

Content of General Terms and Conditions (T&Cs)

- General Terms and Conditions for Equipment (P.2 to P.21)
- General Terms and Conditions for Service (P.22 to P.39)

CONTRACT FOR SUPPLY OF PRODUCTS (For Equipment)

This contract for supply of products (the “**Contract**”) is entered into and made effective as of _____ (“**Effective Date**”) between:

1. **Hong Kong Microelectronics Research and Development Institute Company Limited**, a company incorporated in Hong Kong, having its registered office at Unit 501-503 & 505, 5/F, 12W, 12 Science Park West Avenue, Hong Kong (“**MRDI**”); and
2. **[Legally Registered Name of Supplier]**, a company incorporated in [jurisdiction/location of incorporation] having its registered office at [Legally Registered Address of Company] (“**Supplier**”).

RECITAL

- A. MRDI issued the Invitation to Tender No. [Tender Reference Number] (the “**Tender Documents**”) on [Date of Tender Issue], inviting qualified suppliers to submit Tenders for the supply of “[Name/Title of Equipment/Products]” [and related services].
- B. The Supplier has submitted its Tender in accordance with the Tender Documents.
- B. Both parties agree to enter into this Contract in accordance with the terms and conditions of the Tender Documents and the provisions hereof.

IT IS HEREBY AGREED AS FOLLOWS: -

Section 1 – Definitions and Interpretation

- 1.1 In these Tender Documents, the following words and expressions shall have the respective meanings ascribed to them below unless the context otherwise requires:-

“Associate”	means in relation to any person: (a) a Relative or partner of that person; or (b) a company one or more of whose Directors is in common with one or more of the Directors of that person.
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“Associated Person”	means in relation to another person: (a) any person who has Control, directly or indirectly, over the other; (b) any person who is Controlled, directly or indirectly, by the other; or (c) any person who is Controlled by, or has Control over, a person as specified in item (a) or (b)
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above.

“Cap.”	means a Chapter of the Laws of Hong Kong.
“Company” or “MRDI”	means Hong Kong Microelectronics Research and Development Institute Company Limited, whose registered office is situated at Flat 501-5, 5 th Floor, Building 12W, Hong Kong Science Park, Shatin, New Territories, Hong Kong.
“Control”	means in relation to another person the power of a person to secure: (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; (b) by virtue of powers conferred by any constitution, articles of association, partnership or arrangement (whether legally enforceable or not) affecting that or any other person; or (c) by virtue of holding office as a Director in that or any other person; that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.
“Director”	means any person occupying the position of a director by whatever name called and includes a de facto or shadow director.
“Fee” or “Price”	means the fees and charges to be paid by the Company to the Supplier for the Products provided by the Supplier to the Company under the Contract.
“Force Majeure Event”	means, with respect to a party, an unforeseeable and supervening event outside of such party’s reasonable control which is not caused by the fault, omission or negligence of such party, including any flood, fire, lightning, earthquake, storm, explosion, meteor, government action, outbreak or continuation of pandemic, epidemic or infectious disease, accident, embargo, blockade, riot, any kind of war, acts of terrorism (which has direct impact on the performance of the duties and obligations of a party) or of the public enemy, power outage or acts of God.
“HK Dollar”, “HK\$”	means the Hong Kong Dollar, the lawful currency of Hong Kong.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Intellectual Rights”	Property means patents, copyrights, design rights, trademarks, service marks, trade names, domain names, database

rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wherever arising) whether now known or hereafter created and in each case whether registered or unregistered and including applications for the grant of any such rights.

“Negligence” has the same meaning as that assigned to it under the Control of Exemption Clauses Ordinance (Cap.71).

“Relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.

“Products” means the detailed description of goods to be supplied by the Supplier to the Company in accordance with the Contract.

“Protected Information” means all the contents of MRDI, including materials, data and information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of MRDI, the Price Schedule and all the materials, data and information which may come to the Supplier’s knowledge in connection with, incidental to or in the course of carrying out/ providing of the Products, recommendations, advice or tests made, given or undertaken by the Supplier in connection with the performance of its obligations hereunder, any other information and data which MRDI considers secret, confidential or commercially sensitive.

“Reference Number” means the [Tender Ref. No.] of this Tender.

“Specifications” means the technical description of Products contained in this Invitation to Tender or, as the context requires, in the Technical Proposal provided by a Supplier.

- 1.2 Capitalized terms used in this Contract, unless the context otherwise requires or otherwise defines, shall have the same meanings ascribed to them in Part I – Interpretation of the Tender Documents. The Tender Documents form an integral part of this Contract.

- 1.3 Unless the context otherwise requires, words importing the singular only include the plural and vice versa.
- 1.4 Unless the context otherwise requires, each gender includes all other genders.
- 1.5 Sections and clause headings to any provision in these Tender Documents are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of these Tender Documents.
- 1.6 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent amendment, order, regulation or instrument from time to time.
- 1.7 References to time and dates in these Tender Documents shall be construed as Hong Kong time and dates.
- 1.8 Reference to statute includes all subsidiary legislation made under the statute.
- 1.9 Words importing a person shall, where the context so requires or admits, include an individual, a firm, partnership, trust, corporation, government, governmental body, authority, agency, unincorporated body of persons or associations, corporations and any organizations having legal capacity.
- 1.10 Unless the context requires otherwise –
 - (a) any word or expression to which a specific meaning has been attached in any part of these Tender Documents shall bear such meaning whenever it may appear in the same and other parts of the Tender Documents; and
 - (b) any rule of construction set out in any part of these Tender Documents shall apply to other parts of the Tender Documents.
- 1.11 Unless otherwise provided, all payments in relation to the Tender shall be made in Hong Kong Dollars.
- 1.12 Where in these Tender Documents there is a reference to a clause, sub-clause, schedule, appendix or attachment by number or by letter, such reference shall be construed (unless the context otherwise requires) as a reference to the clause, sub-clause, schedule, appendix or attachment of that number or letter contained in the relevant part of these Tender Documents.
- 1.13 Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.
- 1.14 The words “include” and “including” shall be construed without limitation to the words following.

Section 2 – General Conditions of Contract

1. Contract Period

The Supplier shall provide the Products to MRDI commencing on [Date] until [Date]/ [the completion and/or the delivery, installation, and final acceptance of all the Products] ("Contract Period").

2. Products to be Provided

2.1 Without prejudice to any other provisions of this Contract, the Supplier shall, during the Contract Period, [description of the Products/ Equipment and pertinent particulars e.g. provide/ maintain and employ/ deliver/ install/ commission/ and/or ensure the satisfactory operation of the Products/ Equipment].

2.2 The Supplier shall, upon and subject to the terms and conditions of the Contract herein, [deliver/ install/ carry out/ and/or complete the Products] in accordance with the directions and to the reasonable satisfaction of MRDI, who may, from time to time, issue further details, and/or written directions with regard to the Products.

3. Price and Payment Terms

3.1 The Price and payment terms of the Products, including the respective timeline/ payment schedule of the Products, are more particularly described in Schedule 1 of this Contract.

3.2 No increase in the Price shall be made (whether on account of increased material, labour, transport costs, fluctuation in rates of exchange, or otherwise) without the prior written consent of MRDI.

3.3 The Supplier shall invoice MRDI in respect of the Products completed in accordance with the Payment Schedule stated in Schedule 1. The invoice shall state the Reference Number and necessary particulars, including what works/ portions of the Products are completed, the rate and/or the amount payable.

3.4 Subject to the performance of the Products in accordance with the terms and conditions of the Contract and to the satisfaction of MRDI, the Fees of the Products will be paid within thirty (30) working days after the relevant invoice is certified and acknowledged by MRDI.

