

Terms and Conditions



Korea Aerospace Research Institute

Preamble

This Contract made on Month _____, 2014 and will be valid until Month _____, 201x by and between Korea Aerospace Research Institute, established under the law of the Republic of Korea with its principal office at 169-84 Gwahakro, Yuseong-Gu, Daejeon 305-806, Korea, hereinafter referred to as “KARI” and xxx established under the law of the xxx with its principal office at xxx, hereinafter referred to as “Contractor”.

Article 1. Objective

The objective of this Contract is to carry out and provide design of seismic mass for horizontal vibration shaker and perform the technical supports under the Contractor’s responsibility. To accomplish this objective, Contractor shall perform all the works under this Contract required for the RFP as well as Contractor’s proposal.

Article 2. Scope of Services

- 2.1 Contractor shall perform and accomplish the Services and any other scopes of works as required and to be added by KARI’s requests under this Contract in a timely manner.
- 2.2 Contractor shall provide as sufficient as engineering and administrative manpower and resources for the timely completion of the Services under this Contract. In the event the Services are not completed with manpower and resources due to Contractor’s fault, Contractor shall provide any additional manpower and resources to accomplish the Services free of charge to KARI.
- 2.3 Contractor shall provide any technical data or technical information as may be needed for KARI to understand the results of Services free of charge to KARI.
- 2.4 To accomplish this Contract, KARI shall cooperate to Contractor in order for it to obtain any necessary government and KARI’s Associates approvals, if necessary. And Contractor shall obtain any government approvals required to accomplish and perform this Contract free of charge to KARI

Article 3. Contract Price and Terms of Payment

- 3.1 For the full, satisfactory and timely performance of all obligations by Contractor in accordance with the provisions of this Contract, KARI shall pay to Contractor the Contract Price of **USD or EUR XXX.00**.
- 3.2 The payment of Contract amount specified in Article 3.1 shall be made after delivering the detailed drawing and deliverable items to KARI.
- 3.3 The Contract Price is a firm and fixed amount not subject to any escalation or to any adjustment or revision for any reason whatsoever, including but not limited to the increase of actual cost incurred by Contractor in the performance of the Contract.
- 3.4 The Contract price excludes any VAT that may be applicable in Korea.

- 3.5 All banking charges incurred in Korea shall be borne by KARI, and those charges incurred outside Korea shall be borne by Contractor.

Article 4. Taxes and Duties

- 4.1 If Korean income tax is required to be withheld from amounts paid or payable to Contractor under this Contract (herein referred to as 'Applicable Tax'), KARI shall withhold the Applicable Tax and pay on behalf of Contractor the relevant Korean taxing authority in accordance with applicable Korean law.
- 4.2 KARI shall forward proof of the withheld Applicable Tax to the Contractor within ninety (90) days of payment.
- 4.3 Neither Party shall be responsible for paying the customs duties, and related taxes, fees or charges for the personnel and the personal belongings of the other Party.
- 4.4 Each Party shall further comply with instructions the other Party may issue from time to time in order to facilitate any exemptions or reductions from customs duties and other taxes that might be levied on the other Party.

Article 5. Performance Bond

- 5.1 Contractor shall establish a performance bond within four (4) weeks after EDC in favor of KARI in the value of ten percent (10 %) of the Contract Price, in the form of an irrevocable and unconditional standby letter of credit available by KARI's draft at sight.
- 5.2 The entire amount covered by the performance bond shall be unconditionally payable to KARI on demand together with KARI's written statement to the effect:
- (a) that there was a breach of the Contractor in the performance of the Contract (including the breach of its Subcontractor under the Subcontract); or
 - (b) that this Contract was terminated by Contractor's breach as specified in Article 11 'Termination'.
- 5.3 The letter of credit shall be issued by first class international bank acceptable to KARI. The letter of credit shall be drawn in favor of KARI and advised through the Woori Bank (Daejeon Branch at 1495 Dunsan-dong, Seogu, Daejeon, 302-173 Korea, Tel: +82-42-488-9704, Ext. 312, email: the_banker@wooribank.com) and shall remain valid through the end of this Contract. The letter of credit shall not be amended, modified or canceled without KARI's prior written consent.
- 5.4 It is hereby agreed between the Parties that payment from the performance bond under this Article 5 shall not affect any other of KARI's rights, privileges, interests or remedies under this Contract.

