

## ANNEX

### **SUPPLY OF SERVICES TERMS AND CONDITIONS Between National Metrology Centre, A\*STAR Research Entities ("Supplier") and the Purchaser**

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Unless specifically excluded by agreement in writing the following terms and conditions shall be the operative terms of the agreement for the supply of goods or services ("**Agreement**") between National Metrology Centre, A\*STAR Research Entities and the Purchaser arising from any offer or proposal referring to these terms.

#### **1. Supply of Services**

- (a) The Supplier shall provide services as described in Schedule 1 ("**Services**") for the agreed consideration.
- (b) The Supplier undertakes to use reasonable care and skill to carry out its obligations under this Agreement, but does not warrant or guarantee that due performance of all its obligations herein will result in or achieve any or all the objectives set out in the Services. The Purchaser shall not rely on any representation or statement made by the Supplier in relation to the Services and warrants that it has made its own inquiry, testing and investigation into and has formed an independent judgment concerning the Services and will not assert any claim against or hold the Supplier liable for any information furnished (or failed to be furnished) by the Supplier.
- (c) If there are any documents or information from the Purchaser which the Supplier requires in order to provide the Services, the Supplier shall not be obliged to provide the Services until such documents or information are furnished.
- (d) The Supplier does not make any representation, condition or warranty, express or implied with respect to the Services or the deliverables as described at Schedule 1 ("**Deliverables**"), including any warranty as to non-infringement of third party intellectual property rights, fitness for purpose, merchantable or satisfactory quality or correspondence with a particular description.

#### **2. Exclusion and Limitation of Liability**

- (a) To the extent permitted by law, the Supplier disclaims all liability that it may have to the Purchaser or any third party arising from any cause of action for any indirect, special, incidental, consequential damages, loss of profits or pure economic loss.
- (b) Any liability of the Supplier to the Purchaser hereunder shall in no event, exceed the total price (as stated in Schedule 1) of the Services provided.

#### **3. Time of Provision of Services**

The Services shall be deemed to have been duly completed and accepted by the Purchase if no notice to the contrary has been received by the Supplier within seven (7) days of the delivery of the Deliverables to the Purchaser.

#### **4. Invoicing**

- (a) All invoices will be denominated in Singapore Dollars. The Purchaser shall settle all invoices for Services provided within thirty (30) days from the date of the invoice in the manner required by the Supplier. Time shall be of the essence for payment for Services provided.
- (b) All taxes (such as goods and services tax), delivery costs, bank charges and other costs and expenses

incurred in connection with any payment shall be borne by the Purchaser.

- (c) Supplier shall have the right to charge Purchaser, in respect of any and all overdue payments, interest at the rate of one percent (1%) per month or part thereof (compounded).

#### **5. Deliverables**

The Deliverables and all rights therein shall belong to the Purchaser. Notwithstanding the foregoing, all background know-how and intellectual property rights used or introduced by a Party in the course of carrying out the Services under this Agreement shall not be transferred to the other Party.

#### **6. Confidentiality**

- (a) Each Party shall not disclose or use any proprietary or confidential information received from the other Party pursuant to this Agreement without the other Party's prior written approval.
- (b) The confidentiality obligations in this clause shall not apply to any information which is (i) already in the possession of a receiving Party without prior restriction; (ii) independently developed by a receiving Party; (iii) publicly disclosed by a disclosing Party; (iv) received by a receiving Party from a third party; or (v) required to be disclosed to governmental or regulatory bodies or to a court of competent jurisdiction pursuant to any written law, provided, however, that such disclosure is limited to that required to be disclosed.
- (c) The recipient of any proprietary or confidential information shall, upon the other Party's request or the termination of this Agreement, return or destroy all such information within five (5) days of such request. All such proprietary or confidential information shall be kept confidential by the recipient for a period of three (3) years from the time of receipt.

#### **7. Termination**

- (a) This Agreement shall be in force and effect for the term as stated in Schedule 1 ("**Term**").
- (b) Any Party may terminate this Agreement upon providing the other Party with thirty (30) days written notice of termination. In addition, any Party may terminate this Agreement forthwith by notice in writing if the other Party:
  - (i) commits or threatens to commit any breach of this Agreement, and if such breach is remediable, fails to remedy the same within fourteen (14) days after notice to remedy the same; or
  - (ii) suspends or discontinues its business or sells or otherwise disposes of all or a substantial part of its assets (otherwise than for the purpose of a corporate restructuring as described at Clause 8(d)); or
  - (iii) makes an arrangement with its creditors, is subject to a judicial management order, is insolvent or goes into liquidation (otherwise than for the purpose of a reconstruction or amalgamation); or

(iv) if the delay in performance stipulated in Clause 8(a) below persists for more than one (1) month.

- (c) In the case of termination for any reason by any Party, the Supplier shall be entitled to be paid for all Services carried out as of (and including) the date of termination and all works-in-progress and non-cancellable costs, including sub-contractors' commitments, if any, without prejudice to its other rights.

