



“**IPR**” means all intellectual property rights and other proprietary rights including without limitation copyrights, patents, registered designs, trade marks and trade names(including any attached goodwill), moral rights, registered database rights and any applications for any of the foregoing together with any right or form of protection of a similar nature and having equivalent or similar effect to any of them anywhere in the world.

“**Party**” refers to Customer or Contractor, “**Parties**” refers to Customer and Contractor.

“**Proprietary Information**” means and includes without limitation designs, drawings, reports, specifications, procedures, instructions, software, data, methods, methodologies, know-how, processes, information, analysis, get up and any other technical or commercial information and data and any unfinished versions of the same in any form or medium.

“**Services**” refers to those tasks, collectively or individually, outlined in general terms in Exhibit A – Scope of Work, to be provided to Customer by Contractor.

“**Willful Misconduct**” means a conscious willful act or conscious willful failure to act which is deliberately committed with the intent to cause harm or injury to persons or property.

## **2. Term of Agreement**

- 2.1. This Agreement shall become effective as of the date first above written, and shall remain effective until [ ] inclusive unless or until terminated earlier under clause 4.
- 2.2. The termination of this Agreement for any reason shall not affect this clause 2.2, clause 7 (Proprietary Rights and Copyright of Deliverable(s)), clause 8 (Confidentiality), clause 11 (Waiver), clause 12 (Notices), clause 14 (Employee Solicitation), clause 16 (Governing Law), clause 17 (Language) and clause 18 (Disputes and Arbitration), which shall continue in force notwithstanding such termination for five (5) years from the date first above written.

## **3. Services**

Contractor agrees to provide, perform and complete the Services set forth in Exhibit A, for the sole and exclusive benefit of Customer. Contractor personnel shall comply with all of Customer’s workplace rules and requirements identified by Customer while at Customer’s facility. For the avoidance of doubt, Contractor may continue to provide services to other customers during the duration of this Agreement.

## **4. Termination**

This Agreement may be terminated by either Party upon giving the other Party thirty (30) days advance written notice thereof. Either Party may terminate this Agreement upon ten (10) days written notice to the other Party if the other Party is in default of its obligations under this Agreement. The defaulting Party shall have five (5) days to cure or to take reasonable steps towards curing such default.

## **5. Remuneration**

- 5.1 Subject to the terms and conditions hereinafter set forth, Customer shall pay to Contractor the compensation, in accordance with the rates, costs and expenses incurred by Contractor, stipulated in the “Budget of Remuneration” of Exhibit A-Scope of Work (hereinafter referred to as “**BOR**”).
- 5.2 It is expressly acknowledged by both Parties that the total amount of such remuneration to be paid by Customer to Contractor as is itemized in BOR shall not exceed the upper limit of the sum comprising of [     ], inclusive of all taxes, and that the items (1) Direct Personnel Cost, (2) Other Cost, (3) Handling Charge (4) Subcontract Cost shall not concurrently exceed the respective sums specified in BOR for the items.
- 5.3 Expenses - Customer shall reimburse to Contractor such traveling and other expenses, data processing expense and commutation allowance incurred in connection with on-the-job services furnished under this Agreement as are set out in BOR.
- 5.4 Handling Charge – Customer agrees to pay to Contractor the handling charges to be respectively calculated, at the appropriate rate to be agreed upon between the Parties, against Direct Personnel Cost and Other Cost as are set out in BOR.
- 5.5 Reporting – Contractor shall submit to Customer the Remuneration Report (hereinafter “**RR**”) covering such expenditures by Contractor, itemized as per BOR, together with the relevant evidencing papers and supporting documentation (such as receipts for air travel, hotel and rental cars or paid vendor’s invoices). For the purpose of assisting the inspection by Customer, under clause 5.6, Contractor shall submit to Customer Contractor’s intra-company rulebook relating to such expenditures by Contractor, if available.
- 5.6 Inspection – Customer shall respectively inspect RR, together with the Deliverable(s), and inform Contractor by return in writing of its approval and acceptance thereof.
- 5.7 Invoicing – Contractor shall submit invoice(s) to Customer after obtaining the said approval(s) from Customer.
- 5.8 Payment – No later than thirty (30) days after such invoice(s) is deemed to be received, Customer will make payment(s) for the Services by way of electronic bank transfer, provided that the

payment(s) is impracticable resulting from events or circumstances beyond the control of Customer, set forth in clause 13 (Force Majeure), the number of days during such events last will be added to the moratorium period.