Article 6. Delivery

- 6.1 Contractor shall deliver the detailed drawing and deliverable items in accordance with the defined schedule and method as set forth in the RFP.
- 6.2 Contractor shall deliver the detailed drawing and deliverable items under the rule of EXW Contractor's facility (EX Works in accordance with the Incoterms 2010) in accordance with the delivery schedule of this Contract.

Article 7. Delays in Performance

7.1 Excusable Delay

- (a) Neither Party shall be responsible to the other Party for any delay in performing its obligations under this Contract due to any events of Force Majeure.
- (b) 'Force Majeure' means any act of God, war, act or failure to act of any government in its sovereign capacity, fire, flood, earthquake, strike, epidemic, quarantine, embargo, nuclear incident, or any other act unforeseeable and beyond the reasonable control without the fault of either Party or its Sub-Contractors.
- (c) The Party whose performance of obligations hereunder has been affected by any events of Force Majeure shall notify the other Party within ten (10) days thereafter by sending a detailed statement and sufficient evidence with respect thereto, and promptly of any subsequent change in the circumstances, if any. The affected Party shall exercise its best efforts under the circumstances to remove or remedy the events of Force Majeure and the effects thereof and resume full performance hereof as soon as possible.

7.2 Non-Excusable Delay

- (a) In the event that, unless otherwise excused by virtue of this Contract or the governing or Applicable law, Contractor delays the provision of Services or delivery of detailed drawing and deliverable items as stipulated in this Contract, or performance of its other obligations under this Contract, Contractor shall be responsible for damages incurred by KARI as a result of such delay.
- (b) Non-Excusable Delay, Liquidated damages, shall be applied for late performance or non-performance at the rate of zero point twenty-five (0.25) percent of total Contract price per calendar day, up to ten (10) percent of total price.

Article 8. Final Acceptance

- 8.1 Final Acceptance of the detailed drawing and deliverable items shall occur only after:
- (a) detailed drawing and deliverable items to be performed by the Contractor under the Contract have been completed in accordance with the Contract; and
- (b) the Contractor has demonstrated to KARI that the detailed drawing and deliverable items meet the specifications and requirements in this Contract; and
- 8.2 If the detailed drawing and deliverable items are determined to be unacceptable, it shall be considered as non-delivery and the Contractor shall, at its expense, promptly repair or replace such Items so that it shall comply with the Contract specifications and requirements, and shall submit such repaired or replaced Items for its confirmation. The repaired or replaced Items shall

be accepted in accordance with the requirements of Article 8.1.

- 8.3 The Parties agree that the acceptance of any Items under this Article shall not be interpreted or construed to mean that such Items are free of all defects and conform in all respects with the requirements of this Contract, and Contractor shall not be entitled to any additional costs incurred or to recover any damages suffered due to defects in the Items or KARI's rejection of the Items.

Article 9. Intellectual Property

- 9.1 KARI shall own and have a right to use, without any obligation, all the detailed drawing and deliverable items provided by Contractor in its performing this Contract. Contractor shall take all necessary precautions so that the Services supplied hereunder shall be free from infringement of any patent, design patent, trademark, utility model or any other industrial property right, copyright, license or any other right thereunder of any third party or parties.
- 9.2 In the event that any party other than Contractor claims or threatens to claim infringement by KARI with respect to such use of the detailed drawing and deliverable items, Contractor shall defend, hold harmless, and indemnify KARI from such infringement claims.
- 9.3 This Article will survive the completion of the Contract, any termination, cancellation or expiration of the Contract in any manner whatsoever.

Article 10. Confidentiality

- 10.1 Each party shall confidentially treat all documents, data, materials and information supplied by one to the other, and shall not disclose the above to any third party, and shall not use the above for any other purpose than for the performance of this Contract without prior written consent from the other party. However this Confidentiality obligation shall not be apply to the information which is made available to the general public.
- 10.2 If specified by written consent, both parties agree to enter into Non-Disclosure Agreement.

