



**HONG KONG SCIENCE AND TECHNOLOGY
PARKS CORPORATION**

**The Service Terms and Conditions
of
Medical Device Testing Laboratory
(MDTL)**

Definitions

APPLICABLE LAWS	All laws (including laws relating to anti-bribery and anti-corruption), statutes, regulations, decisions, rulings, sanctions, governmental and regulatory policies and/or mandatory codes of practice which may from time to time be in force anywhere in the world and relevant to any rights and/or obligations under and/or the performance of the SERVICE(S).
MDTL	HKSTP provides SERVICE(S) through The Medical Device Testing Laboratory (“MDTL”). MDTL is funded, owned and operated by HKSTP.
CLIENT	A company or entity receiving the SERVICE(S) which is subject to HKSTP’s approval at its absolute discretion. .
CONFIDENTIAL INFORMATION	All information of a confidential nature or which would be deemed confidential by a reasonable business person or not available to the general public (however recorded and whether marked as confidential or not) belonging to a party which is disclosed to or received by the other party, whether before or after the date of QUOTATION , directly or indirectly, in connection with the subject matter of the TERMS, including all provisions of the TERMS, confidential information and know-how relating to the SERVICE(S), SAMPLE(S) and/or DELIVERABLE(S) and any financial, technical, operational, commercial, employee, management and other information and/or data of whatever kind (including without limitation all information relating to trade secrets, operations, processes, plans, intentions, developments, product information, know-how, designs, transactions, affairs and/or business) of the disclosing party and/or its customers, CLIENT, suppliers and/or the parties’ associates.
CLIENT SUPPORT	The representative(s) of HKSTP providing assistance and advice to CLIENT.
DELIVERABLE(S)	Measured result, report of testing, report of consultancy, and PROTOTYPE(S) to be created, developed and/or acquired by or on behalf of HKSTP specifically for the CLIENT in the course of providing the SERVICE(S).
EQUIPMENT	Including, but not limited to, measuring instruments, software, measurement standards, reference materials, reference data, reagents, consumables or auxiliary apparatus.
HKSTP	Hong Kong Science and Technology Parks Corporation.

ITEM(S)	Any objects utilized by HKSTP to provide the SERVICE(S) (including without limitation any computers, servers, EQUIPMENT, tools, software, and/or facilities).
LOSS	All costs, liabilities, damages, fines, and/or penalties (including all interest and reasonable legal and other professional fees, costs and expenses) of whatsoever nature or any kind and whether or not the same arise during or after the duration of the SERVICE(s).
PREMISES	Any physical location from which the SERVICE(S) are provided under the HKSTP control
PROTOTYPE(S)	Test fixture to be created in the SERVICE(S)
QUOTATION	A formal document setting out the cost for a particular SERVICE(S)
SAMPLE(S)	Test subject that are provided by the CLIENT for the purpose of providing the SERVICE(S).
SERVICE(S)	The work provided by HKSTP includes, but not limited to, medical device testing and related acts.
SPECIFICATION(S)	Any documents, materials, assistance, data and/or other information required to be provided by the CLIENT to HKSTP for the proper provision of the SERVICE(S) in accordance with the TERMS.
TERMS	The terms and conditions set out herein and any amendments made by HKSTP from time to time in its absolute discretion.

