.") owned by the Contractor or owned by the Contractor jointly with a third party in the implementation or use of the Industrial Property Rights, etc. relating to the Work Product, the Owner may request from the Contractor a license, etc. of the relevant Industrial Property Right, etc. The terms and conditions, such as licensing fees, shall be determined based on discussions between the Owner and the Contractor.

2. In the event that the Owner licenses, etc. the Related Industrial Property Rights, etc. relating to the Work Product to a third party and the Owner requires the implementation or use of Industrial Property Rights, etc. in the implementation or use of the Related Industrial Property Rights, etc., the Contractor shall license, etc. the Related Industrial Property Rights, etc. to the relevant third party. The terms and conditions, such as licensing fees, shall be determined based on discussions between the Owner and the relevant third party.

3. The provisions of this Article shall not be applicable when otherwise provided for by the Owner and the Contractor.

(Designation of Know-how)

Article 35 From amongst the technical information which will not be the subject of the Related Industrial Property Rights, etc. relating to the Work Product, the Owner shall, based on discussions with the Contractor, designate technical information which can be kept secret and which has a proprietary nature and shall give notice to that effect to the Contractor.

2. Pursuant to the provision of the preceding Paragraph, the Contractor must, in accordance with the instructions of the Owner, submit to the Owner along with a report the technical information (hereafter referred to as "Know-how") designated by the Owner.

3. At the time of the notice of Paragraph 1, the Owner shall make clear the period during which the Owner and the Contractor must keep the Know-how secret.

4. Based on discussions between the Owner and the Contractor, the period during which the Know-how must be kept secret of the preceding Paragraph shall, as a general rule, be five (5) years calculated from the day after the completion date prescribed in Article 1 excluding in cases listed in the following Items. However, particular Know-how which the Owner and the Contractor deem to have a high need for secrecy may have a period of ten (10) years.

(1) When disclosed with an obligation of confidentiality in order to obtain export permission in respect to Japan and the Contractor's affiliated country's related institution

(2) When disclosed with an obligation of confidentiality in respect to a necessary third party for the

purpose of the implementation of the Work or to undertake one's own work

(3) When disclosed with an obligation of confidentiality in order for the Owner to discharge obligations in respect to the government of Japan

5. The period during which the Know-how designated in Paragraph 1 must be kept secret may, based on discussions between the Owner and the Contractor, be extended or shortened when necessary following that designation.

6. When the Owner receives from the Know-how pursuant to the provisions of Paragraph 2, the Owner must appropriately store the Know-how in a location where the leak of confidential information can be prevented.

(Technical Information Seal, etc.)

Article 36 When the Contractor deems necessary, the Contractor shall make a record of important technical information already in the possession of the Contractor on the starting date prescribed in Article 1 and shall submit to the Owner application form to affix seals to said technical information within 30 days following the conclusion of this Agreement.

2. When there is the submission of the application form to affix seals of the preceding Paragraph, the Owner and the Contractor shall in their mutual presence affix their respective seals to the technical information.

3. The sealed record shall be retained by the Contractor and the Owner and the Contractor shall each retain a sealed records list.

4. When there is an objection from the Contractor concerning the vesting of the Know-how notified by the Contractor to the Owner pursuant to the provisions of Article 35, Paragraph 1, the Owner and the Contractor may in their mutual presence open the technical information pertaining to the relevant application from amongst the sealed technical information and shall promptly re-seal the technical information after opening.

5. When the Owner acknowledges as a result of the opening of the technical information of the preceding Paragraph that the designated Know-how pursuant the provisions of Article 35, Paragraph 1 vests in the Contractor, the designation of the relevant Know-how shall be rescinded.

6. The Owner must not use or leak to a third party the technical information learned through the opening of said technical information.

7. When there is an objection from the Contractor concerning the vesting of the designated Know-how based on discussions between the Owner and the Contractor pursuant to the provisions of Article 35, Paragraph 1, the Owner and the Contractor shall rescind the sealing executed pursuant to the provisions of Paragraph 2.

(Defect Warranty)

Article 37 If the Owner finds any defect in the Work Product after delivery of the Wok Product and within the defect liability period as referred to in Paragraph 2 of this Article and if the Owner submits to the Contractor a claim on the defect, the Contractor shall, at its own expenses and subject to the Owner's instructions, repair the defective

Work Product, and/or, in lieu of or along with the repair, compensate damages suffered by the Owner due to such defect. The Parties shall consult with each other to determine the amount of the damages.

- 2 The defect liability period under this Article shall be one year from the date when the Contractor passed the inspection under Article 22.
- 3 The amount of the damages under Paragraph 1 of this Article shall not exceed the total Contract Price hereunder.
- 4 If the defect under Paragraph 1 of this Article is resulted from willful intention or gross negligence of the Contractor, the limitations on the damages as prescribed in Paragraph 3 of this Article do not apply.

