

**CONTRACT AGREEMENT FOR THE
ESTABLISHMENT AND OPERATION OF A FUEL MARKING AND FIELD
TESTING SYSTEM FOR THE BUREAU OF CUSTOMS**

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this 29th day of October 2018 by and among:

The **BUREAU OF CUSTOMS**, an agency of the National Government of the Republic of the Philippines with office address at South Harbor, Gate 3, Port Area, Manila, represented by **COMMISSIONER ISIDRO S LAPENA**, hereinafter referred to as the **"BOC"**;

-and-

The **PROCUREMENT SERVICE - DEPARTMENT OF BUDGET AND MANAGEMENT**, an agency of the National Government of the Republic of the Philippines with the office address at PS Complex, Cristobal Street, Paco, Manila, represented by **EXECUTIVE DIRECTOR BINGLE B. GUTIERREZ**, hereinafter referred to as the **"PS"**;

-and-

The **JOINT VENTURE** organized and existing under the laws of Switzerland between **SICPA SA**, a company organized and existing under the laws of Switzerland with office address at Avenue de Florissant 41, 1008 Prilly, Switzerland, represented by **BÉNÉDICT SAPIN, REGIONAL COUNSEL**, and **SGS PHILIPPINES, INC.**, a corporation organized and existing under the laws of the Philippines with office address at the 2nd Floor Alegria Building, 2229 Chino Roces Avenue, Makati City, National Capital Region, Philippines represented by **ARIEL MIRANDA, MANAGING DIRECTOR** and **CHRISTA FILIUS, OIL, GAS AND CHEMICALS DIRECTOR**, hereinafter referred to as the **"CONSULTANT"**.

BOC, PS, and the CONSULTANT are collectively called Parties.



WITNESSETH:

WHEREAS, PS entered into a Memorandum of Agreement (MOA) with the **BOC** for the Establishment and Operation of a Fuel Marking and Field Testing System for the Bureau of Customs (“Fuel Marking Program”).

WHEREAS, PS invited Bids, consistent with the requirements and regulations under RA 9184 and its 2016 Revised Implementing Rules, for the said Fuel Marking Program and has accepted the Bid by the **CONSULTANT** for the supply of the required consultancy services per the Terms of Reference in the amount of **six thousand, eight hundred eight-four hundred thousandths centavos per liter (₱0.06884 per liter)** (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - a. The Terms of Reference (“TOR”);
 - b. Reply to Clarifications dated 13 June 2018;
 - c. Bid Bulletin No. 2 dated 20 July 2018;
 - d. Bid Bulletin No. 3 dated 20 July 2018;
 - e. The **CONSULTANT**’s Bid, including the Technical and Financial Proposals, and all other documents/statements submitted (including, but not limited to, bidder’s responses to clarifications), including corrections to the bid resulting from the Procuring Entity’s bid evaluation;
 - f. The Schedule of Requirements;
 - g. The Technical Specifications;
 - h. The Resulting Agreement from the Negotiations as per Appendix 1 attached;
 - i. The General Conditions of Contract (“GCC”);
 - j. The Special Conditions of Contract;
 - k. The Performance Security;
 - l. The Notice of Award; and
 - m. The Purchase Order.

In case of discrepancy or conflict between the terms of this Agreement (including the documents mentioned under a, b, c, d, e, f, g, i, j, k, l, and m above and the terms of the Resulting Agreement from the Negotiations (as mentioned under h. above), the terms of the Resulting Agreement from the Negotiations shall prevail.

3. **RESPONSIBILITIES.** The documents above shall likewise govern in so far as the specific responsibilities of Parties are concerned.
4. **PAYMENT.** Subject to the payment arrangements and provisions as provided in the documents under Clause 2 herein during the implementation of the Fuel Marking Program, the Parties hereby covenant the following:

