1. INTERPRETATION

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

(a) this expression shall be construed as referring to this Agreement entered into between Intertek and the Client;
(b) App means an Application owned by Intertek, which the Client can download onto a mobile device and use to assist the Inspector when performing Remote Inspections;
(c) Charges shall have the meaning set forth in Section 6.1;
(d) Confidential Information means all information in whatever form or manner presented which: (a) is designated to be confidential or secret by the provisions of this Agreement pursuant to, this Agreement; (ii) is disclosed in writing, electronically, visually, orally or otherwise and is marked; and (iii) is identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (iv) is information, however disclosed, which would reasonably be considered to be confidential by the receiving party;
(e) ICT means information communication technology which shall include the App owned by Intertek;
(f) Inspection Bodies means any government, government department or any other public entity;
(g) Inspection Report means a form of visual inspection of samples or products, conducted by the Inspector by directing the Client to move to certain areas to allow the Inspector to inspect the samples or products via a direct video link by using the Remote Inspections App;
(h) Inspection Site means the premises, property, estimate, or fee quote, if applicable, provided to the Client by Intertek relating to the Services; and
(i) Inspector means Intertek inspector responsible for performance of the Services.

2. THE SERVICES

2.1. Intertek shall provide the Services to the Client in accordance with the terms of this Agreement which shall be the agreement between Intertek and 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. Where, under this Agreement, Intertek shall perform a Remote Inspection, the Client agrees and warrants: (i) to provide Intertek, with complete, accurate, and the most current information and documentation to build the Benchmark Report; (ii) to download the App onto the Clients smartphone and use the App solely for the purposes of Remote Inspection; (iii) to allow the Inspector to direct the camera of the smartphone while using the App, to allow the Inspector to perform the Remote Inspection and (iv) the Client shall not use or dispose of any information or images which are prepared by the Inspector to reconnect, if reconnection is not possible a physical inspection will be scheduled. The Client must be charged for any such connection failure and if an inspection can be rescheduled.

2.4. The Services provided 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 shall not be used at its premises or otherwise necessary for the provision of the Services or to provide Intertek (including its agents, subcontractors and employees) will create a warranty or any limitation of liability, or affect the Client's obligations under this Agreement for payment of the Charges pursuant to this Agreement. The Client acknowledges that any Reports issued by Intertek is limited to the facts and information, documents, data, products and/or other materials in existence at the time of the performance of the Services only.

2.5. Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its other 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.

2.6. In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or otherwise limit the rights of the Client to any other provision of law or the rights of any person to the Client.

2.7. The Client acknowledges that Intertek's internal auditors are authorized to amend or overturn the recent inspection outcome if the Result of the Services supports this action. The Services will be conducted in a manner that does not unduly interfere with the export of the products nor jeopardize the Client's legitimate interests.

2.8. The Client acknowledges that approved laboratories are acting as independent laboratories. In the event of conflict between the Client and an approved laboratory relating to the testing of the products, the dispute shall be resolved by the two parties, without involvement or responsibility on the part of Intertek.

2.9. Intertek warrants the use of its knowledge exclusively to the Client: (a) that it has the power and authority to enter into this Agreement and that it will comply with relevant legislation and regulations in force as at the date of this Agreement in relation to the provision of the Services; (b) that any Report issued in response to the Client's instructions for the Services will be issued with due care, in accordance with the best industry practices and within the limits of the mandate received from the relevant government, federal or governmental authorities; (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 made applicable when entering upon the Client's premises and shall not under any circumstances enter the Client's premises in any manner that directly or indirectly caused by Intertek's reliance on any information, other related documents provided to Intertek by the Client, or by any of its agents or representatives.

2.10. The Client acknowledges that by entering into this Agreement, Intertek, shall, at its own expense, perform services of the type originally performed as being reasonably required to correct any defect in Intertek's performance.

2.11. Intertek warrants no express or implied warranties. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. In no event, will the contents, excepts 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; (b) that all and any advertising or 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; (c) that Intertek may share any Report, data, and documentation generated and gathered during the performance of the Services to the extent requested by the relevant authorities. 

