

## 1. DEFINITIONS

- 1.1** The following definitions and rules of interpretation apply to the Contract:
- a. "CEP" means the Certificate of Eligible Procurement necessary for the Principal and the End-User to authorise purchase of the Goods.
  - b. "Contract" means the agreement between the Principal and the Contractor, entered into by Crown Agents as an agent, acting on behalf of the Principal, including these conditions, all plans, drawings or other documents or conditions which may be referred to in the Contract, and all correspondence in writing between the Contractor and Crown Agents entered into in connection with any bid or request for quote pursuant to which the Goods and Services are being supplied where such correspondence has been entered into by the parties prior to Crown Agents and the Contractor signing the Contract.
  - c. "Conditions" means the terms and conditions set out in this document and any other terms and conditions set out in any other document that forms part of the Contract as amended from time to time in accordance with clause 26.
  - d. "Contract Price" means the price, payable under the Contract in consideration of the full and proper performance of all the Contractor's obligations under the Contract. Unless otherwise stated in the Contract, the Contract Price shall be fixed.
  - e. "Contractor" means the party who undertakes to supply the Goods and Services.
  - f. "Country" means the country in which the Site is situated.
  - g. "Crown Agents" means Crown Agents Japan Limited and/or any subsidiary or affiliate of Crown Agents in each and every case acting as an agent or agents, as the case may be, for and on behalf of the Principal.

- h. "Deliverables" means all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation, computer programs, data, reports and specifications (including drafts).
- i. "End-User" means the entity named in the Contract who is the intended recipient of the Goods and Services and is intended to benefit from the terms of the Contract.
- j. "CCRES" means Japanese Grant Assistance for the Programme for COVID-19 Crisis Response Emergency Support.
- k. "Goods" means all the goods which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service.
- l. "Grant" means the funding to be provided under the Japanese Grant Assistance for the Programme for COVID-19 Crisis Response Emergency Support to the Principal.
- m. "Installation Equipment" means all of the equipment and plant required on the Site for the satisfactory installation, commissioning and (if appropriate) testing, for the provision of the Services otherwise than for incorporation in the Goods.
- n. "Inspector" means the person authorised by Crown Agents or the Principal, to act as Crown Agents and/or the Principal's inspector under the Contract.
- o. "Japanese Nationals" means Japanese physical persons or Japanese juridical persons controlled by the Japanese physical persons.
- p. "Personnel" means individuals engaged by the Contractor or any of the Contractor's permitted subcontractors to assist with the provision of the Services.
- q. "Principal" means the party on whose behalf Crown Agents enters into the Contract. The existence of the Principal as

a party to the Contract is hereby disclosed. The name of the Principal shall be stated in the Contract. For the purposes of clause 29, and except as regards clause 11.7, references to the Principal shall be deemed to include the End-User.

r. "Services" means the services to be provided by the Contractor as specified in the Contract.

s. "Site" means the actual place or places where the Services are to be carried out.

t. "Special Conditions" means the special conditions set out in the Contract.

**1.2** In the Conditions, unless the context requires otherwise, the following rules apply:

a. reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

b. reference to a party includes its personal representatives, successors or permitted assigns.

c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

d. any phrase introduced by the terms **including, include, in particular** or any similar expression shall not be construed as illustrative and shall not limit the sense of the words preceding those terms.

e. A reference to **writing** or **written** includes faxes and e-mails.

## **2. APPLICATION**

**2.1** The Conditions apply to the Contract to the exclusion of any other terms or conditions that the Contractor seeks to incorporate, or

which are implied by trade, custom, practice or course of dealing.

## **3. STANDARDS AND REGULATIONS**

**3.1** The Goods shall be supplied in accordance with the description and specification set out in the Contract.

**3.2** Where no specification or standard is stated then all Goods shall be supplied in accordance with the relevant JIS Standard, or to a recognised national standard in the country of manufacture acceptable to Crown Agents.

**3.3** The Contractor shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including without limitation all applicable statutory and regulatory requirements within the country where the Goods are manufactured and within the Principal's country.

**3.4** The Contractor shall provide the Services in accordance with the terms of the Contract.

**3.5** In providing the Services the Contractor shall:

a. co-operate with Crown Agents and/or the Principal and/or the End-User in all matters relating to the Services and comply with all instructions of Crown Agents;

b. perform the Services with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;

c. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Contract and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by Crown Agents;

d. unless otherwise expressly stated in the Contract, provide all Installation

- Equipment and such other items as are required to provide the Services;
- e. use the best quality goods, materials, standards and techniques and ensure that the Deliverables and all Goods and materials supplied and used in the Services or transferred to Crown Agents, the Principal or the End-User will be free from defects in workmanship, installation and design;
  - f. not to do or omit to do anything that may cause Crown Agents, the Principal or any End-User to lose any licence, authority, consent or permission upon which it relies for the purpose of conducting its business.
- 3.6** The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

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#### **4. ELIGIBILITY**

- 4.1** Unless otherwise expressly stated in the Contract, the Contractor represents and warrants that:
- a. it is not as a matter of law or official regulations in the Principal's country that they are prohibited from having commercial relations with the Principal's country;
  - b. it does not owe any taxes to or is engaged in any dispute with any government department or agency in the Principal's country;
  - c. the Goods are not partially or wholly manufactured in a country prohibited from having commercial relations with the Principal's country as a matter of law or official regulation in the Principal's country;
  - d. the Principal's country does not, by complying with a decision of the United Nations Security Council, prohibit any import of goods from the country where the Goods are wholly or partially

manufactured or any payment to persons or entities in such country;

- e. it is not prevented by any international sanction and/or embargo from performing its obligations pursuant to the Contract.