(Damages in Case of Delay in the Work)

Article 38 If the Contractor cannot complete the Work within the prescribed Period for reasons attributable to itself, the Owner may request payment for the amount of money equivalent to one thousandth (1/1000) of the total Contract Price per day in arrears from the Contractor; provided, however, that the upper limit of the damages shall not exceed ten (10) percent of the total Contract Price, and fractions less than 1 yen shall be rounded down.

- 2 If the Contractor is obligated to pay the damages indicated in the preceding paragraph, the Owner and the Contractor agree to set-off such damages by the same amount against any payment obligation (including any debt which is not based on this Contract) owed to the Contractor by the Owner; provided, however, that this paragraph is not applicable if the Owner does not agree to use set-off for settlement of the debts.
- 3 The provisions of Paragraphs 1 and 2 of this Article are not applicable, if the delay in question cannot be attributable to the Contractor's fault.
- 4 If the delay in question is caused by the Contractor's willful intention or gross negligence, then the upper limit of the damages under the proviso of Paragraph 1 of this Article is not applicable.

(Damages Suffered to Third Parties)

Article 39 If the Contractor causes any damage to a third party in performance of the Work, the Contractor shall at its own responsibility negotiate with the damaged third party, compensate the damage and take all other necessary measures. However, if necessity arises, the Owner may take the measures by itself or may give instructions to the Contractor to take the measures.

- 2 The Contractor shall bear all costs required for the measures under the preceding Paragraph. However, if it is evident that the whole or part of the damages is attributable to the Owner's fault, the Owner shall bear the costs in consideration of the proportionate responsibility for the damages.
- 3 If it is evident that the damages prescribed under Paragraph 1 of this Article were due to reasons not attributable to either of the Parties, or if it is not evident that the damages were due to reasons attributable to either of the Parties, the Parties shall consult with each other and decide on the sharing of the costs prescribed under the preceding paragraph.

(Damages Suffered to the Owner)



Article 40 In addition to what is prescribed in the provisions of this Contract, if the Contractor causes damages to the Owner in performance of this Contract, the Contractor shall compensate any and all damages suffered by the Owner. However, if it is evident that the whole or part of the damages is attributable to the Owner's fault, the Owner shall bear the costs in consideration of the proportionate responsibility for the damages.

2 If it is evident that the damages suffered by the Owner were due to reasons not attributable to either of the Parties, or if it is not evident that the damages were due to reasons attributable to either of the Parties, the Parties shall consult with each other and decide on the sharing of the costs prescribed under Paragraph 1 of this Article.

(Investigation into and Report of Quality Conditions)

Article 41 The Owner, when it finds it necessary for the reason falling under any one of the following items (1) through (5), and the Contractor, when it finds it necessary for the reason falling under any one of items (4) and (5), may request to the other Party the provision of a written investigation report or management condition report, and the other Party shall cooperate with the request. Also, the Owner or the Contractor, as long as either Party obtains approval from the other Party, may send a representative to investigate the other Party's office, etc.:

- (1) When confirmation of the implementation of the Work, the status of progress or the results is required
- (2) Failure to pass the inspection as set forth in Article 22, Paragraph 2;
- (3) Detection of a defect as set forth in Article 37, Paragraph 1 or any other serious flaw;
- (4) Suspected leak of Confidential Information as set forth in Article 5 or when the Owner or the Contractor detects such possibility;
- (5) Violation of any terms or conditions of this Contract.

2 The sharing of costs relating to the analysis indicated in the preceding paragraph shall be determined through mutual consultations between the Owner and the Contractor.

(Termination of Contract by the Owner)

Article 42 The Owner, if it has any reason that falls under any one of the following items, may immediately terminate all or part of the contracts concluded with the Contractor without notice or formal demand. In this case, the Contractor shall not demand any damage compensation or make any other claim to the Owner.