- 5.9 Interim Payment – Upon Contractor’s request, the Parties may agree for interim payment(s), the terms of which shall be specified in Exhibit A-Scope of Work. The conditions and method of such interim payment(s) conform to those specified in 5.1 to 5.8.
- 5.10 Audits – Contractor shall keep records of all Contractor’s billing for a period of five (5) years following Customer’s payment thereof. Customer shall have the right to examine and audit such billings to Customer and all of Contractor’s backup and support data for those billings. Upon Customer’s request, Contractor shall make such data and backup available for Customer’s auditors to examine at Contractor’s office. All payments made by Customer are subject to revaluation and refund or future withholding of billing payments conditioned on the results of the audit.

Notwithstanding any other provisions stated herein above or in this Agreement, Contractor shall have the right to exclude, from the scope of any audit or inspection performed by Customer, its trade secrets, formulae and processes irrelevant to this Agreement.

## **6. Cancellation Charge**

In the event Customer cancels an order for Services, Customer shall pay all costs and expenses incurred by Contractor (including labor and materials) prior to receipt of notice of cancellation.

## **7. Proprietary Rights and Copyright of Deliverable(s)**

- 7.1. Each Party shall retain all right, title and interest in its Background IP.
- 7.2. The ownership of any and all of the Deliverable(s), as well as any and all IPR in each of the Deliverable(s) which is derived from Customer’s Background IP (but not the Contractor’s Background IP), shall belong wholly and exclusively to Customer, without prejudice to the confidentiality obligations under clause 8. Contractor agrees to do all acts and execute all documents to give effect to this provision, promptly on the request of Customer. Nothing herein shall be deemed to grant or convey ownership of Contractor’s Background IP to Customer.
- 7.3 Neither party will create any new IPR during the course of service provision. And the Parties agree to defer the decision as to the ownership of such rights until such a time as a potential innovation is likely to occur. Prior to any such innovation, the Parties agree to enter into a separate agreement setting out the terms of IPR.

- 7.4. Contractor hereby grants to Customer and its legal successors non-exclusive, royalty-free, worldwide right and license to use Contractor's Background IP within the scope of the Deliverable(s) or for the purpose of running the Deliverable(s), to the extent the same is incorporated into the Deliverable(s).
- 7.5 Without prejudice to the confidentiality obligations in clause 8, Contractor agrees that it will not grant any third party a license to use the Deliverable(s) or any part thereof for any purposes whatsoever nor will it use the Deliverable(s) for the benefit of any third party.
- 7.6. Contractor hereby agrees to indemnify Customer for any costs, losses or expenses incurred by Customer as a result of any claim by any third party that the use or possession by Customer of any Deliverable (or part thereof) or that the preparation of the Deliverable by Contractor infringes any IPR of any third party, provided Contractor is promptly notified in writing of any such suit or claim against Customer and further provided that Customer permits Contractor to defend, compromise or settle same, and gives Contractor all available information, reasonable assistance and authority to enable Contractor to do so. If, as the result of any claim of infringement against any patent, trademark, copyright, license or other property right, Contractor or Customer is enjoined from using or utilizing the Deliverable(s), or if Contractor believes that the Deliverable(s) is likely to become the subject of a claim of infringement, Contractor, at its option and expense, shall procure the right for Customer to continue to use the Deliverable(s), or replace or modify the Deliverable(s) so as to make it non-infringing. THE FOREGOING STATES THE ENTIRE LIABILITY OF CONTRACTOR WITH RESPECT TO ANY THIRD PARTY IPR INFRINGEMENT CLAIMS.
- 7.7. Notwithstanding clause 7.6., Contractor will not be liable for IPR infringement that arises:
- 7.7.1. out of Customer's use of Contractor's Deliverable(s) in combination with products or services not provided by Contractor;
  - 7.7.2 where Contractor's Deliverable(s) have been specially modified, designed and/or manufactured to meet Customer's specifications;
  - 7.7.3. out of unauthorized additions and modifications to Contractor's Deliverable(s);
  - 7.7.4. where Customer's use of Contractor's Deliverable(s) does not correspond to Contractor's published standards or specifications.