**4.2** Unless otherwise stated, Goods and Services offered by the Contractor shall only be eligible if the Goods and Services shall be supplied by Japanese Nationals who shall provide evidence of meeting the requirements of clause 4.3.

**4.3** Eligible Contractors (and their manufacturers for the Goods, should the Contractor not be a manufacturer) shall be Japanese companies, incorporated and registered under Japan Law with their headquarters in Japan and shall conform with the eligibility requirements stated in the tender documents.

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#### **5. FUNDING**

- 5.1** The Government of Japan has extended CCRES to the Principal in accordance with a signed Exchange of Notes and a Grant Agreement.
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#### **6. ALTERATION OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES**

**6.1** The Contractor shall not alter the specifications, plans or drawings in the Contract unless requested in writing by, or with the prior written agreement of Crown Agents.

**6.2** In the event that any such alteration requested by Crown Agents involves an alteration in the cost of production, and/or in the period required for performance of the Contract, such revision of the Contract Price, and/or of the time for delivery or performance, shall be made in relation to the Goods and/or Services which are the subject of the alteration, as shall be agreed

in writing between Crown Agents and the Contractor. In all other respects the Contract shall remain unaltered.

**6.3** Where the Contract is for the supply of Goods described in the Contract by reference to the Contractor's proprietary specification, then the Contractor may vary that specification in respect of the Goods, provided that such variation does not affect the price, size, accuracy, quality, function, performance or inter-changeability of the Goods. Full particulars of the variation must be immediately notified in writing to Crown Agents.

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## **7. GUARANTEE**

**7.1** The Contractor guarantees that:

- a. unless otherwise stated in the Contract, the Goods shall be new, of satisfactory quality, fit for the purposes for which the Goods are ordinarily used, and for any purposes expressly made known in writing to the Contractor, and suitable for use in the Principal's and/or the End-User's country;
- b. the Goods shall have no defect arising from design, materials or workmanship, or from any act or omission of the Contractor, or the Contractor's employees or contractors and which may develop under proper use of the Goods in the conditions in the End-User's country;
- c. the Contractor hereby guarantees that the Goods shall remain free of any defect (other than those arising from reasonable wear and tear or improper use, for which the Contractor is not responsible) for a period of 12 (twelve) months from the date of the Taking Over Certificate issued in accordance with the provisions of clause 13.3.

**7.2** Upon receipt of notification of a claim, the Contractor shall promptly repair or replace, (and install such replacement if considered necessary by Crown Agents) any defect in

or damage to the Goods (or any part thereof) free of charge, including all transport charges to the Site. If it is reasonably practicable or necessary for a defective part to be returned to the Contractor, the End-User shall arrange for it to be returned to the Contractor at the Contractor's cost. Where the Contractor has supplied a part in replacement of a defective part, and does not at that time request the return of the defective part, no responsibility for the defective part shall rest with Crown Agents, the Principal or the End-User.

**7.3** If the Contractor fails to remedy the defect or damage within a reasonable time, Crown Agents or the Principal may, after giving notice to the Contractor, take such remedial action as may be necessary, at the Contractor's risk and expense, without prejudice to any other rights which they may have against the Contractor.

**7.4** If any of the Goods or part thereof, are not manufactured by the Contractor, the Contractor shall ensure that the subcontractor or manufacturer of the Goods or such part thereof shall be under the same liability to the Contractor as the Contractor's liability to the Principal under the Contract.

**7.5** No claim will be made by the Principal against the Contractor for any kind of indirect or consequential loss including loss of profit.

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## **8. PACKING**

**8.1** The Contractor shall provide such packing as is required to prevent damage to or deterioration of the Goods during transit to and storage at the final destination, and as may reasonably be anticipated as prudent, bearing in mind the final destination of the Goods and their mode of transport and so as to ensure that the Goods reach their destination in good condition. The packing shall be sufficient, without limitation, to

withstand rough handling and exposure to extreme temperatures. The cost of such packing shall be included in the Contract Price.

- 8.2 The packing, marking and documentation within and outside the packages shall (without prejudice to clauses 3.3 and 8.1) comply strictly with such special requirements as are provided for in the Contract, or in any subsequent instructions and, where appropriate, with any relevant regulations governing the despatch of hazardous cargo by sea, air or overland.
- 8.3 If compliance with an instruction concerning packing which is issued subsequent to the establishment of the Contract, involves an addition or reduction in the Contract Price, and/or in the period required for delivery, such revision of the Contract Price and/or of the time for delivery shall be agreed in writing between Crown Agents and the Contractor. In all other respects the Contract shall remain unaltered.

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## 9. INSPECTION

- 9.1 Where the Special Conditions within the Contract expressly state that the provisions of this clause 9 apply, the details of the scope of inspection shall be set out in the Contract and the following provisions shall apply. These provisions are not in substitution of any Pre-Shipment and/or Price Verification schemes which may be applicable to importation into the End-User's country.
- 9.2 The Goods shall be inspected at the Contractor's premises, or at any other place that the Inspector may reasonably require or approve, and if found defective or inferior in quality to, or differing in form or material from the requirements of the Contract, may be rejected. The whole of any consignment may be rejected if any proportion, percentage or samples of the Goods or materials comprised therein or

samples taken from bulk, are found not to conform in every respect to the requirements of the Contract. The Contractor shall at his own expense and within the time for delivery specified in the Contract replace or make good to the satisfaction of the Inspector any Goods so rejected provided always that if neither replacements nor making good is possible the Contractor shall immediately refund to Crown Agents all monies paid to him on account of any such Goods.

