

## **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 to its best endeavors 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.
- (f) The Client warrants: (a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself; (b) that it is securing the provision of the 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; and (c) that any information, equipment, samples and related documents it (or any of its agents or representatives) provided to Intertek (including its agents, sub-contractors and employees) is, true, accurate, representative, complete and is not misleading in any respect.
- (g) The Client further acknowledges that Intertek will rely on such information, equipment, 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 any information, equipment, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

#### **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 invoice the Client for the Charges and expenses, if any. For Services provided over the course of a period of greater than thirty (30) days the Client agrees that at the end of each calendar month Intertek will issue an invoice for the cost of the Services provided in the month. A final invoice will be issued on the date of the completion of the Services. 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 issue by Intertek of a valid invoice. If Intertek believes that the Client's financial position and/or payment performance justifies such action, Intertek has the right to demand that the Client immediately furnish security or additional security in a form to be determined by Intertek and/or make an advance payment. If the Client fails to furnish the desired security, Intertek has the right, without prejudice to its other rights, to immediately 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. If the Client fails to pay on the due date of the invoice, it is in default of its payment obligations and this Agreement after having been reminded 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 credit balance with effect from the date on which the payment became due until the date of payment. The interest rate applied is deemed to be the Bank of England base rate plus 5%. In addition, all collection costs incurred after the Client's default, both judicial and extrajudicial, are for the Client's account. The extrajudicial costs are set at an amount equal to least 10% of the principal plus interest, without prejudice to Intertek's right to collect the actual extrajudicial costs in excess of this amount. The judicial costs comprise all costs incurred by Intertek, even if they exceed the Bank of England base rate.



(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, any final Deliverables and any and all materials and products developed or prepared for CLIENT by INTERTEK are the property of CLIENT save that INTERTEK shall be permitted to retain copies of any such Deliverables and supporting material. 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. Termination.**

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 8, until the Services have been provided.

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.

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.

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.

**9. 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

**10. 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. INTERTEK reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.

**11. 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.

**12. Governing Law.**

Any work performed pursuant to a proposal, shall be governed by the laws of the jurisdiction within which the Intertek facility making the proposal is located. Any action brought hereon shall be venued in said jurisdiction.

- 13. 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.

**14. Assignment and Sub-Contracting**

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. FORCE MAJEURE**

Neither 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 fires; (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; or (d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

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.

A Party whose performance is affected by an event described in the clause above (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; (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 continue to provide Services that remain unaffected by the Force Majeure Event.

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) days' written notice to the other Party.