Article 11. Termination

- 11.1 KARI may terminate this Contract upon written notice to Contractor;
- (a) if Contractor commits a material breach of any of its obligations under this Contract which shall not be remedied within thirty (30) days from the giving of written notice requiring such breach to be remedied; or
 - (b) Contractor fails to obtain the export or re-export license from any government other than Korean government or conditionally obtains in accordance with Article 2.4; or
 - (c) if Contractor or its creditors or any other eligible party shall file for its liquidation, bankruptcy, receivership, reorganization, dissolution or similar proceedings, or if Contractor's creditors have taken over its management.
- 11.2 In the event of such termination, Contractor shall return to KARI all materials, Data and documentation provided by KARI, at no cost to KARI, and KARI may perform the Services to completion. In addition,

KARI, at its sole discretion, may;

- (a) either retain the Services which have already been or are supposed to be provided by Contractor up to the date of such termination by paying the payments which have already become due up to the date of such termination. Any and all terms and conditions of this Contract shall apply to such Services as if it had not been terminated; or
- (b) Contractor shall return to KARI all the amounts received from KARI up to the date of such termination, and KARI shall return all Services provided by Contractor under this Contractor up to the date of such termination, in the manner of "as is".

Article 12. Warranty

- 12.1 All items and Services provided or delivered by Contractor to KARI or any person designated by KARI shall be sufficient, correct, and complete to enable KARI or its Subcontractors to perform their work for this contract. Contractor hereby warrants the Services against deviation from the Contract Specifications and against defects in workmanship, material and design when the Services are used under normal operation and proper maintenance conditions.
- 12.2 Warranty Period hereof shall be valid one (1) year after delivering all the detailed drawing and deliverable items to KARI.
- 12.3 In the event that Contractor does not commence immediately the rectification on such proven or admitted defects after receipt of notice from KARI, or does not complete the said rectification with reasonable diligence, KARI may, at its option, correct the defects at Contractor's expense. In the latter case, Contractor shall reimburse KARI for all costs incurred in connection with KARI's rectification of the defects and/or deficiencies within thirty (30) days after receipt of KARI's written invoice setting forth such costs.
- 12.4 Notwithstanding anything contained herein elsewhere, Contractor shall indemnify, defend and hold harmless KARI, its officers, directors, agents and employees from and against any and all property and/or personnel losses, injuries, deaths and/or damage arising from the defective part or parts of equipment.

Article 13. Governing Law

The validity, performance, construction, and effect of this Contract shall be governed by the laws of the Republic of Korea.

Article 14. Indemnity

Neither Party shall be liable to the other under this Contract or at law for any indirect or consequential damages including but not limited loss or profits, loss of use or loss of revenue. Any liability to either Party under this Contract shall be limited to the Contract Price.

Article 15. Effective Date of Contract

- 15.1 The effective date of this Contract ("EDC") is the date on which the duly authorized representatives of the Parties have agreed this Contract;

15.2 Any amendment to this Contract shall be effective upon signature by the duly authorized representatives of both Parties

Article 16. Notice

Any and all notice to be given to either party shall be given to the following addresses by registered airmail or other telecommunication media. Either party may change its address by giving prior notice to the other party in the manner provided for herein.

For KARI: **Korea Aerospace Research Institute**

169-84 Gwahakro, Yuseong-gu, Daejeon 305-806, Korea

Commercial matters
Mr. Jung-Nam Cho

Technical matters
Mr. Jong-Min Im

Tel: +82-42-860-2613
Fax: +82-42-860-2666
E-mail: jncho@kari.re.kr

Tel: +82-42-860-2562
Fax: +82-42-860-2234
E-mail: acoust@kari.re.kr

For Contractor: xxx Company
Address

Commercial matters

Technical matters

Mr.

Mr.

Tel: +
E-mail:

Tel: +
E-mail:

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in duplicate in English by causing these presents to be signed by their duly authorized representatives as of the day and year first above written.

Signed for and on behalf of KARI

Signed for and on behalf of Contractor

By:

By:

Name: Dr. Seung-Jo Kim

Name:

Title: President

Title: