1. INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

(a) (i) the meaning ascribed to this Agreement entered into between Intertek and the Client;

(b) Charges shall have the meaning given in Clause 5.1;

(c) the information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked ‘Confidential’ or ‘Confidential Information’, or any other means as considered appropriate by Intertek in its discretion, (ii) is not in the public domain, (iii) is not the subject of such disclosure; and/or (ii) is information, however disclosed, which, reasonably considered may be considered to be confidential by the receiving party.

(d) Intertek’s Proprietary Rights means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howeversoever existing or acquired

(e) Report means the report set out in Clause 5.3 or 5.4 above; and

(f) 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;

(g) Proposal means the proposal, estimate or fee quote, 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 shall provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any Proposal Intertek 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 shall be performed 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 any summaries or other documents or agreements that become the result of any work or services performed (Report) shall be only for the Client’s use and benefit.

2.4 The Client acknowledges that if Intertek provides the Services Intertek is obliged to deliver a Report to a third-party, Intertek shall be deemed irrevocably authorised to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise on the imposition of the cost 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 that are done or produced as a result of the scope of work agreed with the Client in relation to 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 the material, services, systems or processes tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations made to the extent that 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 actions taken or not taken on the basis of such Report.

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 of the Client to any other person or any duty or obligation of any person to the Client.

3. INTERTEK’S WARRANTIES AND OBLIGATIONS

3.1 Intertek warrants exclusively to the Client:

(a) that it has the power and authority to enter into this Agreement and that it will comply with relevant regulations and regulations in force as at the date of this Agreement in relation to the provision of the Services;

(b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;

(c) that it will take reasonable steps to ensure that whilst on the Client’s premises its personnel comply with any health and safety rules and regulations and other reasonable security requirements established from time to time by the Client and in accordance with Clause 4.3(b).

(d) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party.

(e) that any advertising and promotional materials or an event such that such Services are not collected or disposed by the Client within the required period, Intertek reserves the right to destroy the samples, at the Client’s cost; and

(e) that any information, samples or other related documents (including without limitation certification reports andproposes) provided to Intertek in accordance with this Agreement, in the event of the occurrence of any legal rights (including Intellectual Property Rights) of any third party.

4.2 In the event that the Services provided relate to any third party, the Client shall cause any such 第三方 to acknowledge and confirm 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.

4.3 The Client further agrees:

(a) to co-operate with Intertek in all matters relating to the Services and appoint a manager in relation to the Services to liaise with Intertek and, if authorised by the Client, to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;

(b) to provide Intertek (including its agents, sub-contractors and employees), at its own expense, any and all samples, information and/or ancillary documents required for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed by the Client or his contractors and employees whilst on the Client’s premises in the course of providing the Services. The Client shall indemnify Intertek from any and all responsibility for such alteration, damage or destruction;

(c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items, including but not limited to connecting pieces, fuse- links, etc.;

(d) to provide instructions and feedback to Intertek in a timely manner;

(e) to provide Intertek (including its agents, sub-contractors and employees) with access to its premises as may be reasonably required for the provision of the Services and to any other relevant premises at which the Services are to be provided;

(f) prior to Intertek attending any premises for the performance of the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that apply at any relevant premises upon which the Services are to be provided;

(g) to notify Intertek promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the performance of the Services;

(h) to inform Intertek in advance of any applicable import/ export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be ‘exported’ in contravention of any applicable importing countries.

(i) that it is responsible for obtaining all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;

(j) that it will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;

(k) in no event will the contents of any Reports or any extracts, or parts of any Reports be distributed or published without the prior written consent of Intertek (such consent not to be unreasonably withheld) in each instance; and

(l) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the services provided by Intertek.

4.4 Intertek shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and so 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 Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by Intertek will not affect the Client’s obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

5. CHARGES, INVOICING AND PAYMENT

5.1 The parties agree that the Services are provided on the terms and subject to the conditions set out or referred to in this Agreement and any Proposal or other document submitted by the Client and conditions which the Client has provided or may in the future provide to Intertek, whether in a purchase order or any other document.

5.2 Unless an Agreement was made on behalf of the Client by a person acting in its entirety by the Client prior to submission of samples, submission of samples or any other testing material from the Client to Intertek shall be deemed to be a complete and conclusive evidence of the Client’s acceptance 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 Clause 4. The Client shall pay Intertek the charges set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services (the Charges).

5.3 The Client shall pay Intertek the Charges set out in this Proposal, if applicable, or as otherwise contemplated for provision of the Services. The Client agrees that the Charges represent the correct amount of charges to be paid by the Client to Intertek. In the event of the issuance of a cheque by the Client, or any person or entity acting on its behalf, Intertek will issue an electronic invoice to the Client for the Charges less any amount paid by the Client in the month Intertek has issued the invoice. A final invoice will be issued on the date of the completion of the Services.

5.4 The Client is required to pay all invoiced amounts without any deduction, discount or set-off no later than thirty (30) days after the invoice date or as per payment terms otherwise agreed to by the parties hereto. No deduction for bank charges incurred can be made. Payment, which must be denominated in the currency indicated in the invoice, must be made by means of money transfer to the account designated by Intertek.

5.5 Intertek will issue an electronic invoice to the Client. An electronic invoice may be sent by email and will be deemed to have been delivered to the Client upon receipt of such email. Intertek is under an obligation to refund to the Client any overcharge made upon the Client’s request and any electronic invoice sent by post will include HKD 250 administration fee and the paper invoice must be paid together with the paper copy to be sent by post.

