

**Contract No. SRPO-990103****Terms and Conditions**

The following documents comprise the *Contract No. SRPO-990103*

Between **MITSUBISHI HEAVY INDUSTRIES, LTD.** (hereinafter referred to as the “Seller”) and **NATIONAL SYNCHROTRON RADIATION RESEARCH CENTER** (hereinafter referred to as “NSRRC”). Seller agrees to provide and NSRRC agrees to purchase the following three (3) sets of 500-MHz Superconducting RF Modules for the **Taiwan Photon Source** (hereinafter referred to as “TPS”) on the terms and conditions at the fixed prices set forth below (hereinafter referred to as the “Contract”):

**1. Definitions**

In this Contract, where the context so admits, the following words and expressions shall have the following meanings:

- A. “Award Documentation” means any record in which the winning bidder of the Bid is designated when the Bid is opened.
- B. “Bid” means procurement of the System (set as below) by NSRRC in accordance with the Government Procurement Act of Taiwan, the Republic of China (R.O.C.).
- C. “Bid Invitation Documentation” means the bid invitation e-mail dated March [ ], 2010 issued by Mr. Paul Huang, a purchasing administrator of NSRRC, any documents referred to therein, and any modification or supplement thereof.
- D. “Effective Date” means the date on which the Contract has been signed by both parties.
- E. “Jobsite” means the place where NSRRC’s main office is located in Taiwan, R.O.C.
- F. “KEK” means the High Energy Accelerator Research Organization located in Tsukuba, Japan.
- G. “Receipt Date DDU Jobsite” means the date on which the shipment of the System is delivered to the Jobsite on DDU terms.
- H. “System” means three (3) sets of 500-MHz Superconducting RF Modules for TPS as set forth in Article 3.
- I. “System Transfer” shall take effect upon Receipt Date DDU Jobsite according to Article 8.
- J. “Technical Specification” means the technical specification of one (1) set of 500-MHz Superconducting RF Modules for TPS and attached hereto as Attachment I.
- K. “Tender Documentation” means any and all documentation provided by the Seller for the Bid before the Bid is opened, and any modification or supplement thereof.

**2. Contract Documentation**

- A. This Contract, together with the attachments, (as amended from time to time) and the documents referred to as follows (hereinafter referred to as the “Contract Documentation”) constitutes the whole agreement between the parties and supersedes any previous agreements, arrangements or understandings between them relating to the subject matter hereof:
- (i) Bid Invitation Documentation;
  - (ii) Tender Documentation;
  - (iii) Award Documentation,
  - (iv) any modification or supplement of the Contract, and
  - (v) any and all documentation or data provided by Seller for fulfillment of this Contract.
- B. For purpose of this Contract, the Contract Documentation shall include each type of storage form, original or copy, including but not limited to written documents, sound-recordings, videos, photographs, miniaturized models, digital documents, or samples.
- C. If there is any discrepancy between the Contract Documentation, unless otherwise provided in the Contract, both parties agree:
- (i) this Contract together with its excursus, attachment or exhibition shall prevail over the rest of the Contract Documentation.
  - (ii) the clauses set forth in main text of this Contract shall prevail over the excursus, attachment or exhibition thereof, unless otherwise provided in the applicable excursus, attachment or exhibition.
  - (iii) The clauses in the Bid Invitation Documentation shall prevail over the Tender Documentation. Notwithstanding the foregoing, if there is any remark, notification or exception set forth in Tender Documentation which is allowed in Bid Invitation Documentation and is accepted by NSRRC after review, such remark, notification or exception in the Tender Documentation shall prevail.
  - (iv) the document later approved by NSRRC shall prevail over that earlier approved.
  - (v) the large-scale figures shall prevail over small-scale figures.
  - (vi) Award Documentation shall prevail over the record of opening tender or price negotiation.
- D. The content of the Contract Documentation is complementary. In the event of any vagueness or uncertainty, the interpretation of NSRRC shall be determinative unless overturned in any of the procedures set forth in Article 27.
- E. If any provision or part of a provision of this Contract or its application to any party, shall be, or be found by any authority of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this Contract, all of which shall

remain in full force and effect. In the event the legality of any provision of this Contract is brought into question, the parties shall negotiate to amend such provisions in accordance with the original purpose of this Contract.

**3. System**

Three (3) sets of 500-MHz Superconducting RF Modules for TPS with the Technical Specification as set forth in Attachment I hereto.

