These terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek Pakistan (Private) Limited providing the Services herein contained.

1. INTERPRETATION

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

(a) the Proposal

(b) the Services

(c) the Client

(d) the Proposal

(e) the Intertek Pakistan (Private) Limited

(f) the Party

(g) the Request

(h) the Report

(i) the fee quote

(j) the Services

(k) the Client

(l) the Proposal

(m) the Services

(n) the Client

(o) the Proposal

(p) the Services

(q) the Client

(r) the Proposal

(s) the Services

(t) the Client

(u) the Proposal

(v) the Services

(w) the Client

(x) the Proposal

(y) the Services

(z) the Client

1.2 The use of the plural number or the singular number in the agreement shall 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 this Agreement shall take precedence.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, estimates, reports, statements and reports prepared by Intertek in the course of providing the Services to the Client, together with statements or any other communication in any form describing the results of any services provided (the “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 provide any information, data, documents, records or other materials (the “Information”) to any government regulatory or enforcement authority in order 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 in the best interest of the Client to do so.

2.5 The Client acknowledges and agrees that any Services provided and/or Reports prepared by Intertek are subject to the limits of the scope of work agreed upon 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.

2.6 Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any third party shall 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

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 all applicable laws, regulations and rules and all reporting requirements as set out in this Agreement; and

(b) that the Services shall be performed in a manner consistent with that level of skill and care ordinarily exercised by other providers of services under similar circumstances.

3.2 In the event of breach of the warranty set out in Clause 3.1 (b), Intertek shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Intertek’s performance.

3.3 Intertek warrants, express or implied, all other warranties, conditions and other terms implied by statute or common law (including the warranty of merchantability, fitness for any particular purpose) as to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other statement, or advice provided by Intertek (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

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 procure the provision of the Services.

(b) that it is securing the provision of the Services hereunder for its own account and not as agent or broker for any other person or entity.

(c) that any information, samples and related documents it (or any of its agents or representatives) supplies to Intertek (or its agents, sub-contractors, employees or other representatives) is, true, accurate, complete and is not misleading in any respect. The Client acknowledges that Intertek will rely on such information, samples or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services.

(d) that any samples provided by the Client to Intertek shall be shipped pre-paid and will be considered received by the Client (at the cost) within thirty (30) days of the receipt of such testing unless alternative arrangements are made by the Client. In the event that such samples shall be lost or disposed of by the Client within the required thirty (30) days 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 certificates and reports) provided by the Client to Intertek will not, in any circumstances, be in possession 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 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.

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 who shall be empowered to give all instructions which may be necessary and appropriate for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement;

(b) if any services provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any damage, destruction or destruction;

(c) that it is responsible for providing the samples/equipment to be tested together, where applicable, 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) to promptly inform Intertek 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 provision of the Services;

(g) to inform Intertek in advance of any applicable import/export restrictions that may apply to the Services to be provided, including instructions where applicable, as to whether the importation or technology may be exported/imported to or from a country that is restricted or banned by international or national Transactional laws.

(h) in the event of the issuance of a certificate, to inform and advise Intertek immediately of any changes during the term of the certificate which may have a material impact on the acceptability of the certification;

(i) to obtain and maintain all necessary licenses and consents in order to comply with all relevant legislation and regulations relating to the deemed innocuous nature of any sample provided;

(j) that it will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will not make any false or misleading representations in relation to any Services provided by Intertek.

4.4 Intertek shall not be liable in respect of this Agreement nor liable to the Client for any breach 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. The Client also acknowledges that the impact of such failure may result in 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 any charges pursuant to Clause 5 below.

5. CHARGES, INVOICING AND PAYMENT

5.1 The Client shall pay the Intertek the charges set out in the Proposal, if applicable, or as otherwise agreed in contemplation for providing the Services to be done.

5.2 The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the date on which Intertek issues a valid invoice.

5.3 The Client agrees that it will reimburse Intertek for any expenses incurred by Intertek in relation to the provision of the Services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.

5.4 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek shall be charged at the time and rate of Intertek.

5.5 Intertek shall invoice the Client for the Charges and expenses, if any, within thirty (30) days of receiving them.

5.6 If the invoice is not paid within thirty (30) days of the date of invoice, Intertek shall invoice the Client for the amount unpaid, at interest on the unpaid amount, calculated from the due date of the invoice to the date of payment of such amount, at the highest rate of interest permitted by law, together with its expenses (being at least a reasonable estimate of any lawyers’ or accountants’ fees) at a rate of five percent (5%) per annum above the base rate from time to time of HSBC Bank in the relevant currency.