3.5 The Supplier shall deliver all correspondence(s) concerning payments to the [[title of contact person re payment] (Attn: [name of contact person re payment]) at [address]], or to such other person at such address as specified by MRDI. MRDI shall not be held responsible for any delay in payment if invoices and correspondence are not so addressed.

4. Variation

4.1 Particulars of the Products as addressed under the Contract shall be those as laid down in Part IV – Schedule of Requirements under the Tender Documents. The Supplier shall not extend the scope of the Products beyond the requirements specified in Part IV – Schedule of Requirements except as directed in writing by MRDI. For the avoidance of doubt, MRDI may, subject to the provision hereinafter contained, at any time during the Contract Period by notice in writing, direct the Supplier to alter, amend, omit, add to, or otherwise vary any of the particulars on the Products and/or the Contract Period, and the Supplier shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in Part IV – Schedule of Requirements under the Tender Documents.

4.2 Where a variation has been made to the Contract on the price amount to be added to or deducted from the Products, that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable or such amount as determined by MRDI as reasonable in the circumstances with reference to and on the basis of the rates specified in the Price Schedule.

5. Delivery

5.1 The Products shall be delivered to a specific address (the “Delivery Address”) on or before (as the case may be) a specific date (the “Delivery Date”) during MRDI’s business hours, by such means as specified in Part IV – Schedule of Requirements or as requested by MRDI.

5.2 Not less than three (3) days prior to delivery, the Supplier shall provide to MRDI a notice in writing specifying (a) the proposed date and place of delivery; (b) the main title and Reference Number of the Contract; (c) a description of the Products to be delivered; (d) the quantity of the Products to be delivered; and (e) any other instructions or information required by MRDI in relation to the delivery of the Products.

5.3 A packing note quoting the Reference Number of the Contract must accompany each delivery or consignment of the Products and must be displayed prominently.

5.4 Without prejudice to the generality to any Paragraphs of this Section II, MRDI shall be entitled to reject any Products delivered which are not in accordance with the Tender Documents and/or the Contract, and shall not be deemed to have accepted any Products until MRDI has delivered to the Supplier a written notice confirming its acceptance of the Products.

5.5 Within thirty (30) days of the delivery of the Products at the Delivery Address, MRDI shall inspect and test the Products. Alternatively, MRDI may, at its option, require the Supplier to inspect and test the Products, in which case the Supplier shall do so (using such methodology and procedures MRDI may, in its sole and absolute discretion, determine), and submit to MRDI a report of such inspection and testing (in such form and with such contents as MRDI may require). Such report shall not be binding upon MRDI, who shall be entitled to reject the said report and either to

require the Supplier to repeat the inspection and testing or to undertake its own inspection and testing.

5.6 Following the inspection and testing referred to in Paragraph 5.5 above, MRDI shall notify the Supplier in writing in whether to accept the Products or not. Any such notice shall be without prejudice to any rights or remedies available to MRDI in respect of any latent defects which are not apparent because of such inspection and testing. Without prejudice to the generality to any of the Paragraphs of this Section II and to any other right or remedy to which MRDI may be entitled, if any Products are not supplied in accordance with the Contract, then MRDI shall, notwithstanding that some or all of the Products may have already been accepted by MRDI, be entitled (within the Warranty Period (as defined in Paragraph 6 below) or at any time up to six (6) months after delivery, whichever is the later) at its sole option, to (a) require the Supplier to repair the Products (to the satisfaction of MRDI) or supply replacement Products in accordance with the Contract within three (3) days after being notified by MRDI of its rejection of such Products; or (b) whether or not MRDI has previously required the Supplier to repair the Products or to supply any replacement Products, treat the Contract as discharged by the Supplier's breach, and require the Supplier to (whereupon the Supplier shall) collect the rejected Products and forthwith repay to MRDI any part of the Price which has been paid by MRDI to the Supplier in respect of the Products. If the Supplier does not collect such Products within a reasonable time of being notified by MRDI of its rejection of such Products, MRDI may dispose of such Products as MRDI thinks fit.

5.7 If the Products are not delivered on or before the Delivery Date then, without prejudice to any other right or remedy to which MRDI may be entitled, MRDI shall be entitled to deduct from the Price (by way of liquidated damages for delay) one percent (1%) of the Price for every day's delay, calculated from the agreed Delivery Date to the date upon which delivery actually takes place (both such days inclusive), up to a maximum of twenty percent (20%) of the Price.

5.8 The Supplier shall be responsible, at its own cost and expense, for preparing and obtaining from all relevant authorities (whether prior to or after shipment) all permits, consents, approvals, licences and other documents necessary to permit the Products to be lawfully transported and delivered to the Delivery Address.

6. Warranty Period, Maintenance and Training

6.1 The Supplier warrants that the Products will be free from defects in design, material, and workmanship for a period [as specified in Part IV – Schedule of Requirements or as agreed by the parties on or before the final acceptance of the Products] ("Warranty Period").

6.2 During the Warranty Period, the Supplier shall provide such services and take such actions as may be necessary to ensure that the Products are maintained in proper repair and good working order and in a condition so as to be fully functional and operative at all times, including sending its qualified technicians to the premises where the Products are situated in order to effect any necessary repairs or maintenance services ("Maintenance Services").

6.3 During the Warranty Period, MRDI shall be entitled to request the Supplier to provide Maintenance Services at any time during MRDI's normal business hours. Such requests shall be delivered to the Supplier in writing or by telephone, and upon receipt of such a request, the Supplier shall cause and procure that (a) its qualified technicians shall visit the premises where the relevant Product is situated at the times requested by MRDI; (b) its qualified technicians shall repair any and all defects, faults and/or malfunctions in or affecting the relevant Product within forty-eight (48) hours of the time when those qualified technicians first arrive at the relevant premises (or such other time period as may be agreed by MRDI); and (c) within seven (7) days of completing the Maintenance Services, the Supplier shall provide to MRDI a written service report specifying in reasonable detail the Maintenance Services provided.

6.4 MRDI shall be entitled to supervise and monitor all Maintenance Services provided by the Supplier or its technicians.

6.5 The Maintenance Services will be provided by the Supplier at its own cost and expense, unless such Maintenance Services are necessary as a result of, or in order to remedy any defect caused by, MRDI's negligence or misuse of the Products, in which case MRDI shall pay to the Supplier such reasonable fee as may be agreed between the parties (or in the absence of such agreement, the reasonable costs and expenses incurred by the Supplier in providing such Maintenance Services).

6.6 The Supplier shall, if requested by MRDI, enter into a separate written maintenance contract with MRDI in connection with the provision of Maintenance Services following the expiry of the Warranty Period, for such further period and on such payment terms as may be agreed between MRDI and the Supplier.

6.7 If required by MRDI, the Supplier shall provide to MRDI (or its personnel) such technical training and support in relation to the use and operation of the Products as MRDI may reasonably request.

6.8 The Supplier shall not charge MRDI for such technical training or support. All technical training shall take place at such times and at such locations as MRDI may reasonably request. Without limiting the generality of the foregoing, MRDI shall be entitled to request such technical training at any time prior to, and up to six (6) months after, inspection and delivery of the Products.

6.9 The Supplier shall provide MRDI (at no additional cost to MRDI) with one (1) or more copies of all technical information relating to the use, operation, maintenance, repair and servicing of the Products, including the service manuals, parts catalogues, engineering information, and any other information (written or oral) which MRDI may reasonably require ("Technical Information"). The Supplier shall, during the Warranty Period, update such Technical Information on a regular basis (at no additional cost to MRDI) so as to ensure that such Technical Information is and remains correct and up-to-date.