**4. Marking**

All documents and shipping mark must bear the NSRRC's Contract No. SRPO-990103

**5. Completion Date and Delivery**

- A. The System shall be manufactured from the Effective Date and delivered to Jobsite on DDU terms (INCOTERMS 2000).
- B. Seller shall bear the cost of transporting the System from and between the Seller's premises and those of KEK, as may be required by the Contract, and between the Seller's premises or KEK's premises, as the case may be, and the Jobsite. The cost of unloading of the System at the Jobsite and the cost of any import duties or similar charges payable in Taiwan shall be borne by NSRRC.
- C. The System shall be packaged and packed by Seller for export in accordance with the requirements specified in the Contract or, in absence of any requirement in the Contract, the applicable commercial standard for export shipment for the system of a similar nature. Seller shall assume full responsibility for any damage or deterioration of the System sustained due to faulty or inadequate packing, handling or storage.
- D. NSRRC reserves the right for itself or its representatives to inspect all packages before shipment, but this inspection shall not delay the shipment. In case of such an inspection delay, the shipment delay penalty, if any, shall not be applied to the period of the delay occupied by the inspection act itself. Should such inspection result in identifying faults of design or part itself, delay penalty associated with the inspection duration remains in effect and prevail antecedent statement.
- E. Seller shall deliver the System and related documentations, if any, as set forth in attachment II hereto.

**6. Insurance**

- A. If the Seller is a natural person, the Seller shall purchase its own bodily accident insurance; if the Seller is not a natural person, the Seller shall purchase insurances during the term of this Contract as the following:

- ☒ Property Installation Comprehensive Insurance.
  - ☐ Employee Liability Insurance.
  - ☐ Machinery Insurance/Electrical Equipment Insurance/Boiler Insurance.
  - ☒ Seller shall purchase insurance that fully covers any damage that may occur to the System during transport from the point of origin to and from KEK's premise(s) and to the Jobsite. The coverage shall be one hundred and ten percent (110%) of DDU value of the System.
- B. Seller shall insure the personnel engaged by Seller or its sub-contractor (hereinafter referred to as "Sub-contractor") against the risk of illness, accident, disability, invalidity or death during their stay in Taiwan in accordance with regulations in force in Seller's country and in accordance with the mandatory requirements, if any, of laws and regulations of Taiwan.
- C. Seller shall maintain comprehensive general liability insurance for damage claims because of bodily injury (inclusive of death) and property damage caused by, or arising out of, acts or omissions of Seller, its employees or Sub-contractor. Seller shall provide NSRRC one original of policy and one duplicate of premium receipt after subscribing such policy. The insurance policy under this Article 6C shall include as the following:

Third Party Liability :

- (i) The insured amount for bodily injury (inclusive of death) per person shall not below NT\$5,000,000 .
- (ii) The insured amount for bodily injury (inclusive of death) per damaging event shall not below NT\$20,500,000, The deductible for bodily injury per damaging event shall not below NT\$2000 .
- (iii) The insured amount for property damage per damaging event shall not below NT\$5,000,000 .
- (iv) The deductible for property damage per damaging event shall not below NT\$10,000 .
- (v) The maximum aggregate liability amount during the term of policy shall not exceed NT\$100,000,000 .

Employee Liability Insurance:

- (i) The insured amount for bodily injury (inclusive of death) per person shall not below NT\$5,000,000.
- (ii) The insured amount for bodily injury (inclusive of death) per damaging event shall not below NT\$20,500,000, The deductible for bodily injury per damaging event shall not below NT\$2000(excluding society insurance coverage) .

- (iii) The maximum aggregate liability amount during the term of policy shall not exceed NT\$100,000,000 .
- D. Seller will in no event be liable for loss of production, interrupted operations, loss of profit, or other consequential damages, except where mandated by statute, as in the case of intent or gross negligence. The prior approval of NSRRC personnel is required for the use of NSRRC equipment by Seller personnel.
- E. Seller shall hold NSRRC harmless from, and indemnify and defend NSRRC against all costs, claims and damages arising from or related to the above mentioned items.

## **7. Inspection**

- A. Seller shall allow and have its Sub-contractor, if any, to allow NSRRC or its authorized representative (hereinafter referred to as the "Visitor(s)") access to their premises at all reasonable times to inspect the condition and progress of design, manufacture or testing of the System. Seller shall assist Visitor(s) to obtain the permission and passport visa for visiting the premises of the Seller and Sub-contractor.
- B. Seller shall, during a visit by Visitor(s), have available all documents and data as are necessary to ascertain the status of the System and the progress thereof. During an inspection of items under manufacture, Visitor(s) shall be attended by the premise superintendent in charge or his deputy. They shall provide Visitor(s) with all requested information related to the manufacture of the System.
- C. Visitor(s) is entitled to visit, in addition to the premises, the offices which are in charge of the System to be performed in connection with the Contract.
- D. Seller shall be informed of a visit to its premises and/or those of Sub-contractor at least three (3) weeks in advance.
- E. It shall be the responsibility of Seller to inspect all System and materials prior to shipment. The making or failure to make by NSRRC of any inspection, or acceptance of System, shall in no way impair NSRRC's right to reject nonconforming System or release or discharge Seller from any of his obligations hereunder.