## **8. Confidentiality**

- 8.1. The Parties agree to keep confidential any information which is expressly indicated to be confidential and any information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the

other Party and the Parties agree not to disclose or otherwise make available the same to a third party without the prior written consent of the other Party.

- 8.2. The confidentiality obligations under clause 8.1 shall not be applicable to the disclosure by either Party of any information contained in the Deliverable(s):
  - 8.2.1. to its officers, employees, advisors, representatives and agents, in each case, to the extent required to enable such Party to carry out its obligations under this Agreement and in each case they shall be made aware by such Party of its obligations under this Agreement and they shall be required by such Party to observe the same restrictions on the use of any relevant information as contained in clause 8.1 above;
  - 8.2.2. to the extent required by any applicable law or by the regulations of any stock exchange or regulatory or supervisory authority to which such Party is subject or pursuant to any order of the court or other competent authority or tribunal;
  - 8.2.3. to the extent that such information is in or comes into the public domain other than by breach of this Agreement by such Party;
  - 8.2.4. to the extent that such information is lawfully acquired by such Party from a third party which has full rights to disclose such information.
- 8.3. Notwithstanding clause 8.1, Customer shall not be restricted from publishing on Customer's website ([www.jogmec.go.jp](http://www.jogmec.go.jp)) the title, date and total price of the Agreement and the name and address of the Contractor.

## **9. Limitations of Liability; Third Party Claims; Disclaimer**

- 9.1. Neither Contractor nor any of its subsidiaries or affiliates nor one of their respective officers, employees, representatives, agents or subcontractors (each an "**Indemnitee**") shall have any liability to Customer on account of the Agreement unless such liability shall have been the result of fraud, negligence, breach of contract or willful misconduct on the part of such Indemnitee.
- 9.2. NEITHER PARTY NOR ANY INDEMNITEE BE LIABLE, AND HEREBY RELEASES AND INDEMNIFIES THE OTHER PARTY, UNDER ANY CIRCUMSTANCES, FOR INDIRECT, SPECIAL OR PUNITIVE DAMAGES OR LOSS, on account of any claim arising from or in connection with or otherwise relating to the Agreement, whether on the basis of negligence, tort, breach of contract, misrepresentation, indemnity or otherwise.
- 9.3. This Agreement is made exclusively for the benefit of the Parties to it and does not confer any rights on any third party. In particular, Contractor does not owe any duty of care to any third party in respect of the preparation of the Deliverable(s) or their contents. Accordingly, Customer undertakes that no Deliverable shall be provided to a third party unless the source of such

Deliverable is not mentioned or indicated or it is accompanied by the letter attached to this Agreement.

- 9.4. Notwithstanding anything to the contrary in the Agreement, the aggregate liability of Contractor for any and all claims, damages, injuries, losses (including reasonable lawyers fees and legal costs) and other liabilities of any kind under the Agreement, including, without limitation, for negligence, professional negligence, and breach of contract, fundamental or otherwise, shall not exceed hundred percent (100%) of the total price of the Agreement or USD five hundred thousand (USD500,000) whichever is lower. Customer agrees to indemnify and hold harmless Contractor from any claims or losses in excess of the foregoing limitation.