6.10 During the Warranty Period, the Supplier shall provide MRDI with telephone technical support at all times during the Supplier's normal business hours, and shall promptly answer all enquiries which MRDI may have regarding the use, operation,

maintenance, repair and servicing of the Products. Such telephone technical support shall be provided at no additional cost to MRDI.

7. Assignment and Sub-contracting

7.1 The Supplier shall not sub-contract, assign or otherwise transfer or dispose of the Contract or any part thereof or any rights interests and obligations hereunder without the prior written consent of MRDI.

7.2 If the Supplier wishes to subcontract any part of the Contract, the Supplier shall submit the proposed sub-contract to MRDI for approval and MRDI may determine the terms and conditions of the sub-contract. The Supplier shall deliver to MRDI a copy of the executed sub-contract so approved by MRDI within seven (7) days after the effective date of the sub- contract.

7.3 The Supplier shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Supplier shall be responsible for any and all of the acts, defaults omissions and neglect of any sub-contractors, its employees and agents.

8. Inspection and Rejection

8.1 MRDI shall be entitled at any time upon reasonable notice to the Supplier to inspect and test the Products during manufacture, processing, or storage at the premises of the Supplier or any third party prior to delivery. The Supplier shall provide all facilities and assistance reasonably required for such inspection and testing. If required by MRDI, the Supplier shall, at its own cost and in accordance with any Specifications, produce and submit pre-production samples of the Products or components for inspection and approval by MRDI.

8.2 Without prejudice to any rights or remedies available to MRDI and to any other provision of this Contract, if –

- (a) the Supplier fails to observe or perform any provision of this Contract; or
- (b) having inspected the Supplier's performance of the Products, MRDI is of the opinion that the Supplier has failed to perform any of the Products in accordance with the terms or conditions of the Contract.

MRDI may:

- (i) reject the Products provided by the Supplier;
- (ii) in the case of a failure that is capable of being remedied, by notice in writing to the Supplier, require the Supplier to rectify the failure; or
- (iii) withhold payment or any part thereof and, in the case of a failure that is capable of being remedied, until the Supplier has duly rectified the failure.

9. Non-exclusive Contract

Nothing in the Contract shall preclude MRDI from procuring any Products from any other person.

10. MRDI Premises

10.1 If necessary, the Supplier shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of the premises of MRDI as are necessary for the due discharge of the Supplier's obligations under the Contract.

10.2 The safety of any craft, vessel and vehicle used by the Supplier or its sub-Supplier and brought alongside or onto the premises of MRDI, as the case may be, shall be the responsibility of the Supplier, who shall indemnify MRDI in respect of any loss or damage to such premises of MRDI.

11. Suspension or Termination of Contract

11.1 MRDI may at any time suspend or terminate the Contract by giving the Supplier twenty-one (21) days' prior written notice.

11.2 Without prejudice to its accrued rights and actions against the Supplier, MRDI may terminate the Contract forthwith upon giving written notice to the Supplier if:

- (i) the Supplier commits a breach of any provision of the Contract which:
 - a. in the case of a breach of a term capable of being remedied, have not been remedied by the Supplier within fourteen (14) days or at a time stipulated by MRDI (whichever the earliest); or
 - b. is fundamental to the Contract;
- (ii) the Supplier shall pass a resolution or the court shall make an order for its liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if the Supplier is a partnership, shall have been dissolved or be put into receivership or have a bankruptcy order made against it or shall make an arrangement with or assignment in favour of its creditors;
- (iii) a receiver is appointed over any of the Supplier's assets or a distress or execution is levied or enforced upon any of the Supplier's chattels, properties or assets and is not discharged or stayed or in good faith contested by action within thirty (30) days thereafter; or
- (iv) the Supplier stops payment to its creditors generally or is unable to pay its respective debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or shall cease or threaten to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction).

12. Consequence of Suspension and Termination

12.1 In the event of suspension or early termination of the Contract for whatever reason, including pursuant to Paragraph 11 above, MRDI shall not be required to pay the Supplier any further payments referred to in Schedule 1. If any payment has been made in advance by MRDI to the Supplier covering in whole or in part a period after the effective date of suspension or early termination, the Supplier shall repay MRDI within seven (7) working days of the effective date of suspension or early termination the whole or the pro-rata amount of the payments (as applicable) paid by MRDI in advance. If the said advance payment is not repaid within the period specified, interest at the prevailing prime rate in Hong Kong Dollars of [The Hong Kong and Shanghai Banking Corporation Limited] shall accrue thereon and shall be payable by the Supplier to MRDI.

12.2 Without prejudice to any rights and remedies which MRDI has or may have against the Supplier (including such rights of action as shall have accrued to MRDI prior to the termination), if the Contract is terminated by MRDI:

- (i) the Supplier shall be liable for any amount in excess of the overall cost of the Contract incurred by MRDI in awarding, assigning and/or engaging another Supplier to complete the uncompleted Products;
- (ii) the Supplier shall further be liable to MRDI for any legal, professional or other costs and expenses reasonably incurred for or in pursuance of any provisions hereof;
- (iii) all rights and obligations of the parties under the Contract shall automatically terminate except for such rights of action as shall have accrued prior thereto and any obligation which expressly or by implication is intended to come into or continue in force on or after such termination;
- (iv) no compensation whatsoever shall be payable by MRDI to the Supplier as a result of suspension or early termination of the Contract. MRDI shall not be responsible for any loss or expenses suffered or incurred by the Supplier due to suspension or early termination of the Contract;
- (v) MRDI shall cease to have any further obligation under the Contract upon its termination, including without limitation the obligation to make any further payments.

12.3 The Supplier shall within fourteen (14) days of the date of suspension or termination of the Contract (as the case may be) compile and submit to MRDI a report of all relevant information, facts, data, findings and conclusions obtained or reached up to the effective date of suspension or termination.

13. Set-off

Where the Supplier has incurred any liability to MRDI, whether at law or in equity and whether such liability is liquidated or unliquidated, MRDI may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from MRDI to the Supplier under the Contract or any other contracts between MRDI and the Supplier.

14. Warranty and Undertaking

The Supplier warrants and undertakes to MRDI that:

- (a) the Products shall conform in all respects to the Specifications outlined in Part IV – Schedule of Requirements;
- (b) the Products shall be of merchantable quality, fit for their intended purpose, free from defects in design, material, and workmanship, and will comply with all statutory requirements and regulations;
- (c) the Products shall be performed and completed in an impartial, timely and diligent manner and that the Supplier and each of the personnel engaged by the Supplier to provide the Products (including the staff of the Supplier) shall have the necessary skills and experience to provide the Products and shall use all reasonable skills and exercise reasonable care and diligence in the provision of the Products and the discharge of all of their duties and obligations under the Contract;
- (d) the Supplier and each of its permitted sub-contractors and their respective personnel shall devote its time, attention and skills as may be necessary for the proper performance of its obligations under the Contract;
- (e) the Supplier shall comply with the reasonable requests of MRDI;
- (f) the materials used by the Supplier in performance of the Products will not subject MRDI or the Supplier to any claim for infringement of any proprietary rights or intellectual property rights of any third party;
- (g) the Products will be provided in accordance with MRDI's instructions, and up to the standards observed in the industry or in similar services;
- (h) it has the full capacity and authority and all necessary licences, permits and consents (including, where applicable and where its circumstances and procedures so requires, the consent of its parent company) to enter into and to perform its obligations under this Contract and any other documents to be entered into by it hereunder;
- (i) this Contract is executed by duly authorized representative(s) of the Supplier;
- (j) the Contract constitutes valid, binding and enforceable obligations of the Supplier in accordance with its terms;
- (k) the execution and delivery of this Contract and the performance by the Supplier of its obligations hereunder will not:
 - (i) result in any breach of, or any provision of the Memorandum or Articles of Association or any other constitutional documents of the Supplier;

- (ii) result in a breach of, or constitute a default under, any instrument, agreement or arrangement to which the Supplier is bound; or
- (iii) result in a breach of any order, judgment or decree or any court or governmental agency to which the Supplier is a party or by which the Supplier is bound;
- (l) all statements and representations made by the Supplier in relation to its Tender and this Contract prior to the date of this Contract are, to the best of its knowledge, information and belief, true and accurate;
- (m) the performance of this Contract shall not infringe any rights of any third party;
- (n) it shall comply with all applicable laws, enactments, orders, regulations, and other similar instrument in performing this Contract; and
- (o) the staff of the Supplier possesses the relevant qualifications and experience set out in Part IV – Schedule of Requirements.