## **8. Acceptance**

- A. A factory acceptance test with respect to each liquid-helium cryostats and niobium cavities for the System shall be undertaken in the Seller's factory (hereinafter referred to as the "Factory Acceptance Test"). Seller shall demonstrate and provide the related documents to NSRRC or its representatives in accordance with the items specified in the Technical Specification. Seller shall provide an Acceptance Test Report including the test results with acknowledgement of the authorized representative of NSRRC.

- B. The final assembly of the System and its high-power RF test at Jobsite will be done by NSRRC under supervision of KEK and assistance of Seller as specified in the Technical Specification. Upon completion of the foresaid tasks, NSRRC will conduct the final acceptance test at Jobsite (hereinafter referred to as the "Acceptance Test") in accordance with the items specified in the Technical Specification. If any test result found to be non-conformity to the Technical Specification, NSRRC shall give Seller a notice stating in what test item(s) the System does not conform. Immediately upon successful completion of the Acceptance Test, such acceptance shall be promptly recorded in an Acceptance Test Certificate.
- C. If NSRRC fails to provide Seller with a signed Acceptance Test Certificate or the notice of non-conformity as set forth in Article 8B above within fifteen (15) months upon Receipt Date DDU Jobsite, the System will be deemed accepted and Seller will be entitled to draw down from the letter of credit for the applicable payment.
- D. Title and risk in the System shall be transferred from the Seller to NSRRC upon Receipt Date DDU Jobsite.
- E. NSRRC will be responsible for the care of the System during the period of any work performed by or on behalf of NSRRC and/or KEK prior to delivery at the Jobsite and shall further be responsible for any damage to the System that occurs whilst the System is in the care of NSRRC and/or KEK or that is caused by any work carried out by or on behalf of NSRRC and/or KEK.

## **9. Service Requirements**

- A. Seller shall hold an engineering review meeting at Jobsite (hereinafter referred to as the "Engineering Review Meeting") within seven (7) months from the Effective Date in accordance with the Technical Specification.
- B. Seller shall, during the period of this Contract, provide NSRRC with a monthly progress report (hereinafter referred to as the "Monthly Progress Reports") which contains the contents specified in the Technical Specification on or before the fifth business day of every calendar month from the Effective Date.
- C. The system integration of the liquid-helium cryostat of the System with the surface-treated and clean niobium cavity will be undertaken at KEK's premise by NSRRC and KEK under supervision of KEK. Seller shall provide the assistance of manpower for such system integration as specified in the Technical Specification.
- D. Seller shall provide NSRRC the documents in English language as specified in the Technical Specification. During assembly and commissioning of the System, Seller shall provide, at NSRRC's request, additional information, drawings and descriptions as far as reasonable and agreed upon by the parties.
- E. Experienced personnel

- (i) For the provision of contractual services at KEK's premise(s) and on the Jobsite, Seller shall engage only persons with adequate experience, who in the past have successfully completed assignments of similar nature and scope with proven records.
  - (ii) NSRRC shall engage only persons with adequate experience for work on the System and related equipment until Acceptance Test is completed.
- F. Seller shall provide NSRRC with the following information about the services engineer to be assigned to the Jobsite:
  - (i) Past experience, including detailed description of projects, duties performed and dates of completion.
  - (ii) Complete passport data.
  - (iii) With the exception of Seller's service engineer being called to the Jobsite on short notice, such information shall be submitted to NSRRC at least one (1) calendar month before said person is required to arrive at the Jobsite. In all cases, NSRRC's consent and approval are required before said person may be officially assigned to the Jobsite.
- G. NSRRC reserves the right to demand additional qualified experienced engineers if the service engineer is unable to complete the contractual services within the specified timeline agreed by Seller and NSRRC.
- H. Provided otherwise specified in this Contract, Seller should comply with such request and all clauses under this Article 9 within two (2) weeks upon receipt of notice.
- I. Seller shall provide optional replacement parts in a separate quotation from this Contract, as listed on the Spare Parts List (See Attachment III), available to NSRRC, and shall provide procurement information regarding suppliers and sources, and also include complete specifications of said parts.

#### **10. Contract Price**

- A. NSRRC agrees to pay Seller a firm fixed lump sum price of [ ] (hereinafter referred to as "Contract Price" or "CP") DDU Jobsite according to INCOTERMS 2000.
- B. The Contract Price includes taxes, as stated in Article 12 Taxes and Duties. NSRRC shall be responsible for customs clearance in Taiwan.
- C. Seller will be entitled to additional payment according to the applicable quotation item(s) as specified in its Tender Documentation provided that either (1) NSRRC or KEK requires a better process results by requesting Seller to repeat or add any of the process, or (2) the actually total assistance working hours derived upon NSRRC's or KEK's request according to Article 8B and 9C are more than 10% of the Seller's estimated total working hours and are not attributable to Seller's fault.