9.3 The Contractor shall, if called upon to do so, obtain the Inspector's approval of the manner in which the Contractor proposes to supply or to perform services in relation to each portion of the Goods and shall furnish such drawings and information as the Inspector may require. Where the Contract is for the supply of Goods described in the Contract by reference to the Contractor's proprietary specification, then the Contractor's liability shall be restricted to providing the Inspector with information concerning the material used, the method of manufacture, details of production line tests and inspection procedures.

9.4 The Contractor shall notify the Inspector at least seven days in advance of the date on which any of the Goods will be ready for inspection. Without limiting the provisions of clause 9.1 of these Conditions, the Inspector may inspect and reject any of the Goods at any earlier stage in course of manufacture or production. If any of the Goods are not presented for inspection at the time notified in accordance with this clause or if the Inspector rejects any of the Goods, such that the Inspector is required to undertake additional inspections, Crown Agents shall be entitled, in addition to any other remedies available under the Contract, to deduct from the Contractor's invoices any additional costs of inspection.

9.5 Where inspection of any of the Goods, whether completed or in course of manufacture or production, is carried out at the Contractor's works (or, where

- applicable, at sub-contractor's works), the Contractor shall ensure that the Inspector has full and free access to the said works as and when required for that purpose, and shall provide the Inspector at no cost to the Inspector or Crown Agents with reasonable accommodation and facilities as may be required by him. The Contractor shall also supply, free of charge, all appliances, materials and labour required for inspection purposes.
- 9.6 The Inspector shall not be required to sign any form of waiver or indemnity concerning his presence or actions at the place of inspection.
- 9.7 If any of the Goods, whether completed or in course of manufacture or production, are rejected by the Inspector, they shall be marked or segregated in such manner satisfactory to the Inspector as to ensure their subsequent identification as rejected.
- 9.8 When independent tests and analyses, in addition to those made by the Inspector on the Contractor's or sub-contractor's premises are considered necessary, such tests or analyses will be made by persons appointed by Crown Agents or the Principal. In the event of failure of the Goods during independent tests and analyses, the Contractor shall bear the cost of supply and transport of samples and the costs of such additional tests and analyses will be borne by the Contractor.
- 9.9 The Contractor shall not send any of the Goods forward for shipment or report the Goods ready for despatch until the Inspector shall have given his consent by means of the issue of an Inspection Release Note. Such consent shall not release the Contractor from any of his liabilities under the Contract. If delivery of the Goods or completion of the Services is not completed by the due date fixed by the Contract by reason of any default of the Contractor, then in addition to any liability which may arise to pay liquidated damages, Crown Agents shall be entitled to deduct from the Contractor's invoices, any additional costs of inspection caused by default of the Contractor.
- 9.10 Notwithstanding any inspection or testing of the Goods, the Contractor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Contract, and Crown Agents shall have the right to conduct further inspections and tests at the Contractor's cost after the Contractor has carried out its remedial actions.
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- 10. DOCUMENTATION**
- 10.1 All documentation as shall be required in respect of the Goods and Services in accordance with the provisions of the applicable Incoterm shall be provided at the time and in such manner specified in the Contract and/or in accordance with such instructions regarding despatch, invoicing and documentation issued by Crown Agents from time to time.
- 10.2 If an export licence is required from the country of manufacture or export, the provision and costs of provision of such a licence shall be the responsibility of the Contractor.
- 10.3 Notwithstanding the provisions of Incoterms® 2020 and/or any contract of carriage entered into by the Contractor in connection with the delivery of the Goods, the Contractor shall promptly pay any demurrage, per diem and detention charges and any similar charges levied by the carrier and/or by any port authority where such charges are levied as a result of the Contractor's late or non-compliant submission of relevant documentation or where such charges are levied as a result of the Contractor's breach of the Contractor's obligations pursuant to the Contract or as a result of the Contractor's negligence.
- 10.4 Without prejudice to clause 10.3, should Crown Agents, the End-User or the

Principal incur any demurrage costs or other charges referred to in clause 10.3 or incur any expense in connection with dealing with any claim in connection with such charges, Crown Agents shall have the right to recover such charges and expenses from the Contractor as a debt or by way of deductions from any payment owed to the Contractor.

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## **11. DELIVERY**

- 11.1** Delivery of the Goods shall be made by the Contractor in the manner and at the time specified in the Contract. Time of delivery of the Goods and completion of the Services is of the essence.
- 11.2** The Contractor shall meet any performance dates for the Services specified in the Contract or notified to the Contractor by Crown Agents.
- 11.3** The Contractor shall provide reports on the progress of the Contract in such form as may be required by Crown Agents. If, at any time during the performance of the Contract, the Contractor is unable to deliver the Goods and/or perform the Services within the time or times specified in the Contract, the Contractor shall immediately give notice of the delay in writing to Crown Agents with an explanation of the cause. The submission and acceptance of these reports and/or notices shall not prejudice the rights of the Principal and/or Crown Agents under the Contract (including but not limited to, clauses 17 and 19).
- 11.4** For the purposes of the Contract, the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms® 2020) shall apply but where they conflict with the express provisions of the Contract, the express provisions shall prevail.
- 11.5** Delivery of the Goods, or any instalment thereof and performance of the Services,

shall be considered complete only when all the conditions of the Contract have been completed, including when all documentation required to be provided by the Contractor has been received by Crown Agents at the relevant Crown Agents' office referred to in the Contract.