15. Exclusion of Liability

15.1 Neither MRDI nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (i) any loss of or damage to any of the Supplier's property or that of its employees or agents howsoever caused (whether by any Negligence of MRDI or any of its employees or agents or otherwise); or
- (ii) any injury to or death of any of the Supplier's employees or agents save and except any such injury or death caused by the Negligence of the MRDI or any of its employees or agents.

15.2 For the avoidance of doubt, nothing in this Contract shall limit or exclude a party's liability for:

- (i) death or personal injury caused by its Negligence or the Negligence of its employees acting in the course of their employment;
- (ii) fraud of such party; or
- (iii) any other liability which cannot be limited or excluded by law.

16. Indemnity and Limitation of Liability

16.1 The Supplier shall indemnify and keep indemnified MRDI against (a) any and all claims (whether or not successful, compromised or settled), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against MRDI; and (b) all liabilities, losses, damages, costs, charges or

expenses (including all legal fees and other costs, charges and expenses which MRDI may pay or incur in disputing any such claim or defending any such action or proceedings instituted against MRDI), and which in any case arise directly or indirectly in connection with or out of, or which relate in any way to:

- (i) the performance or breach of any provisions of the Contract by the Supplier;
- (ii) the Negligence, recklessness, tortious acts or willful misconduct of the Supplier, or any of its employees, agents or permitted sub-contractors in the provision of the Products;
- (iii) any default, unauthorised act or omission of the Supplier, or any of its employees, agents or permitted sub-contractors; or
- (iv) the non-compliance by the Supplier, or any of its employees, agents or permitted sub-contractors with any applicable law, regulation, order or requirement of any government agency or authority in the provision of the Products.

16.2 Notwithstanding any other provisions, MRDI's aggregate liability to the Supplier shall not exceed the total amount of the Price paid by MRDI under the Contract. MRDI shall not be liable for any indirect, special, consequential, or punitive damages.

17. Non-solicitation

17.1 Except as otherwise agreed in writing, during the Contract Period and for six (6) months after the termination or expiration of the Contract, Supplier shall not solicit directly or indirectly any person employed (or who was employed within the six (6) months preceding its termination or expiration) by MRDI or any subsidiary, holding company or associated company of MRDI, who has been involved in the provision of the Products, except those employees who have been involved in a purely administrative or secretarial position.

17.2 For this Paragraph 18, the terms “subsidiary”, “holding company” and “group of companies” shall bear the meanings given by the Companies Ordinance (Cap.622) (save that a “company” shall include a company or body corporate validly formed and registered in any other jurisdiction other than Hong Kong) and “associated company” means, in respect of any person, any company of which that person shall beneficially own twenty percent (20%) or more of the issued share capital or in respect of which that person is entitled to appoint one or more Directors or, in relation to any company, any company which is a subsidiary of a holding company of that first mentioned company.

18. Claims and Insurance

18.1 The Supplier shall indemnify and keep MRDI fully and effectively indemnified against all losses and claims for death, injury or damage to any person or property whatsoever, which may arise out of or in consequence of the execution of

this Contract, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

18.2 The Supplier shall obtain and maintain at its own cost, in respect of the Contract:

(a) third party liability insurance with respect to legal liability in cases of death or personal injury or damage to or loss of any property of whatsoever nature and description arising in connection with the Contract and with no limit as to the number of events; and

(b) other insurance as may be required by law from time to time,

[in each case for the benefit and in the joint names of the Supplier and/or MRDI as owner and/or all others engaged to provide the work in connection with the Contract, and other interested parties engaged or otherwise involved in connection with the Contract].

19. Warning against Bribery

19.1 The offer of an advantage to any staff at MRDI with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Supplier or any of its officers (including Directors), employees or agents will render its Tender null and void.

19.2 The Supplier shall be liable for all expenses necessarily incurred by MRDI as a result of the termination of the Contract. The successful Supplier shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Products that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The successful Supplier shall also caution its officers (including Directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

20. Consent to Disclose

MRDI shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) without any further reference to the Supplier any information concerning the Contract including, the name and address of the Supplier, description of the Products and the Price of the Contract.

21. Publicity

The Supplier shall submit to MRDI all advertising or other publicity material relating to the Contract or the Products supplied or other work done in connection with the Contract wherein MRDI's name is mentioned or the language used from which a connection with MRDI can reasonably be inferred or implied. The Supplier shall not

publish or use any advertising or other publicity materials without the prior written consent of MRDI.

22. Severability

If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of the Contract shall not be affected or impaired thereby.

23. Relationship of the Parties

The Supplier enters into the Contract with MRDI as an independent Supplier only and shall not represent itself as an employee, servant, agent or partner of MRDI.

24. Contract Amendment

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made in writing and duly signed by both parties.

25. No Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power, or remedy shall be cumulative.

26. Vicarious Liability

Any act, default, neglect or omission of any staff, employees or agents of the Supplier shall be deemed to be the act, default, neglect or omission of the Supplier.

27. Conflict of Interest

27.1 The Supplier shall during the Contract Period and for [three (3) months] thereafter:

(a) ensure that it (including each and every employee of the Supplier) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective Associates and Associated Persons, shall not undertake any service, task, or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Supplier's duties or obligations under the Contract without the prior written approval of MRDI (which approval shall not be unreasonably refused or delayed); and

(b) forthwith notify MRDI in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial,

personal or other interests of the Supplier or any of the Supplier's sub-contractors or any of their respective employees, officers and agents deployed for the performance of the Contractor's obligations hereunder or their respective Associates or Associated Persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

27.2 The Supplier shall ensure that each of its Associate and Associated Person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of their obligations hereunder and their respective Associates and Associated Persons shall keep themselves informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Supplier's obligations under this Contract.

28. Undertaking to Protected Information and Intellectual Property Rights

- (a) The Supplier agrees and undertakes that all Protected Information:
 - (i) shall be kept confidential and shall not be divulged or communicated to any person or persons except with MRDI's express consent in writing;
 - (ii) shall not be used or allowed to be used for any purpose other than that of carrying out the provisions of this Contract; and
 - (iii) shall, upon completion or termination of the Products provision, immediately cease using the Protected Information and confirm to MRDI in writing within fourteen (14) days that it is no longer in possession of the Protected Information or any part thereof in any media or in any form and that the same has been permanently erased and/or duly destroyed.
- (b) The Supplier shall ensure that its staff shall take all precautionary measures to preserve the integrity of all Protected Information and to prevent any corruption, disclosure or loss of the same.
- (c) The Supplier hereby acknowledges and agrees that it shall have no rights whatsoever in respect of any Intellectual Property Rights owned by MRDI. All Specifications, data, and information provided by MRDI shall remain the exclusive property of MRDI. The Supplier shall not disclose or use any such information except as required for the purpose of the Contract.
- (d) Any disclosure or misuse of any Protected Information by any of the staff of the Supplier shall be deemed to be the default of the Supplier.
- (e) The obligations on the part of the Supplier under this Paragraph 29 shall continue in full force and effect notwithstanding of any termination or the expiry of this Contract.