**11. Payment Terms**

- A. NSRRC shall open an irrevocable Letter of Credit in favor of the Seller, through a Bank registered in Taiwan for the Contract Price. NSRRC shall pay installments of the Contract Price within fourteen (14) days upon completion of each applicable step as set forth in Attachment II hereto.
- B. All banking charges, including reimbursement charge, outside of Taiwan, are for Seller's account.
- C. NSRRC may, at its sole discretion, in the first instance directly deduct from each installments of the Contract Price in the event that Seller owes any repayment or payment obligations to NSRRC under this Contract.
- D. Information on SELLER's bank:  
( )

**12. Taxes and Duties**

- A. Seller shall be responsible for all taxes, duties, customs duties, tariffs and harbor duties imposed by the governments or any other authority, institution or official body of all countries other than R.O.C.
- B. NSRRC shall be responsible for all taxes, duties, customs duties, tariffs and harbor duties imposed by the government or any other authority, institution or official body of R.O.C. only.

**13. Repayment Guarantee (RG)**

- A. To secure repayment obligations, if any, the Seller shall cause an repayment guarantee (hereinafter referred to as the "RG") to be issued or confirmed by a bank registered in Taiwan, with an amount equivalent to the amount of the prepayment as set forth in Attachment II hereto.
- B. The RG shall be submitted by way of Bank Guarantee (See Attachment IV) in favor of NSRRC through Mega International Commercial Bank Co., Ltd. HSP. Hsin-An Branch Taiwan R.O.C. (Swift code: ICBCTWTP020). The expiration date of RG shall be the date of three (3) months after the expected date of delivery of the System to the Jobsite (DDU, INCOTERMS 2000). The expected date shall be based on the dates which were set forth in the document of Delivery and Payment Schedule.

In the event that the actual Receipt Date DDU Jobsite is found to be delayed later than the original expiration date of the RG, such expiration date of the RG shall be extended by the Seller at its own cost. In the event of any delay caused by NSRRC and/or KEK or by any other third party not under the direct control of the Seller, excluding Japan government, NSRRC shall bear the process fee for the RG extension.



- C. NSRRC shall exercise the RG only in the case of default by the Seller. The RG shall be returned without interest within fourteen (14) days upon Receipt Date DDU Jobsite.

#### **14. Gratuity and Commissions**

- A. The Seller certifies by signing this Contract that no gratuities, gifts or personal favors, either direct or indirect, have been or shall be given or in any way conferred by the Seller to any of the officers, personnel or staff members working in NSRRC or the agencies connected or associated therewith.
- B. **NSRRC is a government supported, nonprofit, scientific research laboratory. The Seller and/or his suppliers shall not give any commission, rebate, gifts or any other form of benefit to any personnel of the R.O.C. Government involved in transactions covered by this Contract. Violation of this stipulation shall cause the Seller to be subjected to any and all punishments prescribed by law, and to be liable for all consequences and make compensation to NSRRC for any loss arising from such violation.**

#### **15. Force Majeure**

- A. Any delay or failure to perform, by either party, the responsibilities contained in the Contract shall not constitute default nor give rise to any claims for damages, if they are caused by an act of God, act of governments in its sovereign capacity (except as specified in the Article 22 “Rescission”, Section A(iii) with respect to the licenses), riots, warlike operations, revolution, war, fire, flood, epidemic of contagious disease, quarantine restrictions, sabotage or other similar events (hereinafter referred to as “Force Majeure”), which are not attributable to, and are beyond the control of, the affected party.
- B. The failure of suppliers to deliver, or the inability of a Sub-contractor to fulfill agreements with Seller shall not be considered as the Force Majeure, unless such failure or inability has been caused by Force Majeure, as defined in Section A above, and that Seller is unable to engage other suppliers/Sub-contractor within reasonable time and expense.
- C. The affected party shall immediately provide written notice, with evidence, to the other party of the causes of the Force Majeure, as defined in Section A above, and in any event within ten (10) calendar days thereafter stating:
- (i) the nature, extent, and expected duration thereof;
  - (ii) the effect thereof on the milestone schedule, in particular, and on the performance of the obligations provided in the Contract, in general, and
  - (iii) the request of the extension of time resulting from such Force Majeure.
- D. The affected party shall be entitled to an extension as may reasonably be required to remove or remedy the Force Majeure provided that the other party has been notified and furnished evidence in a timely manner within fifteen (15) calendar

days after the initial written notice of such Force Majeure, which shall be confirmed by the other party. The extension of milestone schedule shall be granted only when the above requirements have been satisfied.