Terms and Conditions

1. Service(s)

- 1.1. HKSTP will provide the SERVICE(S) on an “as-available” and “as-is” basis..
- 1.2. Subject to HKSTP’s approval, the CLIENT shall only be entitled to enjoy the SERVICE(S) if the CLIENT has submitted a request for SERVICE(S) in advance by contacting CLIENT SUPPORT or via mail: mdtl@hkstp.org
- 1.3. Confirmation of any request for SERVICE(S) is subjected to HKSTP’s absolute discretion and HKSTP does not warrant SERVICE(S) can be provided in accordance with any CLIENT’s request. If HKSTP accepts a request for SERVICE(S), the request itself and the SERVICE(S) provided thereunder shall be governed by the TERMS. Without prejudice of the generality of other provisions herein, each CLIENT: (i) acknowledges that they fully understand the TERMS; (ii) that once HKSTP has confirmed acceptance of its request for SERVICE(S) it agrees to be fully and unconditionally be bound by the TERMS.
- 1.4. Any confirmed request of SERVICE(S) is not transferable. CLIENT shall not transfer or sub-license any of the confirmed request of SERVICE(S) to any other entity at any time.
- 1.5. The CLIENT acknowledges and agrees that the DELIVERABLE(S) will be influenced by the quality of SAMPLE(S) and without prejudice to the generality of other provisions of the TERMS, HKSTP shall not be responsible for any influence on the DELIVERABLE(S) by the quality of SAMPLE(S).
- 1.6. The CLIENT acknowledges that PREMISES and ITEM(S) are, and shall always remain, the property of HKSTP and that the CLIENT has no proprietary or other interest in any of the same. The CLIENT shall have no right to license, sub-license or distribute any of the PREMISES and/or ITEM(S).

2. Client Responsibilities

- 2.1. The CLIENT shall, at its own expense, provide SPECIFICATION(S) and committed SAMPLE(S) to HKSTP in a timely manner to enable HKSTP to carry out its obligations under the TERMS. The CLIENT hereby represents, warrants and undertakes to HKSTP that the SPECIFICATION(S) and SAMPLE(S) provided to HKSTP shall be complete, accurate and true in all material respects.
- 2.2. The CLIENT shall comply with all applicable HKSTP Premises regulations and the latest SHE Handbook (<https://ehs.hkstp.org/book/3>) enforced by HKSTP from time to time.
- 2.3. Without prejudice to the generality of the foregoing, HKSTP reserves the right to claim CLIENT for any LOSS or damage of EQUIPMENT and ITEM(S) of PREMISES caused by CLIENT.

3. Cancellation and Termination of the Services

- 3.1. The CLIENT is required to give at least one day's notice, from the date of confirmed start date of SERVICE(S) as agreed between HKSTP and the CLIENT, for the cancellation of any SERVICE(S). If the CLIENT cancels any of its confirmed SERVICE(S) requests without serving the required (1) working days advance notice to HKSTP, the CLIENT shall pay HKSTP the full fees for the reserved SERVICE(S) or any lesser amount specified by HKSTP and HKSTP shall reserve all rights against the CLIENT.
- 3.2. HKSTP may terminate the CLIENT's right to use/request any or all of the SERVICE(S) without any reason by giving the CLIENT not less than 24 hours prior written notice.
- 3.3. In the event the SERVICE(S) are terminated by CLIENT, CLIENT shall be obligated to pay all fees of the SERVICE(S).
- 3.4. Upon termination of the SERVICE(S) howsoever arising, HKSTP shall give CLIENT 30 days after the date of termination, or by such other date stipulated by HKSTP to remove all of such CLIENT's property and possessions at the PREMISES, failing which, HKSTP shall be entitled to dispose of or deal with any such property and possessions of the CLIENT left inside the PREMISES in such manner as HKSTP deems fit, without any liability whatsoever and without any compensation to the CLIENT, and HKSTP shall have the right to recover the expenses of disposal from the CLIENT.

4. Service Fees

- 4.1. In consideration of the provision of the SERVICE(S), the CLIENT shall pay to HKSTP the fees as detailed on the QUOTATION in accordance with any prescribed timeframes detailed therein.
- 4.2. HKSTP shall have the absolute discretion to stipulate the credit terms / payment methods offered to CLIENT in the QUOTATION.
- 4.3. All payments made by the CLIENT to HKSTP shall be in accordance with the currency stated in the invoice without any deduction or set-off.
- 4.4. In addition, if the CLIENT fails to pay any fees of SERVICE(S) by their due date, HKSTP shall have the right to (without incurring any liability) suspend or terminate all or any parts of the SERVICE(S) to the CLIENT immediately on notice.
- 4.5. The CLIENT shall be responsible for paying any charges (such as the fees for the bank transfer from CLIENT to HKSTP), on the fees of the SERVICE(S).