3. CLIENT WARRANTIES AND OBLIGATIONS

3.1. The Client represents and warrants:

(a) that it has the power and authority to enter into this Agreement and to procure the provision of the Services for itself;
(b) that it has obtained, and shall obtain, the necessary power of attorney to sign and facilitate the performance of this Agreement
(c) that any information, products and related documents (i) or (ii) any of its agents or representatives in accordance with the inspection report, report, inspection notes, notes, files, or records of Intertek (including any confidential report, report, inspection notes, notes, files, or records referred to in this document or any confidential report, report, inspection notes, notes, files, or records in any confidentiality, complete and is not misleading in any respect. The Client further acknowledges that Intertek will rely on such information, products 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 products provided by the Client to Intertek will be shipped pre-paid in a timely manner for Intertek to perform the Services at any time;
(e) that any samples provided by the Client to Intertek will be shipped pre-paid and will be collected or disposed of by the Client (at the Client's cost) within thirty (30) days after testing unless alternative arrangements are made by the Client and the Client. If the Client does not collect the samples within the required thirty (30) days, Intertek reserves the right to destroy the samples, at the Client's cost.

4. CHARGES, INVOICING AND PAYMENT

4.1. 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 that this Agreement shall take precedence over any terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek entity (Intertek) providing the services contemplated therein.

August 2019
conditions which the Client has provided or may in the future provide to Intertek, whether in a purchase order or any other document.

4.2 The Client shall pay the Intertek the charges set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services (the Charges).

4.3 If pricing factors, such as salaries and/or rates are subject to change between the conclusion date of the Proposal and the completion date of the Contract, Intertek has the right to adjust the Charges accordingly.

4.4 The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes at the rates charged at the time and in the manner prescribed by law, on the issue by Intertek of a valid invoice.

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

4.6 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional costs charged by Intertek will be collected on a time and material basis.

4.7 Intertek shall invoice the Client for the Charges and expenses, if any. For Services provided over the course of a calendar month (30) days after 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.

4.8 The Client agrees to pay the Charges and any additional amounts with respect to deduction, discount or set-off no later than thirty (30) days after the invoice date. No deduction for bank charges incurred can be made. Payments, which may be denominated in the currency indicated in the invoice, must be made by the Client, employee, agent designated by Intertek.

4.9 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 no obligation to send any request by the Client for a paper copy to be sent by post. Any invoice sent by post will include a £25 administration fee and the invoice must be paid by the Client within the credit terms referred to in 4.8 of this Agreement.

4.10 If any part of the Services is performed in a geographical position and/or 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 do so within thirty (30) days of such request, the Client is in breach of Clause 4.10 and 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 by Intertek on behalf of the Client and/or Intertek’s lawyers fees for the Client’s benefit, in connection with the extraneous costs are at an amount equal to at least 10% of the principal plus interest, without prejudice to Intertek’s right to collect the actual extraneous 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.

4.11 If the Client fails to pay within the period referred to in 4.8 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is due but not received. In that case, the Client shall observe all statutory provisions with regard to data protection including but not limited to the GDPR. In the event of provision of certification services, Client agrees and acknowledges that the use of the Client’s Confidential Information does not exempt the Client from its obligation to observe all statutory provisions with regard to data protection including but not limited to the GDPR.

4.12 If the Client objects to the contents of the invoice, details of the objection must be raised with Intertek within thirty (30) days of the invoice date. Any such objection will not be accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in 4.8 above.

4.13 If the Client 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 the invoice or supplementary information will not discharge the Client from its obligation to pay within the period referred to in 4.8. Intertek reserves the right to charge a £25 administration fee per invoice for issuing additional copies of invoices or amending invoice detail, format or structure from that agreed in the Proposal. Intertek maintains the right to reject such an invoicing amendment request and such a rejection by Intertek of the Client’s request will not exempt the Client from its obligation to pay within the period referred to in 4.8 above.