- E. The other party shall, within fifteen (15) calendar days of receipt of the notice from the affected party, notify the affected party whether an extension has been granted and the length of such extension, if any. If the other party fails to notify the affected party, the other party shall be deemed to have granted the extension as requested but limited to a maximum of thirty (30) calendar days.
- F. The affected party shall take all steps necessary to remove the effects of the Force Majeure and to regain time lost, and shall in no event discontinue or delay the performance of any obligations provided in the Contract not directly affected by the Force Majeure.
- G. If, by reason of the Force Majeure, the performance of the Contract has been delayed or is expected to be delayed for ninety (90) consecutive days, the non-affected party may, by thirty (30) calendar days prior written notice, terminate the Contract pursuant to the Article 21 "Termination", Section A.
- H. In case any excusable delay is granted in accordance with Sections A-G above, Seller shall extend, at its costs, the validity period of time of Bank Guarantee which is served as RG for a period of time commensurate with the granted extension of time. Seller's act of extension of RG shall apply to all granted delay admitted to either party. In the case of the contractual obligations of NSRRC will be injured, delayed or made impossible due to the Force Majeure, NSRRC shall bear the process fees for RG modification described in this Section H.

## **16. Delay**

- A. Seller shall begin and complete delivery of the System according to the schedule set forth in the Contract. The Contract Price shall be paid with the understanding that Seller shall use as much manpower and as many man hours as necessary to meet the Contract delivery schedule as may be adjusted in accordance with the provisions of Article 15 or in consequence of delays caused by NSRRC. .
- B. Seller shall be fully responsible for the performance of Sub-contractor. Delay by Sub-contractor may not be used as an excuse for schedule extension; provided that, however, the delay due to Force Majeur as defined in Article 15 Force Majeur, Section B and the Sub-contractor have been listed in the attachments to this Contract.
- C. Delay caused by Sub-contractor, if any, shall be treated as delay of Seller stated in this Contract.
- D. The Seller shall be entitled to an extension of the time for delivery of the System in respect of any delays caused by NSRRC and/or KEK or by any other third parties not under the direct control of the Seller, excluding Japan government.

**17. Delay Damages**

- A. Delivery of the System, including associated equipment shall be made in accordance with the schedule as set forth in attachment II hereto. If Seller is unable to deliver according to the third (3<sup>rd</sup>), fifth (5<sup>th</sup>) and sixth (6<sup>th</sup>) time frame as set forth in attachment II hereto, NSRRC has the right, after a grace period of three (3) months, to recover damages for delay (hereinafter referred to as "Delay Damages") in an amount to be calculated on the basis of **one half percent (0.5%)** of the applicable payment for each completed calendar week delayed. The Delay Damages derived from different milestone shall be calculated respectively and the total amount of Delay Damages with respect to single milestone shall not exceed ten percent (10%) of the applicable payment.
- B. Notwithstanding anything else to the contrary in the Contract or otherwise at law, the entitlement to recover Delay Damages as set forth in this Article 17 shall be the sole and exclusive remedy of NSRRC in respect of any delays to any milestones set out in Attachment II hereto or for any other delay to the Seller's performance of its obligations under the Contract.

**18. Warranties**

- A. Seller warrants that the design, material and workmanship provided by Seller shall be in full conformity with the Technical Specification.
- B. Seller agrees that the System and any of its components are guaranteed for two (2) years from the Receipt Date DDU Jobsite according to Article 8.
- C. Within the warranty periods (as set forth above), Seller shall, upon written notification by NSRRC, promptly repair or fabricate, deliver to the Jobsite, replace, and/or test any part of the System free of charge to NSRRC. If NSRRC deems it necessary to ship repaired and/or replacement parts by air, Seller shall do so at Seller's expense.
- D. Seller shall bear all risks and expenses of returning a defective part to itself or a supplier or Sub-contractor, replacing and installing a repaired or new part. Such returns shall be effective after the arrival of the replacement at the Jobsite. NSRRC shall be responsible for dismantling defective parts at its own risk and costs.
- E. In case Seller fails to take actions acceptable to NSRRC within thirty (30) calendar days from the receipt of NSRRC's written request to carry out any necessary repair or replacement services, NSRRC may engage a third party to tender the services and charge the expenses to Seller. In such a case, Seller shall not be relieved from its contractual obligation.

**19. Changes in Specifications**

- A. NSRRC reserves the right to make such changes in the Technical Specification, as may be necessary or desirable, after a purchase order is issued or the Contract is signed. Any difference in the Contract Price resulting from any such change shall be agreed upon in writing by NSRRC before proceeding with the System.
- B. Before proceeding with any work involving possible claims by Seller for compensation above the Contract Price, Seller shall submit in writing to NSRRC a detailed estimate of the price for such work. In a case where NSRRC desires to have such work performed and where a price is agreed upon, such work will be covered by a written order issued to Seller by NSRRC. Seller shall not proceed with any such work before receiving such a written order.
- C. Seller shall cover all cost in all forms when changes in the Technical Specification are due to fault of Seller. Under such condition, Seller shall assume full responsibility to alter and correct other design, System, parts and production related to or affected by the identified fault being hereby stated.