5.6 The Client acknowledges that Intertek reserves the right to suspend the further execution of all or any part of the Services, and any Charges for any part of the Services which has already been performed shall become immediately due and payable.
5.12 If the Client fails to pay within the period referred to in 5.9 above, it is in default of its payment obligations and this Agreement after having been remitted by Intertek at least once that payment is due within a reasonable period. In that case, the Client is liable to pay interest on the outstanding amount from the date of the provision until the date of payment. The interest rate applied is deemed to be the base rate of HSBC in Hong Kong plus 5%. In addition, all collection costs incurred after the Client’s default, both judicial and extrajudicial, are to be borne fully by the Client. Such costs shall consist of at least 10% of the principal plus interest, without prejudice to Intertek’s right to collect the actual extrajudicial costs in question. Intertek’s judicial costs comprise all costs incurred by Intertek, even if they exceed the base rate of HSBC in Hong Kong.

5.13 If the Client objects to the contents of the invoice, details of the objection must be raised with Intertek within five (5) working days of receipt of the invoice. Otherwise, the invoice will be deemed to have been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in 5.9 above.

6.1 Any request by the Client for certain information to be included in or appended to the invoice must be made at the time of setting out the Proposal. A later request by the Client for changes to the agreed format of invoice or supplementary information will not discharge the Client from its obligation to pay within the period referred to in 5.9 above.

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 for any reason must be prior approval by writing to Intertek. Any use of Intertek’s trademarks or brand names is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorized use.

6.3 In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.

6.4 All records and other materials in any Reports, document, drawings, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek in pursuance of this Agreement shall belong to Intertek. The Client shall have the right to use any such Reports, document, drawings, graphs, charts or other materials for the specific purposes for which the Services were provided and in the manner and for the use for which the Services were provided. The Client agrees to return any such Reports, document, drawings, graphs, charts or other materials to Intertek forthwith on the termination of this Agreement.

6.5 The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including amendments to any draft Report or the provision of the Services to the Client).

6.6 Both parties shall observe all statutory provisions with regard to data protection including but not limited to the provision of the General Data Protection Regulation 2016/679 ("GDPR") and shall comply with all applicable requirements of the GDPR. To the extent that Intertek processes personal data in connection with the Services or otherwise in connection with the performance of this Agreement, it shall take all necessary technical and organizational measures to ensure the security of such data (and to guard against unauthorized or unlawful processing, accidental loss, destruction or damage to such data) in line with GDPR.

7.1 A party (the “Receiving Party”) which receives 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:

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

7.1.2 use that Confidential Information only for the purposes of performing obligations under this Agreement;

7.1.3 not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party; and

7.1.4 disclose that Confidential Information to the extent that such disclosure is required by law.

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

7.2.1 to any legal advisers and statutory auditors that it has engaged for itself;

7.2.2 to any regulator having regulatory or supervisory authority over its business;

7.2.3 to any director, officer or employee of the Receiving Party who has a need to know for the performance of its obligations under this Agreement; and

7.2.4 to any person necessary to perform the Services, provided that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7;

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

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

7.3.2 is or becomes public knowledge other than by breach of this Clause 7;

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

7.3.4 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 prior 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.

8.1 No amendment to this Agreement will 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

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 extent of any liability that the Disclosing Party may have to the Receiving Party under this Agreement shall be the amount of Charges due by the Client for Services performed by the Disclosing Party to the extent that the affected party or of the affected party’s or of the Receiving Party’s or of the Disclosing Party’s Intellectual Property Rights is given in respect of any Confidential Information.

10.3 Any such objection and the Disclosing Party prior to its receipt from the Receiving Party.

10.4 Any use by the Client of the affected party or of the affected party’s or of the Disclosing Party’s Intellectual Property Rights is given in respect of any Confidential Information.

11. INDEMNITY

11.1 The Client shall indemnify and hold harmless Intertek, its employees, agents, representatives, 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, or 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 regulatory authority;

(b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising from or in connection with Services provided hereunder by Intertek, its contractors, employees, agents, representatives, contractors or sub-contractors;

(c) claims or suits or alleged breach of any of the terms and obligations herein set out in Clause 4 above;

(d) any claims made by any third party for loss, damage or expense of whatsoever nature and however 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;

(f) any claims arising out of or relating to any third party’s use or reliance on any Reports or any other material (in whatever medium) produced by Intertek pursuant to this Agreement.

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 will continue, unless terminated earlier in accordance with this Clause 12, until the Services have been provided.

13.2 This Agreement may be terminated by:

(a) either party if the other party is in breach of any of its obligations 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 in writing 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 with any person to whom it is 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 encumbrance takes

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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 the law of the Hong Kong Special Administrative Region, China. Any dispute, controversy or claim arising from or in connection with this Agreement and/or the Proposal (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement) shall firstly be resolved through negotiation between Intertek and the Client. If resolution cannot be reached within thirty (30) days, either party may submit the dispute, controversy or claim to the Hong Kong International Arbitration Centre (“HKIAC”) for arbitration which shall be conducted in Hong Kong SAR in accordance with arbitration rules of HKIAC. The arbitral award is final and binding upon both parties. For the avoidance of doubt, this clause shall not prohibit a party to this Agreement to seek relief from the Courts of Hong Kong SAR.

16. MISCELLANEOUS

16.1 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 so fundamental that it prevents the accomplishment of the purpose of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

16.2 No partnership or agency

16.3 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.

16.4 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.

Whole Agreement

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.

Third Party Rights

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

Further Assurance

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.

Complaints

16.10 Intertek has complaint handling procedure for expression of dissatisfaction by any person or organization relating to the Services provided. The procedure can be provided on request.