6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

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 one 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 for any reason must be prior approved in writing by Intertek. Any other 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 unauthorised 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 Intellectual Property Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever form) or information therein and any other material relating to the purposes of this Agreement shall belong to Intertek. The Client shall have the right to use such material and information in accordance with the terms 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 any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.

6.6 Intertek shall observe all statutory provisions with regard to data protection including but not limited to the provisions of the Data Protection Act 1998. To the extent that any data or processes or access to personal data in connection with the Services or otherwise in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to that extent to the extent authorised by unlawful processing, accidental loss, destruction or damage to such data).

7. CONFIDENTIALITY

7.1 Each 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) and shall, subject to Clauses 7.2 to 7.4.

(a) keep that Confidential Information confidential, apply the standard of care that it uses for its own Confidential Information;
9.1 (i) cost or
(ii) in the absence of relevant information on the use of its services; and
(iii) 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 bound to maintain confidentiality with respect to such information;
(d) is independently developed by the Receiving Party without access to the relevant information;
(e) 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 and, 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 granted in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing 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 of a Certification or the relevant accreditation body, all materials necessary to the provision of the Services.

8. AMENDMENT
8.1 To the extent 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 Either 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 caused by:
(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 fires;
(c) strikes and other disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or
(d) failures of urban services or provisions of telecommunication, internet, gas or electricity services.
9.2 For the purposes of this clause, the affected party shall be deemed to be affected by an event described above if:
(a) a delay performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:
(b) 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;
(c) use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and keep the other party informed of the progress of its affected obligations as soon as reasonably possible; and
(d) ensure that any breaches of warranties that remain unaffected by the Force Majeure Event.
9.4 If 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) working days written notice to the other party.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY
10.1 Neither party shall be liable to the other for:
(a) death for personal injury resulting from the negligence of that party or its directors, officers, employees, agents, or sub-contractors;
(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 or in connection with the Services to be provided by Intertek hereunder will not exceed $50,000.
10.3 Subject to Clause 10.1, neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any:
(a) loss of profits;
(b) loss of new or existing customers;
(c) loss of opportunity (including without limitation in relation to third party agreements or contracts);
(d) loss of or damage to goodwill or reputation;
(e) loss of anticipated savings;
(f) cost or expenses incurred in relation to making a product recall;
(g) loss of any of your data or information;
(h) indirect, consequential loss, punitive or special loss (even when advised of their possibility).
10.4 Any claim by the Client against Intertek (always subject to the provisions of this Clause 10) must be made within ninety (90) days after the 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 irrecoverable waiver to any claim, either directly or indirectly, in contract, tort or otherwise, to be paid by Intertek to the Client under this Agreement.

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 attorney’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 violation of any law, ordinance, rule or order of any governmental or judicial authority;
(b) claims or suits by any governmental authority or others for any actual or asserted violation of any law, ordinance, rule or order of any governmental or judicial authority;
(c) claims for, or in respect of, loss of or damage to property, commercial 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 or sub-contractors (other than those sub-contractors to whom the Client has provided the Services, as defined in this Agreement).
(d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising related to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to the Services is in excess of 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 produced by Intertek, analyses, conclusions or recommendations by Intertek (to the extent that 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.

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 Agreement until 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) neither party 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 Client, in the event that the Client’s obligations to the InterTek 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 (or ceases for the purpose of voluntary winding up), or if the Client’s assets are taken or encumbered by the Client’s creditors or if an encumberer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other company, or if it becomes insolvent, or threatens to remain insolvent.
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, together with the 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 or on 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 a third party upon giving prior written notice to the Client. The Client hereby agrees that InterTek may 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 laws of Pakistan. The parties agree to submit to the exclusive jurisdiction of the Pakistani 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
(a) 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 of any provision is to the extent 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.
(b) Partnership or agency
16.2 No party to this Agreement will enter into a partnership or joint venture with the other party or any of its affiliates or sub-contractors.

16.3 Waivers
(a) 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 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 in writing to the other party.

16.5 Whole Agreement
This Agreement contains the entire 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 purchaser order or statement or other similar document will add to or vary the terms of this Agreement.

16.6 Client’s acknowledgement of this Agreement and any agreement made by the Client with InterTek 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, 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.

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

17.3 Payment Assurance
Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and do such other actions in such capacities as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.