**11.6** Notwithstanding clause 7.5, if the Goods are not delivered in accordance with the Contract, the Contractor shall be liable for any loss or expense, arising as a result. Neither Crown Agents nor the Principal shall be liable for any expenses arising from non-delivery or delay in delivery due to lack of shipping opportunities or any other cause, and the Goods shall remain at the risk and expense of the Contractor until a Taking Over Certificate has been issued in accordance with the Contract.

**11.7** Notwithstanding the provisions of Incoterms® 2020, where the Contractor is responsible for insurance for the Goods, the Goods shall, unless otherwise stated in the Special Conditions to the Contract, be insured with the Principal named as the beneficiary and Crown Agents as the loss payee. Unless otherwise agreed in writing by Crown Agents, the insurance shall be for 110 per cent of the Contract Price and in accordance with Clauses (A) or (B) of the Institute Cargo Clauses (LMA/IUA) and/or cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA). The insurance shall be contracted with first class underwriters or a first class insurance company, and shall entitle Crown Agents to claim directly from the insurer.

**11.8** Unless otherwise expressly stated in the Contract, notwithstanding the provisions of Incoterms® 2020 all prices of Goods and Services must be exclusive of taxes and duties.

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## **12. CONTRACTOR'S PERSONNEL**

- 12.1** In providing the Services the Contractor shall use Personnel who are suitably skilled and experienced to perform tasks assigned to them to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- 12.2** The Contractor shall ensure that the Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of Crown Agents', the Principal's, the End-User's premises or the Site.
- 12.3** The Personnel shall provide instruction and training during the period for performance of the Services to such individuals as are nominated by the End-User on all aspects of the composition, proper operation and maintenance of the Goods.
- 12.4** The Contractor shall ensure that the Personnel are medically fit for the provision of the Services and in possession of all necessary medical certificates.
- 12.5** The Contractor shall ensure that the Personnel are in possession of all such visas and permits as may be required to perform the Services at the Site. If visas or permits are refused in respect of any Personnel proposed for the Contract, then the Contractor shall substitute another suitable member of Personnel at the Contractor's cost and expense.
- 12.6** The Contractor shall arrange and pay for all travel and associated costs of the Personnel incurred in relation to the provision of the Services.
- 12.7** Unless otherwise expressly stated in the Contract, the Contractor shall arrange and pay for all accommodation at a location close to the Site and shall pay for all the Personnel's living expenses whilst in the Country.
- 12.8** If any member of the Personnel becomes ill or suffer an injury, the Contractor shall arrange and pay for all medical treatment and attention for the Personnel. Neither the Principal nor the End-User shall pay for the services of the Personnel during any period that he or she is incapacitated. If in the opinion of the End-User or the Principal the Personnel (except for the case where such Personnel is an employee of the Contractor) either has been, or will be incapacitated by illness or injury for an unacceptable period or periods, then it shall be in the absolute discretion of the End-User to decide if and when the engagement of the Personnel shall be terminated and the Contractor required to replace him or her. In this event the Contractor shall on receipt of instructions from Crown Agents immediately terminate the engagement of the Personnel and provide a replacement satisfactory to the End-User and the Principal. The cost of such replacement including, without limitation, travel costs shall be at the Contractor's expense. The charges for the services of any replacement shall commence on the date the replacement starts to provide the Services.
- 12.9** The Personnel are responsible for paying income tax or similar impositions as may be payable under the laws and regulations of the Country in which they are providing the Services. The Contractor shall ensure that the Personnel pay such taxes in a timely manner.
- 12.10** Neither the Principal nor the End-User shall make any payments to the Contractor during any period that any of the Personnel are unable to provide the Services due to any delay by the Contractor in the delivery of any part of the Goods or due to any default on the part of the Contractor or due to any delay that is within the Contractor's power to prevent.
- 12.11** Unless otherwise specified in the Contract, the Contractor shall not permit the Personnel (except for the case where such Personnel is an employee of the Contractor) to take leave during the period for performance of the Services.

- 12.12** If in the opinion of the Principal or the End-User, a member of the Personnel (except for the case where such Personnel is an employee of the Contractor) fails to carry out the Services and/or is unsuitable, then it shall be in the absolute discretion of the Principal or the End-User (as the case may be) to decide if and when the engagement of the Personnel shall be terminated and the Contractor required to replace him or her. In this event the Contractor shall on receipt of written instructions from Crown Agents comply forthwith and shall substitute the Personnel with a replacement satisfactory to the Principal and the End-User. The costs of such replacement including, without limitation, travel costs, shall be at the Contractor's expense. The charges for the services of the replacement Personnel shall commence on the date on which the replacement Personnel starts to provide the Services.
- 12.13** The Contractor may not replace any Personnel (except for the case where such Personnel is an employee of the Contractor) during the period for performance of the Services without the prior written consent of Crown Agents, such consent not to be unreasonably withheld.
- 12.14** The End-User, Crown Agents and the Contractor shall review the expected programme of delivery to the Site of the Goods so as to establish a date by which sufficient Goods will have arrived for the Services to proceed without interruption. When so requested by Crown Agents, the Contractor shall arrange for the Contractor's Personnel to proceed to the Site. The date on which the first member of the Contractor's Personnel arrives in the Country shall be deemed to be the date of commencement of the Services.
- 12.15** The Contractor shall ensure that at all times the Personnel keep the Goods in a safe and secure condition.
- 12.16** Nothing in the Contract nor in the manner in which the Goods and Services are provided and performed shall establish a relationship of master and servant, contractor or agent between any of the Personnel and Crown Agents. The Contractor shall indemnify and keep indemnified Crown Agents in full against all costs, expenses, damages and losses (whether direct or indirect), including, without limitation, any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Crown Agents as a result of or in connection with any claim by a member of the Personnel that the relevant member of Personnel is engaged as an employee, agent or contractor of Crown Agents.
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- 13. COMPLETION**
- 13.1** If for any reason the Contractor becomes delayed or impeded in the performance of the Services the Contractor shall immediately inform the End-User and Crown Agents in writing of the circumstances of the delay or impediment. The Contractor shall not be entitled to receive any additional costs arising in connection with the delay or impediment without having first received the prior written approval of Crown Agents of such costs.
- 13.2** Tests on completion as specified in the Contract to demonstrate that the Goods have been correctly and satisfactorily installed and commissioned shall be carried out by the Contractor in the presence of the End-User, who shall be given reasonable written notice by the Contractor of the date and time scheduled for the tests. If any part of the Goods fails to pass the tests, the Contractor shall immediately take such action as is necessary to ensure that the retests are passed successfully. Retests shall take place within a reasonable time after the original tests. All costs and expenses (including without limitation

