3. INTERTEK’S WARRANTIES

2. THE SERVICES

1. INTERPRETATION

2.1 Intertek shall provide the Services to the Client in accordance with the terms of this Agreement and any Proposal which the Client has signed and/or the specifications set out in the Reports which represent Intertek’s review and/or analysis of the Client’s equipment, samples or other related documents. The Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.

2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of the Proposal shall take precedence.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by Intertek in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed (Report(s)) shall be only for the Client’s use and benefit.

2.4 The Client acknowledges and agrees that if in providing the Services Intertek is obliged to deliver a Report to a third party, Intertek shall be deemed to have authorized the Client to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.

2.5 The Client acknowledges and agrees that any Services provided and/or Reports produced by Intertek are done so within the limits of the scope of work agreed by the Client in the Proposal and pursuant to the Client’s specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. The Client further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports which represent Intertek’s review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.

2.6 Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any loss or injury caused by any errors or omissions in such Report, or for any loss or expense which the Client suffers as a result of such errors or omissions, or for any loss or expense which the Client suffers as a result of any failure to provide the Services in a timely manner sufficient to enable Intertek to provide the Services.

2.7 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or undertake to discharge any duty or obligation to any other person or any duty or obligation of any person to the Client.

3. INTERTEK’S WARRANTIES

3.1 Intertek warrants exclusively to the Client:

(a) that the power and authority to enter into this Agreement and to procure the provision of the Services, if required, and all the Services to be provided, including any applicable import/export restrictions that may apply to the Services, is vested in the Client or any duly authorized person on behalf of the Client and that no claim will be made that Intertek has no power or right to carry on business in the country or to do any business there;

(b) that it is aware of, and has considered and taken into account, all applicable import/export regulations and restrictions that may apply to the Services, including any applicable import/export restrictions that may apply to the Services, and that it will not cause or permit the Services to be delivered or transferred to any person or place that is subject to any such regulations or restrictions;

(c) that it will provide the Services in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;

(d) that it will take reasonable steps to ensure that whilst the Client’s premises are under its care and control the safety of the Client and its premises are not endangered by any accidents, acts of God or third parties;

(e) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

(f) that the Client represents and warrants:

(i) that it has the power and authority to enter into this Agreement and to procure the provision of the Services, if required, and all the Services to be provided, including any applicable import/export restrictions that may apply to the Services, and that no claim will be made that Intertek has no power or right to carry on business in the country or to do any business there;

(ii) that it is providing the Services for the purposes stated in the Proposal and that the Client has considered and taken into account all applicable import/export regulations and restrictions that may apply to the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;

(iii) that Intertek will provide the Services in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;

(iv) that it will take reasonable steps to ensure that whilst the Client’s premises are under its care and control the safety of the Client and its premises are not endangered by any accidents, acts of God or third parties;

(v) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

(g) that it is secure to the Client or any third party to disclose the Services to the Client.

(h) that it is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any loss or injury caused by any errors or omissions in such Report, or for any loss or expense which the Client suffers as a result of such errors or omissions, or for any loss or expense which the Client suffers as a result of any failure to provide the Services in a timely manner sufficient to enable Intertek to provide the Services.

(i) that it will provide the Services in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;

(j) that it will take reasonable steps to ensure that whilst the Client’s premises are under its care and control the safety of the Client and its premises are not endangered by any accidents, acts of God or third parties;

(k) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

(l) that in providing the Services Intertek is not required to comply with any applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;

(m) that it is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any loss or injury caused by any errors or omissions in such Report, or for any loss or expense which the Client suffers as a result of such errors or omissions, or for any loss or expense which the Client suffers as a result of any failure to provide the Services in a timely manner sufficient to enable Intertek to provide the Services.

(n) that it will provide the Services in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;

(o) that it will take reasonable steps to ensure that whilst the Client’s premises are under its care and control the safety of the Client and its premises are not endangered by any accidents, acts of God or third parties;

(p) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

(q) that it is secure to the Client or any third party to disclose the Services to the Client.

(r) that it is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any loss or injury caused by any errors or omissions in such Report, or for any loss or expense which the Client suffers as a result of such errors or omissions, or for any loss or expense which the Client suffers as a result of any failure to provide the Services in a timely manner sufficient to enable Intertek to provide the Services.

(s) that it will provide the Services in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;

(t) that it will take reasonable steps to ensure that whilst the Client’s premises are under its care and control the safety of the Client and its premises are not endangered by any accidents, acts of God or third parties;

(u) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).
6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

5. CHARGES, INVOICING AND PAYMENT

7. CONFIDENTIALITY

6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.

