

## **Consulting Terms and Conditions**

### **1. Deliverables.**

The Services provided by INTERTEK under this Proposal and any memoranda, notes and other material prepared by INTERTEK in the course of providing the Services to CLIENT, together with status summaries or any other communication in any form describing the results of any work or services performed (“Deliverables”) shall be only for CLIENT’s use and benefit. CLIENT acknowledges and understands Deliverables are issued based on the information provided by CLIENT and the Service as requested by CLIENT and that reliance on any Deliverable is limited to the facts and representations set out therein.

### **2. Relationship of the Parties.**

Notwithstanding any provision herein to the contrary or any course of conduct between the Parties, the Parties hereto are independent contractors, and nothing contained in these Consulting Terms and Conditions shall be construed to place them in the relationship of partners, principal and agent, employer and employee. Each Party agrees that it shall have no power or right to bind or obligate the other and neither Party shall hold itself out as having such authority. INTERTEK shall be solely responsible for providing and paying all compensation and any benefits (including, but not limited to, unemployment, disability, insurance, or medical, and any pension or profit sharing plans) for INTERTEK’s affiliates, employees, directors, officers, agents, representatives and advisors (“Representatives”). The parties hereto agree that the services to be rendered hereunder by INTERTEK are not exclusive to the Client. INTERTEK during the term of this Proposal or any extension thereof may accept from others, concurrent consulting work provided that such consulting work does not interfere, in the opinion of INTERTEK acting reasonably, with the consulting services INTERTEK is required to perform under this Proposal.

### **3. Warranty.**

- (a) INTERTEK warrants that if any of its completed services fail to conform to professional standard, INTERTEK will, at its own expense, perform corrective services of the type originally performed as may be reasonably required to correct such defects, of which INTERTEK is notified in writing within six months of the completion of services. No other representation, express or implied, and no warranty or guarantee is included or intended in these Consulting Terms and Conditions, or in any deliverable, opinion, document or otherwise.
- (b) The maximum aggregate liability of INTERTEK in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of these Consulting Terms and Conditions or any matter arising out of or in connection with the Services to be provided in accordance with this Proposal shall be the amount of charges due by CLIENT to INTERTEK for the services rendered on the project in question.
- (c) Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any:
  - i. loss of profits;
  - ii. loss of sales or business;
  - iii. loss of opportunity (including without limitation in relation to third party agreements or contracts);
  - iv. loss of or damage to goodwill or reputation;
  - v. loss of anticipated savings;
  - vi. cost or expenses incurred in relation to making a product recall;
  - vii. loss of use or corruption of software, data or information; or



- viii. any indirect, consequential loss, punitive or special loss (even when advised of their possibility).
- (d) Any claim by CLIENT against INTERTEK (always subject to the provisions of this clause) must be made within ninety (90) days after CLIENT becomes aware of any circumstances giving rise to any such claim. 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 Proposal.
- (e) The foregoing indemnities shall not apply to the extent that they are void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of authorization of this Proposal

**4. Compensation.**

- (a) Unless agreed to by the parties in writing, CLIENT agrees to pay INTERTEK as compensation for the Consulting Services to be performed hereunder INTERTEK's hourly rates, such rates will be subject to periodic modification. In addition, CLIENT agrees to reimburse INTERTEK for all reasonable expenses (including travel expenses and related out-of-pocket expenses) incurred by INTERTEK, which have been agreed upon by both parties and are necessary or appropriate to perform the Consulting Services hereunder. At the request of CLIENT Representative, proposals with estimates of consulting fees and related expenses for defined-scope projects falling within the broad-scope definition of Consulting Services will be provided to Client for advance approval.
- (b) All payments to INTERTEK by CLIENT specified in this Proposal shall be paid within thirty days (NET 30) of the invoice date. INTERTEK shall include in such invoices all payment taxes required to be paid including without limitation the Canadian Goods and Services Tax if applicable. Payments shall be made in accordance with INTERTEK standard payment policy.
- (c) If INTERTEK is requested by CLIENT or a third party to prepare for and/or respond to any discovery requests, including participation and preparation for any depositions or other testimony related to the services performed, these services would be subject to INTERTEK's daily rates. CLIENT will reimburse INTERTEK for the costs incurred, including reasonable legal fees and travel expenses, upon invoicing by INTERTEK. Intertek retains the right to participate in and observe testimony preparation given the nature of the services provided.

**5. Audit.**

CLIENT shall have the right to audit INTERTEK's books and records to ensure compliance with the terms and conditions of this Proposal. INTERTEK shall ensure that its books and records shall be complete and accurate in all respects.

**6. Title to Work Product.**

All work performed hereunder, Deliverables and any and all materials and products developed or prepared for CLIENT by INTERTEK are the property of CLIENT. All title and interest therein shall vest in CLIENT, shall be deemed to be made in the course of the Work rendered hereunder and may be used by CLIENT in its business without accounting to INTERTEK. INTERTEK agrees to give CLIENT and any person designated by CLIENT reasonable assistance, at CLIENT's expense, required to perfect the rights defined in this paragraph. Notwithstanding the foregoing, INTERTEK retains any and all rights of ownership of INTERTEK's ideas, concepts, know-how, techniques and processes of a general nature that are applied, discovered, invented, created, conceived, made or reduced to practice by INTERTEK (i) prior to performing Services; or (ii) upon or after performance of the Services, provided that (A) such property was independent of the scope of Services; and (B) such property is not based on or derived, in whole or in part, directly or indirectly, from CLIENT's intellectual property rights.

**7. Confidentiality.**

Neither party shall disclose confidential or proprietary information of the other party to a third party without written



authorization from the disclosing party. This obligation shall not apply to information which is already or becomes available to the public, or acquired from other sources without confidentiality restrictions, or independently developed by the receiving party. If the receiving party is served with a subpoena, court order, or similar document requesting the disclosure of confidential or proprietary information, the receiving party shall promptly notify the disclosing party. In the event that the disclosing party chooses to contest the request, the receiving party shall cooperate with the disclosing party. The responsibility for contesting the request shall rest solely with the disclosing party. Any costs incurred by the receiving party in responding to the request, including reasonable attorney's fees, shall be reimbursed by the disclosing party. This obligation to maintain confidentiality shall survive for three years after the completion of the project.

8. **No Solicitation.**

During the conduct of the project, and for a period of twelve (12) months after provision of the final deliverable, neither party shall directly or indirectly solicit employees of the other for hire

9. **Publicity.**

Neither Party may use the other Party's name, or any trademark, logo, or any other identifier of the other Party, in any form of advertising, promotion, or publicity including press releases, or for any other purpose, without the prior written consent of the other Party.

10. **Entire Agreement.**

The Consulting Terms and Conditions concerning the services described in this Proposal shall supersede all previous contracts between the Parties concerning the subject matter hereof. No oral statements or written material not specifically incorporated herein shall be of any force or effect.

11. **Governing Law.**

These Consulting Terms and Conditions shall be governed by, and interpreted and enforced in accordance with, the laws in the Province of Ontario and the laws of Canada, as applicable.

12. **Amendment, Modification, Waiver.**

No provision of these Consulting Terms and Conditions may be amended or modified unless such amendment or modification is agreed to in writing and duly executed by CLIENT and INTERTEK. No waiver shall be affected unless in writing and duly executed and delivered by each Party to the other. The waiver by any Party of the breach or violation of any provision of these Consulting Terms and Conditions shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.