## **10. Variation**

No variation of this Agreement shall be effective unless it is in writing signed by and on behalf of both of the Parties. The expression “variation” as used in the preceding sentence includes, but is not limited to supplement, deletion or replacement, however effected. Variation of this Agreement cannot be effected via e-mail.

## **11. Waiver**

The rights and remedies of either Party shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by such Party except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of such Party. No single or partial exercise of any right or remedy by either Party shall prevent any further or other exercise thereof or the exercise of any other right or remedy by such Party.

## **12. Notices**

- 12.1. Any notice or other communication required or permitted to be given under this Agreement:

12.1.1. shall be in writing in English language; and

12.1.2. shall be left at the address of the addressee or sent by pre-paid post, recorded delivery or courier to the address of the addressee or sent by e-mail to the e-mail number of the addressee in each case which is specified in this clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or e-mail address, and/or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this clause.



Except with the prior written consent of the other Party and except if part of a public solicitation for employment, neither Party shall solicit the employment of any of the other Party's employee until not less than one (1) year has elapsed from the payment of the final invoice for the Services.

#### **15. Subcontracting**

Contractor may engage third party consultants or subcontractors, including but not limited to companies with which Contractor may have an alliance, to perform the services under this Agreement in whole or in part on behalf of Contractor, with the prior written consent of Customer, which consent shall not be unreasonably withheld or delayed, provided Contractor shall remain responsible for such performance.

#### **16. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Japan.

#### **17. Language**

This Agreement is entered into in English language. Should there be any discrepancy between this Agreement and any translation of it into any language other than English, the original English text shall prevail.

#### **18. Disputes and Arbitration**

- 18.1 The Parties shall do their best to negotiate in good faith and settle amicably all disputes, controversies or differences which may arise between the Parties, out of or in relation to or in connection with this Agreement or any breach thereof. If such dispute cannot be settled amicably through ordinary negotiations by appropriate officers or directors of the Parties within a thirty (30) day period of being first referred, it shall be submitted for final resolution by arbitration in Tokyo in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. Any judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction therein. Any award rendered by the arbitrators may include costs against either Party, but under no circumstances are the arbitrators authorized or empowered to award special, punitive or multiple damages against either Party. The award of the arbitration shall be final and binding to the Parties.
- 18.2 The language to be used in the arbitral proceedings shall be English.
- 18.3 The arbitral tribunal (hereinafter the "Tribunal") shall be composed of three (3) arbitrators, with each party appointing one arbitrator, and the two arbitrators so appointed appointing the third arbitrator who shall act as the presiding arbitrator of the Tribunal.



**EXHIBIT A - Scope of Work**

**1. Contents of Services**

[ ]

**2. Schedule**

[ ]

3. 4. [ ]

**5. Budget of Remuneration**

items	Amount	Details
(1) Direct Personnel Cost	○○○○○	Researcher A: ¥○○/day × ○○days Researcher B: ¥○○/day × ○○days Researcher C: ¥○○/hour × ○○hours
(2) Other Cost	○○○○○	
Traveling Expenses	○○○○	To London(5 times, A): ¥○○○ To LA (1 time, C): ¥○○○
Data Processing Expenses	○○○	Computer: ¥○○/month Software: \$○○○ (= ¥○○○) PC Accessories: ¥○○○
Printing Fee	○○○	Binding: ¥○○
Equipment Cost	○○○○	
Commutation Allowance	○○	
Misc.	○○○	
(3) Handling Charge	○○	(1) × α% & (2) × α%
(4) Subcontract Cost	○○○○	Vendor A: ¥○○○ Vendor B: \$○○○ (= ¥○○○)
Sub Total	○○○○	(1)+(2)+(3)+(4)
Consumption Tax (5%)	○○	
Grand Total	¥○○○○○	

**6. Interim Payment**

[ ]