## **20. Disposal of Non-Compliant System**

- A. All System supplied by Seller shall be in strict compliance with the Technical Specification. In case of any non-compliance System, NSRRC may at its sole discretion:
  - (i) reject the non-compliant System and require Seller to take full responsibility, or
  - (ii) require Seller to make immediate corrections as necessary to meet the requirements found in the Technical Specification or as directed by NSRRC.
- B. In the event of above Section A(ii), Seller shall take all necessary actions to make correction within the designated time from receipt of NSRRC's notification. Should Seller fail to comply with this requirement, NSRRC is entitled to make corrections by itself and charge Seller all out-of-pocket costs.

## **21. Termination**

- A. Termination for Force Majeure
  - (i) If any delay due to the occurrence of any event of the Force Majeure continues for ninety (90) consecutive days, the non-affected party may, by serving not less than thirty (30) calendar days prior written notice to the affected party, terminate the Contract pursuant to Article 15 Force Majeure, Section G.
  - (ii) If Seller suffers from the Force Majeure and Seller is terminated by NSRRC, Seller shall without delay stop all manufacture or production of System subject to the termination and place no further purchase orders for materials or facilities to the extent of such termination.
  - (iii) Prior to delivery to and unloading of the System at the Jobsite and given a termination of the Contract due to the Force Majeure, Seller shall refund to NSRRC all funds previously paid by NSRRC with respect to the System,

provided always that if Seller has delivered any part of the System, including any design, and such part of the System complies with the Technical Specifications and is free from damage and defects, NSRRC shall accept that part of the System that has been delivered and pay the corresponding amount, according to Seller's Price Break Down (set forth as Attachment V hereto) of this Contract or a price to be agreed upon if such part is not specified in the Price Break Down.

- (iv) After a subSystem of the System is duly delivered to and unloaded at Jobsite, upon termination of the Contract due to event of Force Majeure, Seller shall be entitled to all the payments made by NSRRC with respect to the such delivered subSystem under the condition that representatives of NSRRC confirm the subSystem has not been damaged during transport and is produced in compliance with the Technical Specification.
  - (v) If, by reason of Force Majeure, the contractual obligations of NSRRC will be injured, delayed or made impossible, then in deviation of the regulations of Section A.(iii) above Seller shall be entitled to payment from NSRRC of a reasonable price in accordance with Section A.(ii) above for the performances and costs already made respectively occurred with proven records. Such claims may be set off against payments received.
- B. In case Seller fails to provide applicable RG within one (1) month upon applicable time frame, Seller will be held in default as stated in Article 13 Repayment Guarantee (RG). Termination of the Contract shall immediate go into effect, unless otherwise altered by NSRRC.
- C. In case Seller employs lobbyists directly or indirectly or seeks governmental connection to pose pressure or obstruction on the execution of the Contract, once proven, NSRRC may terminate the Contract immediately.
- D. In the event that NSRRC fails to pay any amount pursuant to any provisions of the Contract within the time or times stated in the Contract then the Seller may suspend the performance of the Contract following fourteen (14) days written notice to NSRRC or may otherwise terminate the performance of the Contract following thirty (30) days written notice to NSRRC. The provisions of Article 21A(iii) with regard to payment on termination shall apply mutatis mutandis to any termination under this Article 21D.

## **22. Rescission**

- A. Rescission due to Seller's default. NSRRC shall have the right to rescind the Contract, in whole or in part, upon occurrence of any of the following events:
- (i) In the event that (a) Seller commences a voluntary action pursuant to bankruptcy law as now or hereafter in effect (hereinafter referred to as the "Bankruptcy Law"); (b) an involuntary action is commenced against Seller in which the petition is not controverted or dismissed within one (1) month; (c) a trustee or receiver as defined in the Bankruptcy Law is appointed for, or takes

- charge of all or any substantial part of Seller; (d) Seller commences any proceeding under any reorganization arrangement, adjustment of debt, debtor relief, dissolution, insolvency or liquidation or similar law in any jurisdiction, whether now or hereafter in effect, or any such proceeding is commenced against Seller, which proceeding remains undismissed for a period of one (1) month or Seller is adjudicated insolvent or bankrupt; or (e) Seller sells his business in whole or in part in such a way that materially affects his financial or technical ability to perform the Contract;
- (ii) Seller persistently defaults on any essential obligation provided in the Contract and such default is not cured in accordance with the provisions of Article 22B.
  - (iii) If the business licenses, export license or any other governmental approval required for the performance of the Contract is suspended, revoked, reduced or otherwise limited by the government of Seller and/or Sub-contractor or suppliers for causes attributable to Seller and/or Sub-contractor/suppliers, and such export license or governmental approval is not reinstated within one (1) month of the suspension, revocation or reduction.
- B. Upon occurrence of an event of default, NSRRC shall serve a default notice to Seller. Promptly following such notice of default, Seller shall clarify any issues regarding the default. For a default which is subject to a cure within the stipulated period, Seller shall immediately propose a work-around and the parties shall meet and discuss any possible solutions. NSRRC may, at its sole discretion, accept a cure plan presented by Seller and waive its right to claims provided herein. Such waiver, issued by NSRRC, shall be treated as an isolated instance and only apply for one case of default regardless the cause of default appears to be related.
- C. In the event of rescission, pursuant to the provisions set forth in Section A above, NSRRC may immediately proceed to avail himself of appropriate remedies, including: claim or drawdown the RG for the refund of sums previously paid to Seller pursuant to the Contract. Seller shall be liable for payment within ten (10) calendar days from the date of NSRRC's demand for funds, if any, which have not been refunded by Seller from the RG. The provisions of Article 21A(iii) shall apply mutatis mutandis to any part or parts of the System that have been delivered prior to rescission.
- D. All costs of Seller shall be subject to reasonable substantiation and verification by Seller's controller and a certified public accountant firm acceptable to NSRRC. The responsibility for the costs associated with the use of such an accounting firm shall
- (i) in the case of termination pursuant to the Article 21 "Termination", Section A., be shared equally by both parties;
  - (ii) in the case of rescission pursuant to Section A above, be borne by Seller.