- (1) If the Owner finds that the performance of the Work is or is likely to be significantly disturbed because a third party petitions against the Contractor provisional attachment, provisional injunction, seizure, public auction or disposition for tax delinquency;
- (2) If a petition for commencement of bankruptcy, civil rehabilitation, corporate reorganization or special liquidation proceeding is filed for or against the Contractor;
- (3) If the bills and checks drawn, guaranteed, accepted or endorsed by the Contractor are bounced and their payments are stopped, worsening its financial position and the Owner determines that the Contractor's ability to carry out the Contract is lost;
- (4) If the Contractor fails to start the Work without justifiable reason even after the time for commencing the Work

has passed; (5) If the Contractor has discontinued the Work or has suspended the Work for a considerably long period without justifiable reason;

- (6) If the Owner finds that it becomes impossible or extremely difficult to complete the Work within the Period due to reasons attributable to the Contractor's fault;
- (7) If the Owner finds that it becomes impossible or extremely difficult to complete the Work within the Period due to reasons not attributable to fault of either of the Parties;
- (8) If the Owner finds inappropriate items in the report materials and other related documents submitted by the Contractor to the Owner in relation to the performance of the Work, because of the Contractor's willful intention or gross negligence;
- (9) If the Contractor breaches any provision hereof;
  - (10) If the Contractor has lost the qualifications required for the performance of the Work;
  - (11) If the Contractor or subcontractor(s) entrusted with works hereunder violates laws or regulations in performance of this Contract.

(Exclusion of Antisocial Forces)

Article 43 The Owner, if any event that falls under any one of Items (1) to (9) described below occurs to the Contractor (which means, if the Contractor is a consortium (*kyoudou-kigyou-tai*), any of its members; if the Contractor is an individual, that individual; if the Contractor is a corporation, its representative or responsible manager, a person who substantially controls the management interest of that corporation, any of its officers, or representative of any of its branches or an office with which it constantly enters into a contract; if the Contractor has several subcontractors, including all of those subcontractors; hereinafter in this Article the same applies), may immediately terminate all or part of contracts concluded with the Contractor without notice or formal demand. In this case, the Contractor shall not make any claim for damages, etc. to the Owner.

- (1) It is determined that the Contractor is an organized crime group, a member of any organized crime group, a quasi-member of any organized crime group, an affiliate of any organized crime group, a corporate racketeer (*soukaiya*) or any other entity similar thereto (hereinafter those entities are collectively referred to as "antisocial forces"; hereinafter in this Article, the same applies);
- (2) It is determined that any antisocial forces substantially participates in the management of the Contractor;
- (3) It is determined that the Contractor has utilized any antisocial forces in any way;
- (4) It is determined that the Contractor has been involved with any antisocial forces by giving money or others or providing any benefit;
- (5) It is determined that the Contractor has any socially reprehensible relationship with any antisocial forces;
- (6) It is determined that the Contractor has entered into a subcontracting agreement, service engagement agreement, materials or raw materials purchase agreement or other agreement (hereinafter those agreements are collectively referred to as "subcontracting agreement, etc."; hereinafter in this Article the same applies) with any entity, with the knowledge that such entity falls under any one of Items (1) through (5) of this Paragraph;

(7) Provided that the Contractor has entered into a subcontracting agreement, etc. with any entity that falls under any one of Items (1) through (5) of this Paragraph (except in cases where it falls under Item (6) of this Paragraph), the Contractor does not comply with the Owner's request that such subcontracting agreement, etc. be terminated);

(8) Although it is detected that the Contractor has entered into the subcontracting agreement, etc. with any entity that falls under any one of Items (1) through (5) of this Paragraph, the Contractor does not inform the Owner thereof; or

(9) The Contractor, directly or through the use of any third party, has made any violent request or any request that surpasses legal responsibilities to the Owner, has used any threatening language or conduct, or violence against the Owner, or has diffused any rumor relating to the Owner, has injured the reputation of the Owner by utilizing fraudulent means or force, or has committed any other act that should interfere with the business operations of the Owner.

2 The Contractor assures that the Contractor or any of its subcontractors or sub-subcontractors, or its providers of materials or raw materials (including, if there are several subcontracting contracts, all of those entities; hereinafter those entities are collectively referred to as "subcontractors, etc."; hereinafter in this Article the same applies) does not or will not fall under any one of the Items of the preceding Paragraph.

3 When it is detected that any of such subcontractors, etc. falls under any one of the Items of Paragraph 1, the Contractor shall immediately terminate the relevant contract or take steps to terminate the relevant contract.

4 When the Contractor or any of its subcontractors, etc. receives any undue demand from, or suffers any interference with the civil engineering works or other performance of the contract by, any antisocial forces (hereinafter referred to as "undue intervention"), the Contractor shall determinately reject it or cause its subcontractors, etc. to reject it, and at the time of undue intervention, promptly inform the Owner and provide the Owner with cooperation necessary for reporting to the investigative authorities.

5 When the Contractor violates any of the provisions of Paragraphs 2 through 4 of this Article, the Owner may immediately terminate all or part of contracts concluded with the Contractor without notice or formal demand. In this case, the Contractor shall not make any claim for damages, etc. to the Owner.