- a. **PS** to pay the **CONSULTANT** the Contract Price for the first year of the Fuel Marking Program reckoned from the date of issuance of the Notice to Proceed.
 - b. **BOC** to pay the **CONSULTANT** the Contract Price for the second through the fifth year of the Fuel Marking Program, sourced through the Trust Receipt created pursuant to Section 148-A of the National Internal Revenue Code (NIRC), as amended by Republic Act No. 10963; and
 - c. **CONSULTANT** to provide **PS and BOC** the consultancy services in accordance with the provisions of this Agreement and remedy defects therein.
5. **LIQUIDATED DAMAGES.** If the **CONSULTANT** fails to deliver any or all of the consultancy services within the period(s) specified in this Agreement, the Procuring Entity shall, without prejudice to its other remedies under this Agreement and under the Applicable Law, deduct from the Contract Price, as liquidated damages, a sum equivalent to one-tenth of one percent of the baseline for the liquidated damages for the particular year (hereinafter the "Baseline"), for each day of delay based on the approved contract schedule up to a maximum deduction of ten percent (10%) of the Baseline for the particular year. Once the maximum is reached, the Procuring Entity may consider termination of this Agreement pursuant to GCC Clause 27.
- The Baseline for the liquidated damages is the projected volume for the particular year of Annex A-1 of the TOR multiplied by the PhP0.06884/liter.
6. **PS and BOC** hereby covenant to provide **CONSULTANT** a maximum of sixty (60) days grace period to comply with its deliverables without penalty. After said non-extendible grace period, liquidated damages will be imposed.
7. **BREACH OF CONTRACT.** The **CONSULTANT** will be required to pay a maximum penalty of ten percent (10%) of the Contract Price in total for scenarios, events, infractions, violations, and breaches that would warrant the payment of damages other than liquidated damages. This penalty shall likewise apply in:
- a. instances enumerated under **GCC Clause 27** on the Termination by the Procuring Entity; and
 - b. in case of breach of security through fault of the **CONSULTANT** resulting in replication of the fuel marker or failure of the field testing equipment.
8. **APPLICABLE LAWS.** This Agreement shall be governed by the applicable laws of the Republic of the Philippines.
9. **SEPARABILITY.** If any provisions or part of this Agreement is invalidated or declared to be contrary to law, the warranty of other provisions or parts of this Agreement shall not be affected.

IN WITNESS WHEREOF, the Parties have hereunto affixed their signatures on the date above in the City of Manila, Metro Manila, Philippines.



BUREAU OF CUSTOMS (BOC)

By:

[Signature] 18-19352

ISIDRO S LAPEÑA, PhD, CSEE
Commissioner OCT 29 2018

PROCUREMENT SERVICE (PS)

**SICPA SA
AND
SGS PHILIPPINES, INC.
JOINT VENTURE**

By:

[Signature]

BINGLE B. GUTIERREZ
Executive Director

By:

FOR SICPA SA:

[Signature]

BÉNÉDICT SAPIN
Regional Counsel

FOR SGS PHILIPPINES INC.

[Signature]

ARIEL MIRANDA
Managing Director

[Signature]

CHRISTA FILIUS
Oil, Gas and Chemicals Director



SIGNED IN THE PRESENCE OF:

[Signature]
ENGR. JULIETA LOZANO
OIC-Director, Operations Group

[Signature]
ATTY. EDWARD JAMES A. DY BUCO
Deputy Commissioner, AOCG

Appendix 1: The Resulting Agreement from the Negotiation



ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, this 29 October 2018 appeared the following persons presenting to me their respective identifications, to wit:

Name	Competent Evidence of Identity	Date & Place of Issue
ISIDRO S LAPENA, PhD, CSEE	Driver's License No. L02-74-015625 Philippines	on 28/12/ 2015
BINGLE B. GUTIERREZ	Driver's License No. N02-93-214978 Philippines	on 16/10/2015
BÉNÉDICT SAPIN	Passport No. X6164136	Bern, Switzerland on 15/02/ 2018
ARIEL MIRANDA	Passport No. EC3476530 DFA PE Dhaka	on 18/02/ 2015
CHRISTA FILIUS	Passport No. BJD4DL1R3	Manila on 28/07/ 2017


known to me and to me known to be the same persons who executed and voluntarily signed the foregoing *Contract Agreement for the Establishment and Operation of a Fuel Marking and Field Testing System for the Bureau of Customs* which they acknowledged before me as their own free and voluntary act and deed and with full authority to sign in that capacity.

This instrument refers to the *Contract Agreement for the Establishment and Operation of a Fuel Marking and Field Testing System for the Bureau of Customs* and consisting of five (5) pages including this page where the Acknowledgment is written, duly signed by the parties and their instrumental witnesses thereof.

WITNESS MY HAND AND SEAL, on the date and place above written.

Notary Public

Doc. No. 106 ;
Page No. 23 ;
Book No. 1 ;
Series of 2018.


ATTY. VINCENT G. CAÑARES
NOTARY PUBLIC FOR MANILA
Blk 5 Lot 19, 14 Cristobal St.
Paco, Manila
Commission No. 2018-093 (2018-2019)
Roll No. 62181
IBP Lifetime No. 016771
PTR No. 6694069
MCLE Compliance No. V-007570