## **23. Government Approvals**

- A. The Seller's obligations hereunder are contingent upon the Seller being able to obtain all necessary government licenses, permits, authorizations and other clearances.
- B. The Seller shall undertake to obtain such licenses, permits, authorizations and other clearances and shall inform NSRRC of any delays or difficulties relating thereto. Any and all export licenses, permits, authorizations and other clearances required by government shall be secured by the Seller at the Seller's costs and expense.
- C. Such clearances may be granted subject to incorporation herein of certain clauses or terms required by the government or other government agency, and NSRRC agrees that any such required clauses may be incorporated herein.

#### **24. Infringement**

- A. NSRRC reserves the right to return at Seller's expense any equipments or parts of the System, and rescind this Contract if any claim is made that sale or use of any items purchased from Seller infringes any patent, design, trademark, copyright or trademark rights. Seller agrees to indemnify NSRRC and hold it harmless and to defend any suit or proceeding brought against NSRRC at Seller's own expense, including but not limited to costs and legal/counsel fees, any liability loss, fine, penalty or expense by reason of any design, patent, trade name, trademark or copyright claim or litigation arising out of relating to any or all items covered by this Contract. Notwithstanding the foregoing, Seller will not be responsible under this Article 24 in the event that such claim or litigation is solely attributable to NSRRC's own design.
- B. In the case that said equipment, or any part thereof, is in such suit held to constitute an infringement and the use of said equipment or part is enjoined, Seller shall, at its own expense, either procure for NSRRC the right to continue using said equipment or part or replace the same with non-infringing equipment or part, or modify it so that it no longer infringes upon the patent rights of the original article, within the delivery term of this Contract.

#### **25. Compliance with Laws**

- A. Seller warrants that the System conforms to, and was processed, manufactured, described, labeled, advertised, sold, invoiced, and shipped in compliance with all applicable laws, including but not limited to regulations, orders, and regulations of the Federal and Local governments, and all agencies thereof. Seller warrants that no equipment or parts of the System provided to NSRRC contains or was manufactured with restricted materials regulated by international laws without required license and permission from authorized agencies.
- B. Seller agrees to execute and affix to its invoice all certificates, which NSRRC may require to evidence Seller's compliance with the foregoing. Seller agrees to furnish upon request by NSRRC with any continuing guaranty filed with the

International Trade Commission or Consumer Product Safety Commission indicating that the System covered by this Contract are properly labeled in accordance with the particular law and regulations pertaining thereto and have passed all applicable tests. Seller's failure to provide any documents or warranties that NSRRC requests to verify or its compliance with federal or local laws, orders, rules or regulations shall be deemed to be a material breach of the terms and conditions of this Contract. Seller warrants that it has all required authorization, licenses and permits.

## **26. Governing Law**

The validity, operation, interpretation and performance of this Contract shall be governed by and construed in accordance with the laws of R.O.C.

## **27. Dispute Resolution**

- A. In the event of any dispute derived from the performance of this contract, the parties agree to discuss in good faith and settle by mutual agreement. KEK will be invited to join the foresaid discussion and be highly respected to provide its point of view or solution.
- B. For any dispute cannot be settled by mutual agreement,
  - (i) Seller shall file a written complaint resort to the Complaint Review Board for Government Procurement of Executive Yuan Public Construction Committee (hereinafter referred to as "CRBGP") in accordance with the Government Procurement Act, Chapter VI Protest and Complaint.
  - (ii) If Seller still can not be satisfied with the result of Section B in this clause, both parties agree that all disputes, controversies, differences or claims arising out of, relating to or connecting with the Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in Taipei, referred to the Arbitration Association of R.O.C. in accordance with the Arbitration Law of R.O.C. and the Arbitration Rules of Chinese Arbitration Association, Taipei. The award rendered by the arbitrator(s) shall be final and binding upon both parties concerned.
- C. Without NSRRC's written consent, the Seller shall not suspend the performance of the Contract by reason of the reference of the dispute resolution. If the Seller suspends the performance of the Contract and the resolution takes the Seller meritless, the Seller shall not request to extend the delivery schedule of the Contract or release the obligations of the Contract for the suspended part.
- D. The arbitrators shall be bound by the provisions of the controlling rules in the course of trial and in arriving at a judgment.
- E. The arbitration ruling shall be enforceable by the courts of the countries of the Seller's domicile and R.O.C.



