These terms and conditions, together with any proposal, estimate or quote, form the agreement between you (the Client) and the intertek entity (Intertek) providing the services contemplated therein.

1. INTERPRETATION
   1.1 In this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:
   (a) ‘Affiliate’ shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
   (b) ‘Agreement’ means this agreement entered into between Intertek and the Client;
   (c) ‘Bill’ is the invoice issued by the Client to Intertek, if any;
   (d) ‘Confidential Information’ means all information in whatever form or manner presented which: (a) is disclosed in connection with the provision of Services pursuant to this Agreement; and (b) is disclosed in writing, electronically, visually, orally, or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (c) is disclosed howsoever, which would reasonably be considered to be confidential by the receiving party;
   (e) ‘Intelectual Property Right(s)’ means copyrights, trademarks, patents, patent applications (including the right to apply for same), service marks, mask works rights (whether registered or unregistered), trade secrets and other rights (whether or not registered) howsoever existing;
   (f) ‘Report(s)’ shall mean any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by Intertek in the course of providing the Services to the Customer, together with status summaries or any other communication in any form describing the results of any work or services performed;
   (g) ‘Services’ means the services set out in any relevant Intertek Proposal, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by Intertek of a Report(s).
   (h) ‘Proposal’ means the description of our Services, and an estimate of our Charges, if applicable, provided to the Client by Intertek.
   1.2 The headings in this Agreement do not affect its interpretation.

2. THE SERVICES
   2.1 Intertek will provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any proposed InterTek Proposal that has made and submitted to the Client.
   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 Report shall be only for the Client’s benefit.

3. THE CLIENT
   3.1 Intertek warrants exclusively to the Client that:
   (a) that it has the power and authority to enter into this Agreement and that it will comply with relevant provisions of its charter or by-laws; and
   (b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing similar services.
   3.2 In the event of a breach of the warranty set out in Clause 3.1, Intertek will, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in the Services.

4. CLIENT WARRANTIES AND OBLIGATIONS
   4.1 The Client represents and warrants:
   (a) that it has the power and authority to enter into this Agreement and provision of the services; and
   (b) that it is the security the provision of Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
   (c) that the Client, or any of its agents or representatives (including but not limited to any implied warranties of merchantability and fitness for a particular purpose), are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Intertek (including its agents, sub-contractors, employees or other representatives) will create a warranty or condition of any product, material, services, systems or processes tested, inspected or certified and Intertek shall not be responsible for any testing samples.

5. CHARGES, INVOICING AND PAYMENT
   5.1 Intertek may invoice the Client in accordance with the terms of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4.2.
   5.2 The Client acknowledges and agrees that if in providing the Services Intertek is obliged to deliver a Report(s), Intertek shall be deemed and is hereby authorised to deliver such Report to the applicable third party.

6. THE SERVICES
   6.1 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 with the Client in relation to the Proposal and pursuant to this Agreement. If 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. The Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its agents, officers, employees or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the basis of such Report.

7. AGREEING TO PROVIDE THE SERVICES
   7.1 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or in any manner whatsoever, affect any other rights available to Intertek.

8. Invoicing and Payment
   8.1 Intertek will invoice the Client in accordance with the terms of this Agreement.

9. PAYMENT
   9.1 Intertek will invoice the Client in accordance with the terms of this Agreement.

10. CHARGES
    10.1 Invoicing of all applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law.

11. Default
    11.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is desired security, Intertek has the right, without prejudice to its other rights, to immediately suspend the Services provided by Intertek under this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4.2.

12. Default
    12.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

13. Default
    13.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

14. Default
    14.1 Invoices rendered will be paid within ten (10) days of receipt. Any invoices not paid within such ten (10) days will be charged interest at the rate of six percent (6%) per annum.

15. Default
    15.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

16. Default
    16.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

17. Default
    17.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

18. Default
    18.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is

19. Default
    19.1 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is
This Agreement or any matter arising out of or in connection with the Services to be provided by Intertek (including negligence and breach of statutory duty) or otherwise for any failure of utilities companies such as providers of telecommunication, internet, gas or electricity services.