5. Force Majeure

- 5.1 No Party will be considered in default to the extent that performance of its obligations, or attempts to cure any breach are delayed or prevented by reason of circumstances beyond its reasonable control, including fire, natural disaster, riots, social unrest, the outbreak of a pandemic, earthquake, accident or other acts of God (“Force Majeure”), provided that the Party seeking to delay its performance gives the other written notice of any such Force Majeure event within fifteen (15) days after the discovery of the Force Majeure and further provided that such Party uses its good faith efforts to cure the Force Majeure if at all possible. If there is a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure. However, another Party may terminate the SERVICE(S) by written notice if such an event prevents performance continuously of any material obligations herein for more than thirty (30) days.

6. Limitation of Liability

- 6.1. The SERVICE(S), PREMISES and ITEM(S) are provided on an “as is” and “as available” basis and no representation or warranty whatsoever has been or will be given by HKSTP or any of its directors, representatives, contractors, officers, agents and employees (collectively the “Released Parties”). To the maximum extent permitted by law, HKSTP and the Released Parties disclaim and exclude all conditions, warranties and representations whether express or implied as to: (a) title, fitness for a particular purpose, merchantability, availability, accuracy or standard of quality of the SERVICE(S), PREMISES and ITEM(S) (or any part thereof), (b) DELIVERABLE(S) from the use of the SERVICE(S); and (c) that the SERVICE(S) and the use of the ITEM(S) will be uninterrupted, error free, virus free, reliable, secure or compatible with the CLIENT’s software, tools or equipment.
- 6.2. To the maximum extent permitted by law, HKSTP and the Released Parties disclaim all liabilities for any ITEM(S) defect or failure, claims that are due to normal wear, abuse, non-compliance with any codes, or misappropriation.
- 6.3. To the maximum extent permitted by law, HKSTP and the Released Parties disclaim all liabilities in relation to any SPECIFICATION(S) and SAMPLE(S), etc. In addition, the CLIENT acknowledges and agrees that its SPECIFICATION(S) and SAMPLE(S) etc. may be destroyed or altered by the SERVICE(S) and without prejudice to the generality of other provisions.
- 6.4. To the maximum extent permitted by law, HKSTP disclaims any and all responsibility, risk, liability and damages arising out of death or personal injury resulting from assembly or operation of any ITEM(S).
- 6.5. To the maximum extent permitted by law, in no event will HKSTP and the Released Parties be liable to the CLIENT or any other party for any consequential, special or indirect damages, LOSS or corruption of data, LOSS of profits, goodwill, bargain or opportunity or LOSS of anticipated savings resulting from (i) errors, mistakes, or inaccuracies of content, (ii) access to, or use of, or inability to use the SERVICE(S), PREMISES or ITEM(S), (iii) any unauthorized access to or use of the servers and/or any and all personal information and/or financial

information stored therein, (iv) any interruption or cessation of transmission to or from the SERVICE(S), or (v) any viruses, bugs, worms, Trojan horses, malware, or the like, which may be transmitted to or through the SERVICE(S) by any third party, whether based on contract, tort, negligence or any other legal theory, and whether or not HKSTP knows of the possibility of such damage or LOSS.

- 6.6. Any claim by the CLIENT against HKSTP arising in connection with the TERMS shall be notified in writing to HKSTP within two (2) weeks of the incident giving rise to such claim failing which the CLIENT shall be deemed to have waived the CLIENT's rights in respect of such claim.
- 6.7. Subject to clause 6.5, the total liability of HKSTP and its employees and agents to a CLIENT in respect of the SERVICE(S) shall not exceed the total SERVICE(S) fees paid by the CLIENT to HKSTP for the SERVICE(S) for the immediately preceding two (2) months prior to any incident (or, in case of a series of incidents arising from a common cause, immediately preceding the first of such incidents) giving rise to a claim (if any).