those in respect of the services of the Personnel) arising from the completion tests and any retests shall be paid by the Contractor. The Contractor shall provide copies of all test and any retest results to the End-User and Crown Agents.

**13.3** Following the successful completion of the Services and the successful testing of the Goods the End-User shall provide the Contractor with a certificate which shall certify the date on which the Services were satisfactorily completed and the Goods successfully passed the tests ("Taking Over Certificate"). The End-User shall take over responsibility for the safe keeping of the Goods at the date set out in the Taking Over Certificate.

**13.4** If the Goods have been delivered and the Services have been completed in accordance with the Contract but either:

- the Contractor is prevented from carrying out the tests referred to in clause 13.2 because of the End-User's unreasonable delay; or
- the End-User starts using the Goods prior to issuing a Taking Over Certificate; or
- the End-User fails to issue a Taking Over Certificate within 60 days of the Goods passing the tests referred to in clause 13.2 other than for reasons due to the Contractor's default, the Contractor shall be entitled to request payment of the amounts that would be otherwise due under the Contract following the issue of the Taking Over Certificate. Crown Agents in consultation with the Principal and the End-User shall give due consideration to the request and where appropriate shall amend the Contract taking account of such factors including but not limited to the commencement date of the warranty period. In such circumstances the Taking Over Certificate shall be deemed to have been issued on the date of such request.

**13.5** Unless otherwise expressly stated in the Contract, the date of completion of the

Services shall be the date of the issue of the Taking Over Certificate.

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#### **14. INTELLECTUAL PROPERTY RIGHTS**

**14.1** In respect of the Goods and any goods that are transferred to the End-User as part of the Services under this Contract, including without limitation, the Deliverables or any part of them, the Contractor warrants that it has full clear and unencumbered title to all such items and that at the date of delivery of such items it shall have full and unrestricted rights to sell and transfer all such items to the End-User.

**14.2** The Contractor assigns to the End-User with full title guarantee and free from all third party rights, all intellectual property rights (including the rights stipulated in Article 27 and Article 28 of the Copyright Act of Japan) in the product of the Services, including for the avoidance of doubt the Deliverables.

**14.3** The Contractor shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may at any future time be entitled.

**14.4** The Contractor shall, promptly at Crown Agents' request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Crown Agents may from time to time require for the purpose of securing for the End-User the right, title and interest in and to the intellectual property rights assigned to the End-User in accordance with clause 14.2.

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#### **15. USE OF DOCUMENTS, INFORMATION, ETC**

**15.1** Except with the prior written agreement of Crown Agents, the Contractor shall not disclose the existence of the Contract, or any provision thereof, or any specification,

plan, drawing, pattern, sample or information issued or furnished by or on behalf of Crown Agents, to any person, other than a person employed by the Contractor in carrying out the Contract. Disclosure to any such person shall only be to the extent necessary for the purposes of the Contract.

**15.2** Except with the prior written agreement of Crown Agents the Contractor shall not make use of any information supplied by Crown Agents or any specification or other thing mentioned in clause 15.1 otherwise than for the purpose of performance of the Contract.

**15.3** The Contractor shall ensure that its employees comply with the confidentiality obligations set out in this clause 15.

**15.4** Specifications, plans, drawings, patterns or samples mentioned in clause 15.1 remains the property of Crown Agents (or the Principal or the End-User as the case may be) and must be returned (with all copies made) to Crown Agents on completion of the Contract.

## **16. PAYMENT**

**16.1** The time for payment of the Contract Price after completion of the Contractor's obligations as described in clause 11 in respect of delivery of the Goods and completion of the Services, or where part deliveries are indicated in the Contract, in proportion to each part delivery of the Goods or part completion of the Services, shall be stated in the Contract. It is Crown Agents' normal practice to use reasonable endeavours to obtain funds from its Principals to settle invoices as they fall due, but Crown Agents does not itself accept any liability for payment of invoices for Goods and/or Services under Contracts placed in their capacity as agent for its Principals. Unless otherwise agreed in writing by Crown Agents and the Contractor, the charges for the Services shall include every

cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.

**16.2** Unless otherwise stated in the Special Conditions within the Contract, 90% of the Contract Price of the Goods shall be paid at the time stated in the Contract after receipt by Crown Agents of documentation specified in the Contract evidencing despatch or receipt of the Goods.