6.2 Any use by the Client (or the Client’s affiliated companies or subsidiaries) of the name “Intertek” or any of Intertek’s trademarks or brand names, if permitted by reason of and subject to Clauses 7.1, 7.2 and 7.3, is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.

6.3 In the event of provision of certification services, Client agrees and undertakes to take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data).

6.4 Intertek shall observe all statutory provisions with regard to data protection. To the extent that Intertek processes or gets access to personal data in connection with the Services or in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data).

7. CONFIDENTIALITY

7.1 Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to clauses 7.2 to 7.4:

(a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;

(b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and

(c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.

7.2 The Receiving Party may disclose the Disclosing Party’s Confidential Information on a “need to know” basis:

(a) to any legal advisers and statutory auditors that it has engaged for itself; or

(b) to any regulator having regulatory or supervisory authority over its business;

(c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by the obligations of confidentiality of such Confidential Information in no less onerous terms than those set out in this Clause 7; and

(d) where the Receiving Party is Intertek, to any of its subsidiaries, affiliates or subcontractors.

7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:

(a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;

(b) is or becomes public knowledge other than by breach of this Clause 7;

(c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

(d) is independently developed by the Receiving Party without access to the relevant Confidential Information.

7.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

7.5 Each party shall ensure the compliance by its employees, agencies and representatives (which, in the case of Intertek, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.

7.6 No licence of any Intellectual Property Rights is given in respect of any Confidential Information by the disclosure by the Disclosing Party of such Confidential Information to the Receiving Party.

7.7 With respect to archival storage, the Client acknowledges that Intertek may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

8. AMENDMENT

8.1 No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorised signatory of each party.

9. FORCE MAJEURE

9.1 Each party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:

(a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;

(b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lighting; explosions and fire;

(c) strikes and labour disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party;

(d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

9.2 For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.

9.3 A party whose performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:

(a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations; and

(b) use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and

(c) continue to provide Services that remain unaffected by the Force Majeure Event.

9.4 The Force Majeure Event continues for more than sixty (60) days after the day on which it started, each party may terminate this Agreement by giving at least ten (10) days’ written notice to the other party.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1 Neither party excludes or limits liability to the other party:

(a) for death or personal injury resulting from the negligence of that party or its directors, officers, employees, agents or sub-contractors; or

(b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).

10.2 Subject to Clause 10.1, the maximum aggregate liability of Intertek in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of

Intertek General Terms and Conditions of Services (Taiwan)
11. INDEMNITY
11.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and a lawyer’s fees) arising, directly or indirectly, out of or in connection with:
(a) any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
(b) claims or suits for personal injuries, loss of or damage to property, economic loss or loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors or sub-contractors;
(c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
(d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above;
(e) any claims or suits arising as a result of any misuse or unauthorised use of any Reports issued by Intertek or any Intellectual Property Rights belonging to Intertek (including trade marks) pursuant to this Agreement; and
(f) any claims arising out of or relating to any third party’s use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.
11.2 The obligations set out in this Clause 11 shall survive termination of this Agreement.

12. INSURANCE POLICIES
12.1 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer’s liability, motor insurance and property insurance.
12.2 Intertek expressly disclaims any liability to the Client as an insurer or guarantor.
12.3 The Client acknowledges that although Intertek maintains employer’s liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, Intertek’s employer’s liability insurance does not provide cover for non-Intertek employees.

13. TERMINATION
13.1 This Agreement shall commence on the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.
13.2 This Agreement may be terminated by:
(a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that party by recorded delivery or courier requesting the other to remedy such breach;
(b) Intertek on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or
(c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.
13.3 In the event of termination of this Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay to Intertek for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.
13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

14. ASSIGNMENT AND SUB-CONTRACTING
14.1 Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/or sub-contractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.

15. GOVERNING LAW AND DISPUTE RESOLUTION
15.1 This Agreement and Proposal shall be governed by the laws of the Taiwan (ROC). The parties agree to exclusively submit to Shihlin District Court (Taiwan) as the first-instance presiding court in respect of any dispute or claim arising out of or in connection with this Agreement (including any non-contractual claim relating to the provisions of the Services in accordance with this Agreement).

16. MISCELLANEOUS

16.1 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.
16.2 Waivers
16.3 Subject to Clause 10.4 above, the failure of any party to insist upon or enforce the performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.
16.4 No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

16.5 This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.
16.6 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
16.7 Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.

17. THIRD PARTY RIGHTS
17.1 A person who is not party to this Agreement has no right to enforce any of its terms.

18. FURTHER ASSURANCE
18.2 Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.