(f) The Supplier agrees and undertakes to fully indemnify MRDI in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any claims in respect of the Protected Information which claims would not have arisen but for some act, omission, neglect or default on the part of the Supplier or any of its staff.

29. Exclusion of Application of Contracts (Right of Third Parties) Ordinance (Cap. 623)

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

30. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations due to a Force Majeure Event, provided that the affected party notifies the other as soon as practicable and takes all reasonable steps to mitigate the effects.

31. Entirety of Contract

The Contract and the documents referred to herein shall constitute the entire agreement concerning the subject matter hereof and shall supersede any and all prior representations, warranties and undertakings in respect of the subject matter herein.

32. Governing Law and Jurisdiction

This Contract is governed by the laws of Hong Kong, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

33. Cost and expenses

The Supplier shall, unless otherwise provided for expressly in this Contract, comply with the provisions of this Contract at its own cost and expenses.

34. Notices

Any notice to be given to the Supplier may be served (a) personally, or (b) by post addressed to the Supplier's last known place of business.

IN WITNESS WHEREOF, these duly authorized representatives of the parties hereby execute this Contract, including all the terms and conditions and schedule(s) which follow.

SIGNED by)
for and on behalf of)
Hong Kong Microelectronics)
Research and Development Institute)
Company Limited)
Date)

SIGNED by)
for and on behalf of)
[full name of Supplier])
Date)

Schedule 1 – Price and Payment Schedule

CONTRACT FOR SUPPLY OF SERVICES (For Service)

This contract for supply of services (the “**Contract**”) is entered into and made effective as of _____ (“**Effective Date**”) between:

3. **Hong Kong Microelectronics Research and Development Institute Company Limited**, a company incorporated in Hong Kong, having its registered office at Unit 501-503 & 505, 5/F, 12W, 12 Science Park West Avenue, Hong Kong (“**MRDI**”); and
4. **[Legally Registered Name of Supplier]**, a company incorporated in [jurisdiction/location of incorporation] having its registered office at [Legally Registered Address of Company] (“**Supplier**”).

RECITAL

- A. MRDI issued the Invitation to Tender No. [Tender Reference Number] (the “**Tender Documents**”) on [Date of Tender Issue], inviting qualified suppliers to submit Tenders for the supply of “[Name/Title of Services]”.
- B. The Supplier has submitted its Tender in accordance with the Tender Documents.
- B. Both parties agree to enter into this Contract in accordance with the terms and conditions of the Tender Documents and the provisions hereof.

IT IS HEREBY AGREED AS FOLLOWS: -

Section 1 – Definitions and Interpretation

- 1.15 In these Tender Documents, the following words and expressions shall have the respective meanings ascribed to them below unless the context otherwise requires:-

“Associate”	means in relation to any person: (a) a Relative or partner of that person; or (b) a company one or more of whose Directors is in common with one or more of the Directors of that person.
“Associated Person”	means in relation to another person: (a) any person who has Control, directly or indirectly, over the other; (b) any person who is Controlled, directly or indirectly, by the other; or (c) any person who is Controlled by, or has Control over, a person as specified in item (a) or (b) above.

“Cap.”	means a Chapter of the Laws of Hong Kong.
“Company” or “MRDI”	means Hong Kong Microelectronics Research and Development Institute Company Limited, whose registered office is situated at Flat 501-5, 5 th Floor, Building 12W, Hong Kong Science Park, Shatin, New Territories, Hong Kong.
“Control”	means in relation to another person the power of a person to secure: (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; (b) by virtue of powers conferred by any constitution, articles of association, partnership or arrangement (whether legally enforceable or not) affecting that or any other person; or (c) by virtue of holding office as a Director in that or any other person; that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.
“Deliverables”	means [all papers, documents, works of authorship, documents and materials in whatever medium or format (including those in electronic format)], developed, written, prepared, produced or created by the Supplier, its employees and/or its representatives in the course of performing the Services.
“Director”	means any person occupying the position of a director by whatever name called and includes a de facto or shadow director.
“Fee” or “Price”	means the fees and charges to be paid by the Company to the Supplier for the Services provided by the Supplier to the Company under the Contract.
“Force Majeure Event”	means, with respect to a party, an unforeseeable and supervening event outside of such party’s reasonable control which is not caused by the fault, omission or negligence of such party, including any flood, fire, lightning, earthquake, storm, explosion, meteor, government action, outbreak or continuation of pandemic, epidemic or infectious disease, accident, embargo, blockade, riot, any kind of war, acts of terrorism (which has direct impact on the performance of the duties and obligations of a party) or of the public enemy, power outage or acts of God.
“HK Dollar”, “HK\$”	means the Hong Kong Dollar, the lawful currency of Hong Kong.

“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Intellectual Property Rights”	means patents, copyrights, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wherever arising) whether now known or hereafter created and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Negligence”	has the same meaning as that assigned to it under the Control of Exemption Clauses Ordinance (Cap.71).
“Relative”	means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.
“Services”	means the detailed description of goods to be supplied by the Supplier to the Company in accordance with the Contract.
“Protected Information”	means all the contents of MRDI, including materials, data and information concerning the Services, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of MRDI, the Price Schedule and all the materials, data and information which may come to the Supplier’s knowledge in connection with, incidental to or in the course of carrying out/ providing of the Services, recommendations, advice or tests made, given or undertaken by the Supplier in connection with the performance of its obligations hereunder, any other information and data which MRDI considers secret, confidential or commercially sensitive.
“Reference Number”	means the [Tender Ref. No.] of this Tender.
“Specifications”	means the technical description of Services contained in this Invitation to Tender or, as the context requires, in the Technical Proposal provided by a Supplier.

- 1.16 Capitalized terms used in this Contract, unless the context otherwise requires or otherwise defines, shall have the same meanings ascribed to them in Part I – Interpretation of the Tender Documents. The Tender Documents form an integral part of this Contract.
- 1.17 Unless the context otherwise requires, words importing the singular only include the plural and vice versa.
- 1.18 Unless the context otherwise requires, each gender includes all other genders.
- 1.19 Sections and clause headings to any provision in these Tender Documents are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of these Tender Documents.
- 1.20 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent amendment, order, regulation or instrument from time to time.
- 1.21 References to time and dates in these Tender Documents shall be construed as Hong Kong time and dates.
- 1.22 Reference to statute includes all subsidiary legislation made under the statute.
- 1.23 Words importing a person shall, where the context so requires or admits, include an individual, a firm, partnership, trust, corporation, government, governmental body, authority, agency, unincorporated body of persons or associations, corporations and any organizations having legal capacity.
- 1.24 Unless the context requires otherwise –
 - (a) any word or expression to which a specific meaning has been attached in any part of these Tender Documents shall bear such meaning whenever it may appear in the same and other parts of the Tender Documents; and
 - (b) any rule of construction set out in any part of these Tender Documents shall apply to other parts of the Tender Documents.
- 1.25 Unless otherwise provided, all payments in relation to the Tender shall be made in Hong Kong Dollars.
- 1.26 Where in these Tender Documents there is a reference to a clause, sub-clause, schedule, appendix or attachment by number or by letter, such reference shall be construed (unless the context otherwise requires) as a reference to the clause, sub-clause, schedule, appendix or attachment of that number or letter contained in the relevant part of these Tender Documents.
- 1.27 Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any

positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.

- 1.28 The words “include” and “including” shall be construed without limitation to the words following.