#### **8. Miscellaneous**

- (a) Force Majeure. If the performance by either Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance. The Supplier shall, for the duration of such event, be relieved of any obligation under this Agreement which is affected by such event.
- (b) Governing Law. This Agreement shall be governed by the laws of Singapore and the parties submit to the non-exclusive jurisdiction of the Singapore courts. The application of the United Nations Convention on Contracts for the International Sale of Goods 1980 to this Agreement is hereby expressly excluded.
- (c) Assignment. The Purchaser may not assign or otherwise transfer any of its rights, benefits or obligations hereunder without the prior written consent of the Supplier.
- (d) Novation. If at any time after the Effective Date the functions and operations of Supplier are assigned, merged, transferred into or otherwise forms part of

another organisation (the "**New Entity**") such that the New Entity takes over the whole or substantially the whole of the Supplier's operations, then it is agreed that this Agreement may, at the option of the Supplier, be novated to the New Entity which will then assume all of the Supplier's rights and obligations hereunder.

- (e) No third party rights. Unless otherwise expressly stated in this Agreement, a person who is not party hereto shall have no right under the Singapore Contracts (Rights of Third Parties) Act Cap. 53B to enforce any of the terms of this Agreement.
- (f) Entire Agreement. Unless otherwise expressly specified, this Agreement embodies the entire understanding between the Parties in respect of the subject matter herein and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement shall be effective unless made in writing and signed by authorized representatives of the Parties.
- (g) Survival. Clauses 2, 4, 5, 6, 7(c) and 8 shall continue in full force in accordance with their terms, notwithstanding the expiration or termination of this Agreement for any reason.
- (h) Additional Terms and Conditions. Additional Terms and Conditions of this Agreement are set out in the Schedule.

## Schedule 1

### Purchaser

Name: Refer to the attached Sales Order  
Address:  
Company Registration No.:  
Addressee for communications:  
Email:

### Services

[Refer to the attached sales order]

### Term

Not Applicable

### Price

[Refer to the attached sales order]

### Deliverables

Written report to be sent by email from Supplier to Purchaser at its email address stated above, unless otherwise indicated in the sales order.

### Payment Schedule

[Refer to the attached sales order]

### Additional Terms and Conditions

1. The Purchaser shall, as and when requested by Supplier, provide all necessary instructions, information, specification, equipment, accessories and access to personnel and facilities which may from time to time be required to enable Supplier to meet its obligations under this Agreement. The Purchaser shall send company test reports, product specifications, catalogues, instruction manuals and any other information relating to the equipment to Supplier for the Services. If the Purchaser fails to supply the necessary accessories, information and data, a storage fee as listed in the published price list then prevailing, shall apply for the storage of the equipment. If the Purchaser fails to provide the information and accessories within one (1) month Supplier may dispose of the equipment at its discretion.
2. The Purchaser shall provide the instrument or equipment properly packaged and in good order, mark the instrument in permanent ink with a number or other distinguishing mark and provide the name, address and telephone number of the Purchaser including a technical contact person.
3. Upon receipt of the equipment, the equipment will be inspected physically and if found below certain standards or faulty, the Purchaser will be informed, and Supplier may thereupon refuse to accept the job. The Purchaser or his representative may be present at the time of inspection, failing which, Supplier's findings shall be final. No further work shall be carried out until the defects are rectified by the Purchaser.
4. Any reports provided shall contain only technical results. They are not and shall not be used by the Purchaser as a certificate of quality or an endorsement of any kind. Analysis and interpretation of results and professional opinions, and recommendations shall only be provided on express request by the Purchaser and payment of an additional fee.
5. No reference shall be made by Purchaser to Supplier or to the report or results furnished by Supplier in any document, advertisement or sales promotion.
6. Any equipment submitted by the Purchaser shall be calibrated according to published standards or any other approved standards as discussed and agreed specifically in writing between the Purchaser and Supplier. In the absence of any written instructions to the contrary, the Purchaser is deemed to have agreed and accepted the standard used by Supplier in the calibration of any equipment tested. Supplier shall state in the report the calibration method adopted for the equipment tested.
7. Purchaser is solely responsible for ensuring that the email address it provides is current and accurate. Supplier does not accept responsibility for any emails not received by Purchaser, or for any delay in the receipt or delivery of any emails from Purchaser.
8. In providing the calibration report, Supplier does not in any way imply the suitability of any equipment for its intended use. Purchaser shall be solely responsible in determining the suitability of any equipment, test or specimens for their intended use for Supplier's purposes.
9. The results of calibration performed by Supplier apply to the specific equipment at the time of testing during the performance of the Services. There is no indication or implication that these results are applicable to other similar items.
10. Any calibration report provided by Supplier does not indicate or imply that Supplier approves, recommends or endorses the manufacturers, the suppliers, or the users of the equipment or specimens referred to therein, or that Supplier, in any way, warrants the such equipment's performance at any time.

11. In addition to any right of lien to which Supplier may be entitled by law, Supplier shall be entitled to a general lien on all equipment of the Purchaser in Supplier's possession for the unpaid price of any goods or services sold or rendered to the Purchaser or any other moneys owing by the Purchaser to Supplier upon this or any other agreement.
12. Purchaser undertakes to collect all tested equipment within 4 weeks (or such other date notified by Supplier) from the date of Supplier's report. If the Purchaser fails to collect such equipment Supplier may charge a storage fee or such other charge as stated in the prevailing published price list. If the Purchaser requests Supplier to arrange for delivery of any equipment to the Purchaser's premises, Supplier may levy an administrative charge and the transportation service contract (and all costs and risks therein) shall be between Purchaser and the delivery service provider. Supplier shall not in any event have any liability for delivery of such equipment.