**16.3** Unless otherwise stated in the Special Conditions within the Contract, 5% of the Contract Price of the Goods and 100% of the Contract Price of the Services shall be paid at the time stated in the Contract after the receipt by Crown Agents of the Certificates for each delivery stage for the Services, issued in accordance with the provisions of the Contract.

**16.4** Unless otherwise stated in the Special Conditions within the Contract, the balance of the Contract Price shall be paid upon the expiry of 12 months from the date of payment under clause 16.3 subject to all such deductions as Crown Agents may be entitled to make under the provisions of the Contract.

**16.5** Should the Contract provide for payment in advance of delivery of the Goods:

a. payment shall only be made upon receipt by Crown Agents of a guarantee from a bank acceptable to Crown Agents, in the form supplied by Crown Agents which shall provide for an unconditional and irrevocable guarantee of payment on demand, of an amount equal to the amount of the advance payment, or relevant part thereof, in the event of the Contractor's default, or breach of the terms of the Contract.

All costs associated with the provision of the guarantee shall be for the account of the Contractor.

b. the Goods and all materials from time to time appropriated to the Contract, shall become the property of the Principal, immediately upon payment of any sum

under the provisions of this clause, or if later, upon the date of purchase or appropriation of such Goods or material by the Contractor. Immediately on purchase of materials intended for use as the Goods or components thereof the Contractor shall fix thereon the name of the Principal in a conspicuous manner and shall not remove the same without the prior written agreement of Crown Agents. Upon completion of the Goods, all such materials which have not been used for the purpose of the Contract, shall become the property of the Contractor.

- c. the Contractor shall, at its own expense and until the issue of the Taking Over Certificate in accordance with the Contract, keep the Goods insured. The insurance shall be contracted with first class underwriters or a first class insurance company, and shall entitle Crown Agents to claim directly from the insurer. Such insurance shall be taken out in an amount equal to the Contract Price of the Goods in respect of which payment has been made, in the currency of the Contract, plus 10 per cent.
- d. if the Goods or any part thereof shall be destroyed, damaged or lost, Crown Agents shall on behalf of the Principal receive the sum recovered under the insurance policies and may at its option either:
  - i. apply such sum to reinstating the Goods so damaged, destroyed or lost in accordance with the Contract, or
  - ii. terminate the unperformed balance of the Contract, in which case the Principal shall pay the Contractor such amount as Crown Agents shall consider to be fair and reasonable in all the circumstances.

- 16.6** Whenever any sums shall be recoverable from or payable by the Contractor, the sums may be deducted from any sum due to the Contractor, or which may become due under any other contract with the Principal.
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## **17. LIABILITY AND REMEDIES**

- 17.1** If the Contractor fails to deliver the Goods and/or perform the Services by the applicable date, Crown Agents shall, without limiting its other rights or remedies have one or more of the following rights:
  - a. to terminate the Contract with immediate effect by giving written notice to the Contractor;
  - b. to refuse to accept any subsequent performance and/or delivery of the Goods which the Contractor attempts to make;
  - c. to recover from the Contractor any costs incurred by Crown Agents, the Principal or the End-User in obtaining substitute goods and/or services from a third party;
  - d. to claim damages for any additional costs, loss or expense which are in any way attributable to the Contractor's failure to meet such dates.
- 17.2** If the Contractor has delivered Goods and/or performed Services that do not comply with any of the conditions in clauses 3 and 13 and/or any of the guarantees in clause 7 then, without limiting its other rights or remedies, Crown Agents shall have one or more of the following rights, whether or not the Goods and/or Services have been accepted:
  - a. to reject the Goods and/or Services (in whole or in part) whether or not title has passed and to return them to the Contractor at the Contractor's own risk and expense;
  - b. to terminate the Contract with immediate effect by giving written notice to the Contractor;
  - c. to require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods and/or Services;
  - d. to refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Contractor attempts to make;

- e. to recover from the Contractor any expenditure incurred by Crown Agents, the Principal or the End-User in obtaining substitute goods and/or services from a third party; and
- f. to claim damages for any additional costs, loss or expenses incurred by Crown Agents, the Principal or the End-User arising from the Contractor's failure to supply the Goods and/or perform the Services in accordance with the conditions in clause 3 and 13 and/or any of the guarantees in clause 7.

**17.3** The Contractor shall indemnify and keep indemnified Crown Agents and their Principal and the End-User in full against all costs, expenses, damages and losses (whether direct or indirect), including, without limitation, any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Crown Agents as a result of or in connection with:

- a. any claim made against Crown Agents or against the End-User by a third party for death, personal injury or damage to property arising out of or in connection with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Contractor, its Personnel and agents;
- b. any claim made against Crown Agents or against the End-User arising out of, or in connection with, the supply of the Goods and/or completion of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its Personnel and agents; and
- c. any claim made against Crown Agents or against the End-User for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with, the manufacture, supply or use of the Goods.

## **18. LIQUIDATED DAMAGES FOR DELAY**

**18.1** If the Contractor fails to complete delivery within the time or times specified in the Contract, Crown Agents may, at its option, acting on behalf of the Principal or the End-User, recover from the Contractor as a debt or deduct from any payment owed to the Contractor one per cent of the value of the Goods which are delayed per week by way of liquidated damages up to a maximum of ten per cent of the value of the Goods.

**18.2** If the Contractor fails to complete the performance of all the Services within the time specified in the Contract, Crown Agents may, at its option, acting on behalf of the Principal or the End-User, recover from the Contractor as a debt or deduct from any payment owed to the Contractor one per cent of the value of the Services which are delayed per week by way of liquidated damages up to a maximum of ten per cent of the value of the Services

**18.3** The parties confirm that the sums referred to in clauses 18. 1 and 18.2 represent a genuine pre-estimate of the Principal's or End-User's loss.