Section 2 – General Conditions of Contract

1. Contract Period

The Supplier shall provide the Services to MRDI commencing on [Date] until [Date]/ [the completion of all the Services] ("Contract Period").

[During the Contract Period, the Supplier shall provide Deliverables as specified and address comments from MRDI arising out of the Services.]

2. Services to be Provided

2.1 Without prejudice to any other provisions of this Contract, the Supplier shall, during the Contract Period, [description of the Services and pertinent particulars e.g. provide/ maintain and employ the pertinent staff to carry out the Services as set out in Part IV – Schedule of Requirements of Tender Documents].

2.2 The Supplier shall, upon and subject to the terms and conditions of the Contract herein, [carry out/ and/or complete the Services] in accordance with the directions and to the reasonable satisfaction of MRDI, who may, from time to time, issue further details, and/or written directions with regard to the Services.

3. Price and Payment Terms

3.1 The Price and payment terms of the Services, including the respective timeline/ payment schedule of the Services, are more particularly described in Schedule 1 of this Contract.

3.2 No increase in the Price shall be made (whether on account of increased material, labour, transport costs, fluctuation in rates of exchange, or otherwise) without the prior written consent of MRDI.

3.3 The Supplier shall invoice MRDI in respect of the Services completed in accordance with the Payment Schedule stated in Schedule 1. The invoice shall state the Reference Number and necessary particulars, including what works/ portions of the Services are completed, the rate and/or the amount payable.

3.4 Subject to the performance of the Services in accordance with the terms and conditions of the Contract and to the satisfaction of MRDI, the Fees of the Services will be paid within thirty (30) working days after the relevant invoice is certified and acknowledged by MRDI.

3.5 The Supplier shall deliver all correspondence(s) concerning payments to the [[title of contact person re payment] (Attn: [name of contact person re payment]) at [address]], or to such other person at such address as specified by MRDI. MRDI shall not be held responsible for any delay in payment if invoices and correspondence are not so addressed.

4. Variation

4.1 Particulars of the Services as addressed under the Contract shall be those as laid down in Part IV – Schedule of Requirements under the Tender Documents. The Supplier shall not extend the scope of the Services beyond the requirements specified in Part IV – Schedule of Requirements except as directed in writing by MRDI. For the avoidance of doubt, MRDI may, subject to the provision hereinafter contained, at any time during the Contract Period by notice in writing, direct the Supplier to alter, amend, omit, add to, or otherwise vary any of the particulars on the Services and/or the Contract Period, and the Supplier shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in Part IV – Schedule of Requirements under the Tender Documents.

4.2 Where a variation has been made to the Contract on the price amount to be added to or deducted from the Services, that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable or such amount as determined by MRDI as reasonable in the circumstances with reference to and on the basis of the rates specified in the Price Schedule.

5. Supplier's Staff

5.1 If required by MRDI, the Services shall be performed by the personnel of the Supplier as approved by MRDI from time to time (whether prior to or after the commencement of the Services) (the "Supplier's Personnel"). Where any Supplier's Personnel are specifically assigned to provide the Services, the Supplier shall not alter or change such Supplier's Personnel without the prior written approval of MRDI.

5.2 If MRDI approves of or requires a change to the Supplier's Personnel, pursuant to Paragraph 5.1 above, the Supplier shall submit to MRDI the name of the substitute Supplier's Personnel and such other information (including the up-to-date curriculum vitae of the proposed substitute Supplier's Personnel showing the prior experience and qualification) as MRDI may reasonably require of any proposed substitute and shall permit MRDI to interview any proposed substitute. MRDI is entitled to reject any proposed substitute, in which case the Supplier shall as soon as reasonably possible submit to MRDI further names (and such other information as MRDI may reasonably require) of the proposed substitutes until a substitute is accepted by MRDI.

5.3 MRDI reserves the right to demand the replacement of any Supplier's Personnel at any time without notice if in the reasonable opinion of MRDI, the performance or conduct of such Supplier's Personnel is or has been unsatisfactory or constitutes a breach of the Contract, in which case the Supplier shall promptly remove the relevant Supplier's Personnel from MRDI's premises where applicable and, where

required, provide replacement Supplier's Personnel in accordance with the above Paragraph 5.2.

6. MRDI's Discretionary Assistance and Delivery of Services and/or Deliverables

6.1 MRDI shall, where appropriate and to the extent reasonably available, provide such reasonable assistance to the Supplier as MRDI considers necessary to enable the Supplier to provide the Services and/or Deliverables. MRDI shall, where appropriate, provide the Supplier with access to such locations within MRDI's premises as MRDI considers appropriate, subject to security limitations notified to the Supplier in advance.

6.2 After the delivery of the relevant Services and/or Deliverables by the Supplier to MRDI, MRDI shall, within fourteen (14) days of the relevant delivery, issue to the Supplier a written confirmation of delivery of the relevant Services and/or Deliverables. The issue of such confirmation of delivery shall not prejudice any rights and remedies (including MRDI's rights of rejection of any or all of the Services and/or Deliverables) that MRDI may have in relation to any of such Services and/or Deliverables.

6.3 If the Services and/or Deliverables provided by the Supplier fail to meet the relevant Specifications and/or Acceptance Criteria, MRDI shall issue a notice of non-compliance ("Non-compliance Notice") to the Supplier as soon as reasonably practicable setting out the particulars of non-compliance.

Upon the receipt of such Non-compliance Notice, the Supplier shall, without prejudice to any other rights and remedies that MRDI may have under the Contract or otherwise, bear the costs and expenses to:

- (a) promptly arrange for all additional resources necessary to remedy any non-conforming Services and/or Deliverables at no additional charge to MRDI;
- (b) promptly rectify and remedy at no additional charge to MRDI any non-conforming Services and/or Deliverables; and
- (c) promptly (in no event longer than fourteen (14) days of the relevant Non-compliance Notice) re-perform the Services and re-deliver the Deliverables that meet the relevant Specifications and/or Acceptance Criteria.

6.4 If the Supplier fails to comply with Paragraph 6.3 above, MRDI shall be entitled to terminate the Contract (in whole or in part) and resort to such other rights and remedies that MRDI may have under the Contract, at law or in equity (including withholding of the payment of Fees to the Supplier).

6.5 If the Contract provides for the passing of title in the Deliverables by the Supplier to MRDI, the legal and beneficial ownership and title in such Deliverables (including all Intellectual Property Rights relating thereto) shall be passed by the Supplier to MRDI free and clear of all liens, claims, mortgages, charges and any other form of encumbrance, contractual rights and third party rights or interests whatsoever

at such time when MRDI has paid the Supplier for such Deliverables in accordance with the terms of the Contract.

6.6 The risk of loss of or damage to the Deliverables shall, upon delivery by the Supplier in accordance with the terms of the Contract, be passed to MRDI who shall have and/or be deemed to have the care, custody, and control of the same.

6.7 If the Services and/or Deliverables provided by the Supplier satisfy the Specifications and/or Acceptance Criteria, MRDI shall issue a written confirmation (aside from the written confirmation on delivery as described in Paragraph 6.1 above) in respect of the relevant Services and/or Deliverables as soon as reasonably practicable.

7. Assignment and Sub-contracting

7.1 The Supplier shall not sub-contract, assign or otherwise transfer or dispose of the Contract or any part thereof or any rights interests and obligations hereunder without the prior written consent of MRDI.

7.2 If the Supplier wishes to subcontract any part of the Contract, the Supplier shall submit the proposed sub-contract to MRDI for approval and MRDI may determine the terms and conditions of the sub-contract. The Supplier shall deliver to MRDI a copy of the executed sub-contract so approved by MRDI within seven (7) days after the effective date of the sub- contract.