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, at all times:

(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 to:

(a) any legal advisers and statutory auditors that it has engaged for itself;
(b) 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 obtains the express written consent of the obliged party, or
(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 6.6; or
(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, agents 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 solely by the disclosure of such Confidential Information by the Disclosing Party.

7.7 Without prejudice to Clause 3.6, the Client acknowledges that it 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 If Intertek is prevented by the Client to perform or fail 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 strikes;
(b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lighting; explosions and fires;
(c) strikes and labour disputes, other than by one or more employees of the affected party or of any supplier or agent of the affected party; or
(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 delay or failure caused by failure or delay of such supplier 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 reasonable steps 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) provide Services that remain unaffected by the Force Majeure Event.

9.4 If the Force Majeure Event continues for more than ten (10) days 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 or agents or subcontractors; or
(b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).

10.2 SUBJECT TO Clause 10.3, THE MAXIMUM AGGREGATE LIABILITY OF INTERTEK IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY OF THIS AGREEMENT OR ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PROVIDED IN ACCORDANCE WITH THIS AGREEMENT SHALL BE THE TOTAL VALUE OF CHARGES UNDER THIS AGREEMENT.

10.3 INTERTEK SHALL NOT BE LIABLE TO THE CLIENT IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY OF:

(a) LOSS OF PROFITS;
(b) LOSS OF BUSINESS; OR
(c) LOSS OF OPPORTUNITY (INCLUDING WITHOUT LIMITATION IN RELATION TO THIRD PARTY AGREEMENTS OR CONTRACTS);
(d) LOSS OF DAMAGE TO GOODS OR REPUTATION;
(e) LOSS OF ANTICIPATED SAVINGS;
(f) COSTS OR EXPENSES INCURRED IN RELATION TO MAKING A PRODUCT RECALL, LOSS OF USE, DATA OR INFORMATION OR ITS RECOVERY; OR
(g) ANY INDIRECT, CONSEQUENTIAL LOSS, PUNITIVE OR SPECIAL LOSS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).

10.4 ANY CLAIM AGAINST THE CLIENT INTERTEK ALWAYS SUBJECT TO THE PROVISIONS OF THIS CLAUSE 10 MUST BE MADE WITHIN NINETY (90) DAYS AFTER THE CLIENT BECOMES AWARE OF ANY CLAIMS.

10.5 FAILURE TO GIVE SUCH NOTICE OF CLAIM WITHIN NINETY (90) DAYS SHALL CONSTITUTE A BAR OR IRREVOCABLE WAIVER TO ANY CLAIM, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT.

11. INDEMNITY

11.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, Affiliates, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney’s fees) arising, directly or indirectly, out of 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, and 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 and sub-contractors;
(c) any 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 its Intellectual Property Rights belonging to Intertek (including trade marks) pursuant to this Agreement; and
(f) any claims arising or relating to any third party’s use of or reliance on any reports or any written or oral representations made by the Client to any third party in connection with the Services.

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 upon 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 performed.

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; or
(c) either party on written notice to the other in the event that the other makes any voluntary arrangement with creditors or becomes subject to an administration order; or the other is declared 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 its property or assets or of the other or the other ceases, or threatens to cease, to carry on business.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay 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 the Proposal shall be governed by Vietnamese law. The parties agree to submit to the exclusive jurisdiction of the Vietnamese Courts in respect of any dispute or claim arising out of or in connection with this Agreement (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement).

16. MISCELLANEOUS

16.1 Severability

16.1.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provision. If the invalidity, illegality or unenforceability is for more than one reason, the Agreement shall be deemed to have been executed by the parties as if this provision of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

16.2 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.

16.3 Subject to Clause 10.4 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver of that party’s right.
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.

16.8 A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

16.9 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.