- F. The ruling shall also indicate how to distribute arbitrator's fee and arbitration expenses between the parties.

## **28. Assignment**

Any assignment of this Contract or of any rights hereunder or hypothecation thereof in any manner, in whole or in a major part, by either party shall be void.

## **29. Waiver of Breach**

Any failure by NSRRC, at any time, or from time to time, to enforce or require the strict keeping and performance by Seller of any of the terms or conditions of the Contract shall not constitute a waiver by NSRRC of a subsequent breach of any such terms or conditions in any way, or the right of NSRRC at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

## **30. Amendment**

The Contract shall only be amended or modified in writing signed by the authorized representatives of the parties. Oral direction will not modify or change the provisions of the Contract. If any provision of this Contract is or subsequently becomes invalid or inapplicable for any reason whatsoever, such invalidity or inapplicability shall not affect the validity of the remaining provisions. The parties shall substitute for any invalid or inapplicable provisions a mutually acceptable valid provision as close as possible to the original provision.

## **31. General Provisions**

- A. Language. All Contract Documentation, correspondence and instructions exchanged between NSRRC and Seller shall be in the English language.
- B. Communications and Notices
1. All instructions, communications and notices, regardless of nature, between NSRRC and Seller shall be made exclusively in writing, including certified airmail, personal delivery, e-mail, cable telex and telephone facsimile. Consequently, whenever the Contract Documentation bear the expression "shall advise", "shall inform", "shall notify" and the like, it is understood that such required correspondence shall be done in writing.
  2. Verbal notice has no validity whatsoever in respect of this Contract.
  3. Notices sent by certified airmail shall be deemed to be received on the date of the receipt. Notices sent by certified mail shall be deemed to be received twenty-four (24) hours after the date of last reject, if such delivery to the designated address provided in this Contract is marked as rejected by licensed/official delivery agents. Notices by personal delivery shall be deemed

to be delivered of the date of the written receipt of service by an employee of the receiving party. Notice given by telefax or e-mail shall be deemed to have been received twenty-four (24) hours after being successfully transmitted. Until changed by written notice given by either party to the other, the addresses of the parties shall be as follows:

Seller's Name :  
The Contract No.: SRPO-990103  
Seller's Address:  
Telephone No.:  
Telefax No.:  
e-mail address:  
Attention:

NSRRC's Name : National Synchrotron Radiation Research Center  
NSRRC's Address: No.101 Hsin-Ann Road, Hsin-Chu Science Park,  
Hsin-Chu City 30076, Taiwan, R.O.C.  
Telephone : +886-3-578-0281 EXT-2107  
Telefax : +886-3-579-7235  
e-mail address: paul@nsrrc.org.tw  
Attention : Paul Huang  
Title: Purchasing Administrator

- C. Neither variations or modifications of the Contract nor waiver of any of the terms and conditions hereof shall be deemed valid unless made in writing and signed by both parties hereto. This Contract does not create a partnership, a joint venture, a new corporate entity, or an affiliate relationship.

### **32. Limitation of Liability**

Except as expressly set forth in the Contract, the Seller shall in no event be liable to NSRRC by way of indemnity or by reason of any breach of the Contract or in tort or otherwise for loss of use of the System and/or any other facilities or any part thereof or for loss of production, loss of profit or loss of any contract, or for any indirect, special or consequential loss or damage that may be suffered by NSRRC in connection with the Contract. Notwithstanding anything to the contrary provided in the Contract, the aggregate liability of the Seller under or for breach of the Contract or in tort or in any other way in connection with the System shall not exceed the Contract Price.

IN WITNESS WHEREOF, NSRRC and Seller have caused the Contract to be executed by their duly authorized officers or representatives as of the day and year indicated below:

**MITSUBISHI HEAVY  
INDUSTRIES, LTD.**

**NATIONAL SYNCHROTRON  
RADIATION RESEARCH  
CENTER**

BY: \_\_\_\_\_  
NAME PRINTED:

TITLE:  
DATE:  
WITNESS:

BY: \_\_\_\_\_  
NAME PRINTED:  
CHIEN-TE CHEN  
TITLE: Director  
DATE:  
WITNESS:

**Attachment I**

**Technical Specification**

**Attachment II**

**Delivery and Payment Schedule**

**Attachment III**

**Spare Parts List  
(Provided by the Seller)**

**Attachment IV**

**Seller's Bank Guarantee**

**Attachment V**

**Seller's Price Breakdown  
( Provided by the Seller )**