(Measures in Case of Termination of Contract by the Owner)

Article 44 If the Owner terminates this Contract under Article 42, Paragraph 1 and Article 43, Paragraph 1, the Owner shall pay to the Contractor the amount calculated by assessing the progress of the Work minus any amount already paid under Article 26.

2 The Contractor shall compensate damages suffered by the Owner due to termination of this Contract. However, the Contractor is not obligated to compensate damages if such damages arise under Article 42, Paragraph 1, Item (7).

3 If the Contractor is obligated to pay refundable prices, indemnities, damages due to a delay in the Work and other debts, the Owner and the Contractor agree to set-off such debts by the same amount against any payment obligation (including any debt which is not based on this Contract) owed to the Contractor by the Owner; provided, however, that this paragraph is not applicable if the Owner does not agree to use set-off for settlement of the debts.

4 The amount of the “damages suffered by the Owner” under Paragraph 2 of this Article shall be determined through mutual consultation between the Contractor and the Owner; provided that such amount shall not exceed the total Contract Price hereunder.

5 If the damages as described in Paragraph 2 of this Article are caused by the Contractor’s willful intention or gross negligence, then the upper limit of the damages under Paragraph 4 of this Article is not applicable.

(Termination of Contract by the Contractor)

Article 45 The Contractor, if it has any reason that falls under any one of the following items, may, after giving formal demand to the Owner, immediately terminate all or part of the contracts concluded with the Owner. In this case, the Owner shall not demand any damage compensation or make any other claim to the Contractor.

(1) If the Contractor finds that the payment of Contract Price is likely to be disturbed because a third party petitions against the Owner provisional attachment, provisional injunction, seizure, public auction or disposition for tax delinquency;

(2) If a petition for commencement of bankruptcy, civil rehabilitation, corporate reorganization or special liquidation proceeding is filed for or against the Owner;

(3) If the bills and checks drawn, guaranteed, accepted or endorsed by the Owner are bounced and their payments are stopped, worsening its financial position and the Contractor determines that the Owner’s ability to pay the Contract Price is deteriorated;

(4) If the Owner refuses to accept the Work Product without any justifiable reason and for reasons attributable to the Owner;

(5) If the Contractor finds inappropriate matters due to willful intention or gross negligence of the Owner in the Specifications, etc. delivered by the Owner and such inappropriate matters make it impossible to carry out the Contract.

(6) If the Owner breaches any provision hereof;

(7) If the Owner violates laws or regulations in performance of this Contract.

(Measures in Case of Termination of Contract by the Contractor)

Article 46 If the Contractor terminates this Contract under Article 45, the Owner shall pay to the Contractor the amount calculated by assessing the progress of the Work minus any amount already paid under Article 21.

2 The Owner shall compensate damages suffered by the Contractor due to termination of this Contract.

3 The amount of the damages claimed under the preceding paragraph shall be determined through mutual consultation between the Contractor and the Owner; provided that such amount shall not exceed the total Contract Price hereunder.

4 If the damages as described in Paragraph 2 of this Article are caused by the Owner’s willful intention or gross negligence, then the upper limit of the damages under Paragraph 3 of this Article is not applicable.

(Work Subject to Sorting and Dismantling and Other Operations)

Article 47 If Article 9, Paragraph 1 of the Construction Material Recycling Act applies to whole or part of the Work, the Parties will later determine sorting and dismantling methods and other details.

(Assignment of Rights, Obligations and Related Details)

Article 48 Neither the Owner nor the Contractor shall assign, transfer or otherwise dispose of its rights or obligations hereunder to a third party, or have a third party succeed to or collateralize them, except for the case where such assignment is approved in writing and in advance by the other party.

2 Notwithstanding the preceding paragraph, the Contractor may transfer accounts receivable to the Credit Guarantee Association and financial institutions as set forth in Article 1-2 of the Order for Enforcement of the Small and Medium-sized Enterprise Credit Insurance Act, with the purpose to receive loans under the system of loan security using current assets insurance. In this case, the Contractor shall submit to the Owner a written proposal and the Parties shall consult with each other.

(Settlement of Dispute over Contract)

Article 49 The questions arising from interpretation of provisions of this Contract and matters mentioned in the Specifications, etc. as well as the matters not prescribed by this Contract shall be decided by consultations between the Owner and the Contractor.

(Jurisdiction and Governing Law)

Article 50 Any litigation pertaining to this Contract will be subject to the jurisdiction of the Tokyo District Court (or the Tokyo Summary Court).

2 This Contract is governed by and made legally effective in accordance with laws of Japan in any and all aspects.

IN WITNESS WHEREOF, the Owner and the Contractor have caused two original texts of this Contract, and each Party shall hold one original text.

Date : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Dr. Masaaki MISHIRO  
Vice President  
The Institute of Applied Energy

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