**18.4** The Contractor shall not be liable to pay liquidated damages pursuant to this clause 18 where delay in delivery of the Goods or delay in performance of the Services has been caused by Crown Agents, the End-User or the Principal preventing the Contractor from delivering the Goods or performing the Services.

**18.5** The Contractor shall not be liable to pay liquidated damages pursuant to this clause 18 where delay in delivery of the Goods or in the performance of the Services is as a result of a Force Majeure event or situation.

**18.6** Without prejudice to the provisions of clause 11.6, the Contractor shall have no liability for liquidated damages under this clause 18 in respect of any Contract on FOB/FAS/FCA terms for any period during which the Goods are packed and ready for

despatch but cannot be shipped because of a lack of shipping opportunities or similar cause.

- 18.7** If Crown Agents exercises its rights under clause 18.1 and/or clause 18.2, it shall not be entitled to any of the remedies set out in clause 17.1 (b) to (d) inclusive or in clause 17.3 in respect of the Goods' late delivery or the Services' late performance (but such remedies shall be available in respect of the Goods' condition and in respect of the standards to which the Services are performed).
- 18.8** Crown Agents shall have the right to recover or deduct liquidated damages from the Contractor in accordance with this clause 18 notwithstanding the termination of the Contract.

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## **19. TERMINATION**

- 19.1** Without prejudice to any other remedy that Crown Agents and/or the Principal may have, Crown Agents may by written notice to the Contractor, terminate the Contract with immediate effect in whole or in part if:
- the Contractor fails to perform the Contract within the time or times specified in the Contract;
  - the Contractor fails to perform the Services within the time or times specified in the Contract;
  - the Contractor fails to perform any of its obligations under the Contract;
  - an order is made or a resolution is passed for the winding up of the Contractor, or an order is made for the appointment of an administrator to manage the affairs , business and property of the Contractor, or such an administrator is appointed , or a receiver is appointed of any of the Contractor's assets or undertaking, or circumstances arise which entitle a court or creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the Contractor takes or suffers any similar or analogous action in consequence of a debt, or an arrangement or composition is made by the Contractor with its creditors or an application to a court for protection from its creditors is made by the Contractor;
- 19.2** Where Crown Agents terminates the Contract in whole or in part for breach or default, Crown Agents may purchase elsewhere goods and/or services similar to those in the Contract and the Contractor shall pay Crown Agents any costs over the Contract Price incurred for such goods and/or services. The Contractor shall continue performance of that part of the Contract not terminated.

- 19.3** Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract including clauses 1, 2, 6, 7, 8, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30 and 31 shall remain in full force and effect after termination of the Contract.
- 19.4** Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
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- 20. FORCE MAJEURE**

- 20.1** For the purposes of the Contract, a "Force Majeure event or situation" is an event or situation that is beyond the control of the Contractor, that is not foreseeable, is unavoidable, and its occurrence is not due in whole or in part to the negligence or lack of preparation or lack of care on the part of the Contractor.
- 20.2** The Contractor shall not be liable for failure to perform the Contract to the extent that such failure is as a result of a Force Majeure event or situation, provided the Contractor notifies Crown Agents in writing within five (5) days of such event or situation arising and specifying the nature and extent of the event or situation and the cause thereof. Unless otherwise directed by Crown Agents in writing, the Contractor shall use all reasonable endeavours to mitigate the effect of the Force Majeure event or situation to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 20.3** The Contractor cannot claim relief if the Force Majeure event or situation is attributable to the Contractor's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event or situation.

- 20.4** The Contractor cannot claim relief if the Force Majeure event or situation is one where a reasonable contractor should have foreseen or provided for the cause in question.
- 20.5** In case of dispute as to whether or not a Force Majeure event or situation has arisen, Crown Agents' opinion shall be final.
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**21. NOTICES**

- 21.1** A notice or other communication given to a party under this Contract shall be in writing and shall be given in any manner set forth below to the following address:
- a. For Crown Agents:  
to the physical address, fax number or e-mail address provided by Crown Agents in the Contract documentation
- b. For the Contractor:  
to either the physical address, fax number or e-mail address provided by the Contractor in any bid, quote or Contract Acknowledgement sent to Crown Agents.
- 21.2** If a notice or other communication has been properly sent or delivered in accordance with this clause it will be deemed to have been received as follows:
- i) if delivered by commercial courier, on the date and at the time of signature of the courier's receipt;
- ii) if sent by facsimile transmission, at the time of transmission (it being agreed that the burden of proving receipt may be met solely by a transmission report generated by the sender's facsimile machine); or
- iii) if sent by e-mail, at the time of transmission (it being agreed that the burden of proving receipt will be on the sender and will not be met solely by a read receipt or sent items report generated by the sender's computer).

**21.3** If deemed receipt is not within business hours meaning (unless otherwise agreed in writing by the Contractor and Crown Agents) 9.00am to 5.30pm Monday to Friday (on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.

**21.4** For the purposes of this clause all times are to be read as local time in the place of deemed receipt.

**21.5** Either party may by notice to the other change the address, facsimile number or e-mail address details at which notices or other communications are to be given to it.

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## **22. CONFLICT OF INTEREST**

**22.1** Neither the Contractor nor any of the Contractor's Personnel or agents shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations under the Contract.

**22.2** Without prejudice to the provisions of Clause 19.1 the Contractor shall notify Crown Agents immediately of any actual or potential conflict together with recommendation as to how the conflict can be avoided.