7.3 The Supplier shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Supplier shall be responsible for any and all of the acts, defaults omissions and neglect of any sub-contractors, its employees and agents.

8. Supplier's Failure to Perform the Contract

8.1 Without prejudice to any rights or remedies available to MRDI and to any other provision of this Contract, if the Supplier fails to observe or perform any provision of this Contract, MRDI may:

- (i) reject the Services provided by the Supplier;
- (ii) in the case of a failure that is capable of being remedied, by notice in writing to the Supplier, require the Supplier to rectify the failure; or
- (iii) withhold payment or any part thereof and, in the case of a failure that is capable of being remedied, until the Supplier has duly rectified the failure.

9. Non-exclusive Contract

Nothing in the Contract shall preclude MRDI from procuring any Services from any other person.

10. MRDI Premises

10.1 If necessary, the Supplier shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of the premises of MRDI as are necessary for the due discharge of the Supplier's obligations under the Contract.

10.2 The safety of any craft, vessel and vehicle used by the Supplier or its sub-Supplier and brought alongside or onto the premises of MRDI, as the case may be, shall be the responsibility of the Supplier, who shall indemnify MRDI in respect of any loss or damage to such premises of MRDI.

11. Suspension or Termination of Contract

11.1 MRDI may at any time suspend or terminate the Contract by giving the Supplier twenty-one (21) days' prior written notice.

11.2 Without prejudice to its accrued rights and actions against the Supplier, MRDI may terminate the Contract forthwith upon giving written notice to the Supplier if:

- (v) the Supplier commits a breach of any provision of the Contract which:
 - a. in the case of a breach of a term capable of being remedied, have not been remedied by the Supplier within fourteen (14) days or at a time stipulated by MRDI (whichever the earliest); or
 - b. is fundamental to the Contract;
- (vi) the Supplier shall pass a resolution or the court shall make an order for its liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if the Supplier is a partnership, shall have been dissolved or be put into receivership or have a bankruptcy order made against it or shall make an arrangement with or assignment in favour of its creditors;
- (vii) a receiver is appointed over any of the Supplier's assets or a distress or execution is levied or enforced upon any of the Supplier's chattels, properties or assets and is not discharged or stayed or in good faith contested by action within thirty (30) days thereafter; or
- (viii) the Supplier stops payment to its creditors generally or is unable to pay its respective debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or shall cease or threaten to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction).

12. Consequence of Suspension and Termination

12.1 In the event of suspension or early termination of the Contract for whatever reason, including pursuant to Paragraph 11 above, MRDI shall not be required to pay the Supplier any further payments referred to in Schedule 1. If any payment has been made in advance by MRDI to the Supplier covering in whole or in part a period after the effective date of suspension or early termination, the Supplier shall repay MRDI within seven (7) working days of the effective date of suspension or early termination

the whole or the pro-rata amount of the payments (as applicable) paid by MRDI in advance. If the said advance payment is not repaid within the period specified, interest at the prevailing prime rate in Hong Kong Dollars of [The Hong Kong and Shanghai Banking Corporation Limited] shall accrue thereon and shall be payable by the Supplier to MRDI.

12.2 Without prejudice to any rights and remedies which MRDI has or may have against the Supplier (including such rights of action as shall have accrued to MRDI prior to the termination), if the Contract is terminated by MRDI:

- (vi) the Supplier shall be liable for any amount in excess of the overall cost of the Contract incurred by MRDI in awarding, assigning and/or engaging another Supplier to complete the uncompleted Services;
- (vii) the Supplier shall further be liable to MRDI for any legal, professional or other costs and expenses reasonably incurred for or in pursuance of any provisions hereof;
- (viii) all rights and obligations of the parties under the Contract shall automatically terminate except for such rights of action as shall have accrued prior thereto and any obligation which expressly or by implication is intended to come into or continue in force on or after such termination;
- (ix) no compensation whatsoever shall be payable by MRDI to the Supplier as a result of suspension or early termination of the Contract. MRDI shall not be responsible for any loss or expenses suffered or incurred by the Supplier due to suspension or early termination of the Contract;
- (x) MRDI shall cease to have any further obligation under the Contract upon its termination, including without limitation the obligation to make any further payments.

12.3 The Supplier shall within fourteen (14) days of the date of suspension or termination of the Contract (as the case may be) compile and submit to MRDI a report of all relevant information, facts, data, findings and conclusions obtained or reached up to the effective date of suspension or termination.

13. Set-off

Where the Supplier has incurred any liability to MRDI, whether at law or in equity and whether such liability is liquidated or unliquidated, MRDI may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from MRDI to the Supplier under the Contract or any other contracts between MRDI and the Supplier.

14. Warranty and Undertaking

The Supplier warrants and undertakes to MRDI that:

- (a) the Services shall be performed and completed in an impartial, timely and diligent manner and that the Supplier and each of the personnel engaged by the Supplier to provide the Services (including the staff of the Supplier) shall have the necessary skills and experience to provide the Services and shall use all reasonable skills and exercise reasonable care and diligence in the provision of the Services and the discharge of all of their duties and obligations under the Contract;
- (b) the Supplier and each of its permitted sub-contractors and their respective personnel shall devote its time, attention and skills as may be necessary for the proper performance of its obligations under the Contract;
- (c) the Supplier shall comply with the reasonable requests of MRDI;
- (d) the materials used by the Supplier in performance of the Services will not subject MRDI or the Supplier to any claim for infringement of any proprietary rights or intellectual property rights of any third party;
- (e) the Services will be provided in accordance with MRDI's instructions, and up to the standards observed in the industry or in similar services;
- (f) it has the full capacity and authority and all necessary licences, permits and consents (including, where applicable and where its circumstances and procedures so requires, the consent of its parent company) to enter into and to perform its obligations under this Contract and any other documents to be entered into by it hereunder;
- (g) this Contract is executed by duly authorized representative(s) of the Supplier;
- (h) the Contract constitutes valid, binding and enforceable obligations of the Supplier in accordance with its terms;
- (i) the execution and delivery of this Contract and the performance by the Supplier of its obligations hereunder will not:
 - (iv) result in any breach of, or any provision of the Memorandum or Articles of Association or any other constitutional documents of the Supplier;
 - (v) result in a breach of, or constitute a default under, any instrument, agreement or arrangement to which the Supplier is bound; or
 - (vi) result in a breach of any order, judgment or decree or any court or governmental agency to which the Supplier is a party or by which the Supplier is bound;
- (j) all statements and representations made by the Supplier in relation to its Tender and this Contract prior to the date of this Contract are, to the best of its knowledge, information and belief, true and accurate;
- (k) the performance of this Contract shall not infringe any rights of any third party;

- (l) it shall comply with all applicable laws, enactments, orders, regulations, and other similar instrument in performing this Contract; and
- (m) the staff of the Supplier possesses the relevant qualifications and experience set out in Part IV – Schedule of Requirements.

15. Exclusion of Liability

15.1 Neither MRDI nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (iii) any loss of or damage to any of the Supplier's property or that of its employees or agents howsoever caused (whether by any Negligence of MRDI or any of its employees or agents or otherwise); or
- (iv) any injury to or death of any of the Supplier's employees or agents save and except any such injury or death caused by the Negligence of the MRDI or any of its employees or agents.

15.2 For the avoidance of doubt, nothing in this Contract shall limit or exclude a party's liability for:

- (iv) death or personal injury caused by its Negligence or the Negligence of its employees acting in the course of their employment;
- (v) fraud of such party; or
- (vi) any other liability which cannot be limited or excluded by law.