7. Warranties and Indemnifications

- 7.1. CLIENT shall guarantee, hold harmless and indemnify HKSTP and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for LOSS, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to (a) any CLIENT's breach or non-observance of any of the TERMS (including any breach of any of the warranties under the TERMS); or (b) any CLIENT's negligent act or omission, or (c) any CLIENT's infringement of third parties' intellectual property rights (including, without limitation, intellectual property rights in respect of any SPECIFICATION(S); or (d) any personal injury or death or property damage caused by any CLIENT or SAMPLE(S) provided, or (e) any CLIENT's violation of APPLICABLE LAWS or regulations.
- 7.2. CLIENT warrants, undertakes and represents that:
 - (a) SAMPLE(S) submitted to HKSTP for the purpose of the SERVICE(S) should have no any claim or interest from any third party.
 - (b) SPECIFICATION(S) provided by the CLIENT to HKSTP is not subject to any third party's consent;
- 7.3. The CLIENT acknowledges that all information provided to HKSTP will be collected and may be used for the purposes of meeting any legal, governmental, statutory or regulatory requirements in Hong Kong or any other applicable jurisdictions, including disclosure or notification requirements. The CLIENT shall indemnify and hold HKSTP and Released Parties harmless from and against any and all liabilities, damages, costs and expenses, including the legal fees incurred by HKSTP, its employees or agents, or its suppliers, licensors, licensees, vendors or contractors in responding to such legal, governmental or regulatory requirements.

8. Change of Terms and Conditions

- 8.1. HKSTP reserves the right at any time to amend or supplement to any of (a) the TERMS; or (b) the published fees of the SERVICE(S). CLIENT should refer to the latest version of the TERMS posted on HKSTP's website (URL address: <https://www.hkstp.org/what-we-offer/institute-for-translational-research/medical-device-testing-lab/>)

9. Confidential Information

- 9.1. CLIENT shall not disclose to any third party about any confidential information of HKSTP which is disclosed or otherwise made available, directly or indirectly, to them in connection with the SERVICE(S) or the TERMS, except where the disclosure is required by law or any governmental authority. For the purposes of this provision, confidential information means all technical information, business information, knowhow and other commercially valuable information (whether in unrecorded or recorded form, and whether consisting of, or comprised in, documents, software, equipment or other materials) relating to the SERVICE(S), the PREMISES, the ITEM(S) and/or HKSTP.
- 9.2. Use of HKSTP's corporate name or registered marks for advertising purposes is not permitted without HKSTP's prior written authorization.

10. Tax Provisions

- 10.1. Unless otherwise stated in the specific QUOTATION, all fees are in Hong Kong dollars and all fees shall be exclusive of any applicable duties, value added tax, goods and SERVICE(S) tax, business tax and similar taxes and levies.
- 10.2. The CLIENT shall comply with all relevant tax laws and regulations in respect of the performance of its obligations under the QUOTATION. All taxes arising from or as a result of the QUOTATION (save and except the business and/or profit tax chargeable by Hong Kong SAR Government upon HKSTP, if any) shall be borne by the CLIENT.

11. Miscellaneous

- 11.1. HKSTP shall be permitted to assign, transfer, novate, sublicense or otherwise dispose of its rights and obligations, under these TERMS, or any part thereof to any third party on notice to the CLIENT.
- 11.2. Nothing in the TERMS shall be deemed to constitute or create a partnership, landlord and tenant relationship, or employer- employee relationship between HKSTP and the CLIENT.
- 11.3. No failure or delay by HKSTP to exercise any right, power or remedy under these TERMS shall operate as a waiver thereof nor shall any single or partial exercise by HKSTP of any right, power or remedy.

- 11.4. If any part of the TERMS is held invalid, unenforceable or illegal for any reason, the TERMS shall remain in full force apart from such part which shall be deemed invalid, unenforceable or illegal.
- 11.5. Clause headings are for ease of reference only and shall not affect their interpretation.
- 11.6. The TERMS shall be governed by and construed in accordance with the laws of Hong Kong SAR.
- 11.7. In the event of any dispute arising between the Parties shall submit to the exclusive jurisdiction of the courts of Hong Kong.
- 11.8. The TERMS, together with any QUOTATION, shall constitute the entire understanding between HKSTP and the CLIENT in respect of the SERVICE(S), and supersede all prior representations, writings, negotiations or understandings with respect hereto and, except in respect of any fraudulent misrepresentation made by a party, the parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied other than as set out in the TERMS and the QUOTATION.
- 11.9. None of the benefits to either HKSTP or CLIENT as a result of the SERVICE(S) is subjected to any requirement that either party procures, influences and/or makes any referrals to, or otherwise generate business for, the other part.