**22.3** The Contractor shall ensure that its Personnel and agents comply with the provisions of this clause.

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## **23. CORRUPTION AND FRAUDULENT PRACTICES**

**23.1** The Government of Japan requires that, under Contracts funded by the Grant, bidders and Contractors observe the highest standard of ethics during the procurement and execution of such Contracts. In this regard the Government of

Japan shall demand that the End-User and Crown Agents shall reject a bid if it determines that the bidder has engaged in corrupt and fraudulent practices in competing for the Contract in question. The Government of Japan shall recognise a Contractor as ineligible, for a period determined by the Government of Japan, to be awarded a Contract funded by the Grant if it at any time determines that the Contractor has engaged in corrupt and fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japanese Official Development Assistance.

**23.2** When the authorities concerned of the Government of Japan decide to impose against a Contractor such administrative sanctions as debarment, exclusion of goods manufactured etc, from Japanese government procurement, the Government of Japan may ask the End-User and the Agent to exclude the Goods manufactured by the sanctioned Contractor from the procurement under the Grant, for the period of sanctions by such authorities concerned of the Government of Japan.

**23.3** The Contractor warrants that it has not and shall not:

- a. offer or agree to give any person working for or engaged by the Principal or the End-User or Crown Agents any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement with the Contractor, including the award of the Contract to the Contractor and any of the rights and obligations contained within it; nor
- b. enter into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Principal or the End-User or Crown Agents by or for the Contractor, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Crown Agents and accepted in

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writing by Crown Agents before execution of the Contract.

**23.4** The Contractor, shall if requested by Crown Agents, make a declaration in a form acceptable to Crown Agents that it has not made any bribe or facilitation payment on Crown Agents' behalf or on behalf of the End-User or the Principal.

**23.5** If the Contractor (including any Contractor employee, subcontractor or agent, in all cases whether or not acting with the Contractor's knowledge) breaches:

- a. any of the provisions in this clause 23; or
- b. any of the provisions of the Bribery Act 2010, or any similar legislation in relation to this Contract or any contract with the Principal or Crown Agents,

Crown Agents may terminate the Contract by written notice with immediate effect.

**23.6** Any termination under clause 23.5 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to Crown Agents, the Principal, or the End-User.

**23.7** Notwithstanding clause 31 (Dispute Resolution), any dispute relating to:

- a. the interpretation of clauses 20.5, 23.5 to clause 23.6 inclusive; or
- b. the amount or value of any gift, consideration or commission

shall be determined by Crown Agents and the decision shall be final and conclusive.

**23.8** Crown Agents will not make payments to bank accounts in countries where the Contractor is not domiciled unless the Contractor provides written evidence satisfactory to Crown Agents that the payment is not contrary to the taxation laws and/or foreign exchange controls of the Contractor's country of domicile. Crown Agents reserves the right to refuse to make payments to such bank accounts in any event.

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## **24. NO WAIVER**

**24.1** No failure or delay by Crown Agents or their Principal to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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## **25. ENTIRE AGREEMENT**

**25.1** The Contract (together with the documents referred to in it) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes any previous agreement or understanding between the parties relating to such matters. Each of the parties represents and agrees that in entering into the Contract it does not rely on and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than expressly made in the Contract. No variation of these Conditions shall be effective unless expressly agreed in writing by Crown Agents and the Contractor.

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## **26. VARIATION**

**26.1** No variation in or modification of the terms of the Contract shall be made except by written amendment signed by both Crown Agents and the Contractor.

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## **27. SEVERANCE**

- 27.1** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 27.2** If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **28. ASSIGNMENT AND SUB-CONTRACTING**

- 28.1** The Contractor shall not assign or subcontract in whole, or in part, or otherwise dispose of any interest in the Contract, without the prior agreement in writing of Crown Agents.

## **29. THIRD PARTY RIGHTS**

- 29.1** The parties to the Contract agree that the End-User is intended to benefit from and enforce the terms and conditions of the Contract as if it were the Principal save in respect of the terms and conditions set out in Clause 17.3 and save that only one of Crown Agents, the Principal or the End-User may recover damages from the Contractor in respect of a specific loss. The consent of the End-User is not required to rescind or vary the Contract at any time. If for any reason an End-User is prevented from enforcing the Contract in the manner envisaged by this clause, Crown Agents shall have the right, but not the obligation, to enforce the relevant terms and conditions of the Contract against the Contractor.

- 29.2** Except, as expressly provided elsewhere in the Conditions, a person who is not a party to the Contract shall not have any rights under Article 537 of the Civil Code of Japan to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Article.

## **30. SET OFF**

- 30.1** The Contractor shall not be entitled to assert any credit, set-off or counterclaim against Crown Agents, the Principal or the End-User in order to justify withholding payment of any such amount in whole or in part. Crown Agents, the End-User and the Principal may, without limiting its other rights or remedies, set off an amount owing to them by the Contractor against any amount payable by them to the Contractor.

## **31. DISPUTE RESOLUTION**

- 31.1** In the case of any dispute or claim in relation to this Contract, the parties shall use their reasonable efforts to negotiate in good faith and settle amicably such dispute or claim through negotiation. If any such dispute or claim cannot be settled within 28 days, either party may commence court proceedings in relation to the dispute or claim pursuant to clauses 31.2 and 31.3 below.

### **Governing Law**

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Japan, excluding the United Nations Convention on Contracts for the International Sale of Goods.

### **Jurisdiction**

Each party irrevocably agrees that the Tokyo District Court shall have exclusive jurisdiction as the court of the first instance to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).