16. Indemnity and Limitation of Liability

16.1 The Supplier shall indemnify and keep indemnified MRDI against (a) any and all claims (whether or not successful, compromised or settled), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against MRDI; and (b) all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other costs, charges and expenses which MRDI may pay or incur in disputing any such claim or defending any such action or proceedings instituted against MRDI), and which in any case arise directly or indirectly in connection with or out of, or which relate in any way to:

- (v) the performance or breach of any provisions of the Contract by the Supplier;
- (vi) the Negligence, recklessness, tortious acts or willful misconduct of the Supplier, or any of its employees, agents or permitted sub-contractors in the provision of the Services;

- (vii) any default, unauthorised act or omission of the Supplier, or any of its employees, agents or permitted sub-contractors; or
- (viii) the non-compliance by the Supplier, or any of its employees, agents or permitted sub-contractors with any applicable law, regulation, order or requirement of any government agency or authority in the provision of the Services.

16.2 Notwithstanding any other provisions, MRDI's aggregate liability to the Supplier shall not exceed the total amount of the Price paid by MRDI under the Contract. MRDI shall not be liable for any indirect, special, consequential, or punitive damages.

17. Non-solicitation

17.1 Except as otherwise agreed in writing, during the Contract Period and for six (6) months after the termination or expiration of the Contract, Supplier shall not solicit directly or indirectly any person employed (or who was employed within the six (6) months preceding its termination or expiration) by MRDI or any subsidiary, holding company or associated company of MRDI, who has been involved in the provision of the Services, except those employees who have been involved in a purely administrative or secretarial position.

17.2 For this Paragraph 18, the terms “subsidiary”, “holding company” and “group of companies” shall bear the meanings given by the Companies Ordinance (Cap.622) (save that a “company” shall include a company or body corporate validly formed and registered in any other jurisdiction other than Hong Kong) and “associated company” means, in respect of any person, any company of which that person shall beneficially own twenty percent (20%) or more of the issued share capital or in respect of which that person is entitled to appoint one or more Directors or, in relation to any company, any company which is a subsidiary of a holding company of that first mentioned company.

18. Claims and Insurance

18.1 The Supplier shall indemnify and keep MRDI fully and effectively indemnified against all losses and claims for death, injury or damage to any person or property whatsoever, which may arise out of or in consequence of the execution of this Contract, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

18.2 The Supplier shall obtain and maintain at its own cost, in respect of the Contract:

- (a) third party liability insurance with respect to legal liability in cases of death or personal injury or damage to or loss of any property of whatsoever nature and description arising in connection with the Contract and with no limit as to the number of events; and
- (b) other insurance as may be required by law from time to time,

[in each case for the benefit and in the joint names of the Supplier and/or MRDI as owner and/or all others engaged to provide the work in connection with the Contract, and other interested parties engaged or otherwise involved in connection with the Contract].

19. Warning against Bribery

19.1 The offer of an advantage to any staff at MRDI with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Supplier or any of its officers (including Directors), employees or agents will render its Tender null and void.

19.2 The Supplier shall be liable for all expenses necessarily incurred by MRDI as a result of the termination of the Contract. The successful Supplier shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The successful Supplier shall also caution its officers (including Directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

20. Consent to Disclose

MRDI shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) without any further reference to the Supplier any information concerning the Contract including, the name and address of the Supplier, description of the Services and the Price of the Contract.

21. Publicity

The Supplier shall submit to MRDI all advertising or other publicity material relating to the Contract or the Services supplied or other work done in connection with the Contract wherein MRDI's name is mentioned or the language used from which a connection with MRDI can reasonably be inferred or implied. The Supplier shall not publish or use any advertising or other publicity materials without the prior written consent of MRDI.

22. Severability

If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of the Contract shall not be affected or impaired thereby.

23. Relationship of the Parties

The Supplier enters into the Contract with MRDI as an independent Supplier only and shall not represent itself as an employee, servant, agent or partner of MRDI.

24. Contract Amendment

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made in writing and duly signed by both parties.

25. No Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power, or remedy shall be cumulative.

26. Vicarious Liability

Any act, default, neglect or omission of any staff, employees or agents of the Supplier shall be deemed to be the act, default, neglect or omission of the Supplier.

27. Conflict of Interest

27.1 The Supplier shall during the Contract Period and for [three (3) months] thereafter:

(a) ensure that it (including each and every employee of the Supplier) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective Associates and Associated Persons, shall not undertake any service, task, or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Supplier's duties or obligations under the Contract without the prior written approval of MRDI (which approval shall not be unreasonably refused or delayed); and

(b) forthwith notify MRDI in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Supplier or any of the Supplier's sub-contractors or any of their respective employees, officers and agents deployed for the performance of the Contractor's obligations hereunder or their respective Associates or Associated Persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

27.2 The Supplier shall ensure that each of its Associate and Associated Person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of their obligations hereunder and their respective Associates and Associated Persons shall keep themselves informed regularly of all facts which may reasonably be considered to give rise to a situation in which the

financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Supplier's obligations under this Contract.

28. Undertaking to Protected Information and Intellectual Property Rights

- (a) The Supplier agrees and undertakes that all Protected Information:
 - (iv) shall be kept confidential and shall not be divulged or communicated to any person or persons except with MRDI's express consent in writing;
 - (v) shall not be used or allowed to be used for any purpose other than that of carrying out the provisions of this Contract; and
 - (vi) shall, upon completion or termination of the Services provision, immediately cease using the Protected Information and confirm to MRDI in writing within fourteen (14) days that it is no longer in possession of the Protected Information or any part thereof in any media or in any form and that the same has been permanently erased and/or duly destroyed.
- (b) The Supplier shall ensure that its staff shall take all precautionary measures to preserve the integrity of all Protected Information and to prevent any corruption, disclosure or loss of the same.
- (c) The Supplier hereby acknowledges and agrees that it shall have no rights whatsoever in respect of any Intellectual Property Rights owned by MRDI. All Specifications, data, and information provided by MRDI shall remain the exclusive property of MRDI. The Supplier shall not disclose or use any such information except as required for the purpose of the Contract.
- (d) Any disclosure or misuse of any Protected Information by any of the staff of the Supplier shall be deemed to be the default of the Supplier.
- (e) The obligations on the part of the Supplier under this Paragraph 29 shall continue in full force and effect notwithstanding of any termination or the expiry of this Contract.
- (f) The Supplier agrees and undertakes to fully indemnify MRDI in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any claims in respect of the Protected Information which claims would not have arisen but for some act, omission, neglect or default on the part of the Supplier or any of its staff.

29. Exclusion of Application of Contracts (Right of Third Parties) Ordinance (Cap. 623)

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

30. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations due to a Force Majeure Event, provided that the affected party notifies the other as soon as practicable and takes all reasonable steps to mitigate the effects.

31. Entirety of Contract

The Contract and the documents referred to herein shall constitute the entire agreement concerning the subject matter hereof and shall supersede any and all prior representations, warranties and undertakings in respect of the subject matter herein.

32. Governing Law and Jurisdiction

This Contract is governed by the laws of Hong Kong, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

33. Cost and expenses

The Supplier shall, unless otherwise provided for expressly in this Contract, comply with the provisions of this Contract at its own cost and expenses.

34. Notices

Any notice to be given to the Supplier may be served (a) personally, or (b) by post addressed to the Supplier's last known place of business.

IN WITNESS WHEREOF, these duly authorized representatives of the parties hereby execute this Contract, including all the terms and conditions and schedule(s) which follow.

SIGNED by)
for and on behalf of)
Hong Kong Microelectronics)
Research and Development Institute)
Company Limited)
Date)

SIGNED by)
for and on behalf of)
[full name of Supplier])
Date)

Schedule 1 – Price and Payment Schedule