4.14 If actions by the Client delay completion of the Services, Intertek has the right to invoice the Client for the cost of all Services provided to date. In such a scenario the Client agrees to pay this invoice within thirty (30) days of the invoice date.

4.15 Upon submission of samples or any other testing material or performance of the Services from the Client, Intertek shall be deemed to be conclusive evidence of the Client’s acceptance of this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

5.1 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 or shall give rise to or vest in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights or shall give rise to or vest in that party.

5.2 In the event of provision of certification services, Client agrees and acknowledges that the use of the Client’s Confidential Information does not exempt the Client from its obligation to observe all statutory provisions with regard to data protection including but not limited to the GDPR. In the event of provision of certification services, Client agrees and acknowledges that the use of the Client’s Confidential Information does not exempt the Client from its obligation to observe all statutory provisions with regard to data protection including but not limited to the GDPR.

5.3 Both parties shall observe all statutory provisions with regard to data protection including but not limited to the provisions of the General Data Protection Regulation 2016/679 ("GDPR") and shall comply with all applicable requirements of the GDPR.

5.4 To the extent that Intertek processes 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 that the protection of such data (and to give effect to the client's right to erasure of personal data, where the affected party is Intertek any failure or delay caused by failure or delay caused by failure of or delay in the supply of services performed by a For a Force Majeure Event as (defined in 8.1 above) where the subcontractor is affected by one of the events described above.

8. Force Majeure

8.1 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) acts of God or other natural disaster;
(b) events beyond the reasonable control of the party, whether arising directly or indirectly, out of or in connection with the Services to be provided in accordance with this Agreement shall be the total amount of fees (whether paid or declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
(c) strikes and labour disputes, other than by any one or more employees of the affected party or any supplier or agent of the affected party; or
(d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

8.2 For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure of or delay in the supply of services performed by a For a Force Majeure Event as (defined in 8.1 above) where the subcontractor is affected by one of the events described above.

9. LIMITATIONS AND EXCLUSIONS OF LIABILITY

9.1 Neither party excludes or limits liability to the other for:

(a) death or personal injury resulting from the negligence of that party or its directors, officers, agents or contractors;
(b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors);
(c) 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 in accordance with this Agreement shall be the total amount of fees (whether paid or declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
(c) strikes and labour disputes, other than by any one or more employees of the affected party or 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 failure or delay caused by failure of or delay in the supply of services performed by a For a Force Majeure Event as (defined in 8.1 above) where the subcontractor is affected by one of the events described above.

9.3 Intertek shall not be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for any:

(a) loss or damage caused by fire, explosion, flood or other natural disasters;
(b) loss of sale or business;
(c) loss of opportunity (including without limitation in relation to third party agreements or contracts);
(d) loss or damage to goodwill;
(e) loss of anticipated savings;
(f) cost or expense incurred in relation to making a product or service available;
(g) loss of or corruption of software, data or information;
(h) any partial or total non-performance of the Services arising directly or indirectly from any event constituting a Force Majeure Event;
(i) Intertek’s control including failure of the client to comply with its obligations as set out in this Agreement;
(j) any indirect, consequential loss, punitive or special loss (even when advised of its possibility);
(k) 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 local authority;
(l) 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 any 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 any 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 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 local authority;
(m) 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 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 local authority;
11. INSURANCE POLICIES
11.1 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.
11.2 Intertek expressly disclaims any liability to the Client as an insurer or guarantor.
11.3 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.

12. TERMINATION
12.1 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 12, until the Services have been provided.
12.2 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 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.
12.3 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.
12.4 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.

13. ASSIGNMENT AND SUB-CONTRACTING
13.1 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.

14. GOVERNING LAW AND DISPUTE RESOLUTION
14.1 This Agreement and the Proposal shall be governed by the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the English 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).

15. MISCELLANEOUS

15.1 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.

15.2 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.

15.3 Subject to Clause 9.4 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.

15.4 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

15.5 This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersede 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.

15.6 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.

15.7 Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.

15.8 Third Party Rights
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.

15.9 Further Assurance
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.