1. INTERPRETATION

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

(a) Agreement means this agreement entered into between InterTek and the Client;

(b) Charges means the Charges set out in Clause 4.2;

(c) Confidential Information means all information in whatever form or manner presented which is not in the public domain and which is not common knowledge or is normally not made known to the public at the time of such disclosure; and/or (d) information, however disclosed, which would reasonably be considered to be confidential information;

(d) Intellectual Property is means copyrights, trademarks (registered or unregistered), patents, trade secrets and other proprietary rights in any way associated with the Services performed by Intertek during the course of the Agreement or any relevant Intertek's work or at any time before the Agreement was entered into, as applicable, and may comprise or include the provision by Intertek of a Report;

(e) 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 provided by InterTek under this Agreement and any ancillary or supporting documents, measurements, estimates, notes, certificates and other material prepared by InterTek in the course of providing the Services to the Client, together with all related documents, shall be the sole property of the Client or otherwise, as the case may be.

2.4 The Client acknowledges and agrees that if in providing 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.

2.5 The Client acknowledges and agrees that any Services provided and/or Reports produced by InterTek are done so within the limits 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 reliability, services, systems, products, materials, authenticity, tested, inspected or certified and the scope of work agreed with all standards which may apply to product, material, services, systems or process tests. The Client further agrees that reliance on information provided by InterTek is limited to the facts and representations set out in the Reports which represent the facts and information by which the Services were provided 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 guarantee or warrant to the Client that the Services will be error-free, complete, accurate or up-to-date in every respect.

3. CONFIDENTIALITY/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 relevant laws and regulations in relation to the provision of the Services;

(b) that it will provide the Services in accordance with the relevant terms and conditions of this Agreement and any relevant proposal submitted by InterTek, to the extent that such proposals are not inconsistent with the Agreement;</n
(c) that it will take reasonable steps to ensure that the Client's information is handled in such a way as to comply with the applicable laws and regulations;

(d) that the Services shall be performed in accordance with the applicable laws and regulations;

(e) that it will not disclose any information or documentation which it obtains in the course of providing the Services to the Client to any third party, other than as agreed in writing with the Client;

(f) that it will maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;

(g) that it will not use any Reports issued by InterTek pursuant to this Agreement in a manner inconsistent with the use of the Services provided by InterTek;

(h) that it will not release any communication or written advice to any third party without the Client’s prior written consent.

3.2 The Client agrees and acknowledges that:

(a) the Services will be provided to the Client in accordance with the relevant terms and conditions of this Agreement and any relevant proposal submitted by InterTek, to the extent that such proposals are not inconsistent with the Agreement.

3.3 InterTek makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to the terms of the Data Protection Act 1998 and the terms of the Privacy Act 2000) are excluded to the fullest extent permitted by law, except where this Agreement provides otherwise. No personal advice or guidance by or on behalf of InterTek, or any of its agents or representatives (including its agents, sub-contractors, employees or other representatives) creates a warranty or otherwise increase the scope of any warranty provided.

4. CHARGES AND PAYMENT

4.1 The Client represents and warrants:

(a) that it has the legal right to enter into this Agreement and is capable of entering into the Services for itself;

(b) that it is securing the provision of the Services hereunder for its own account and not for the account of any person or body other than for the benefit of the Client or its agents; and

(c) that any information, samples or related documents it or any of its agents or representatives supplies to Intertek (including its agents, sub-contractors and employees) is, true, accurate representation, and is not misleading in any respects.

4.2 InterTek reserves the right to withdraw services, if InterTek or its agents or representatives or suppliers of Intertek (including its agents, sub-contractors and employees) are, true, accurate representation, and is not misleading in any respects, or if the Client does not comply with this Agreement or any instructions, or if the Client or any of such clients or any of their agents or representatives are, true, accurate representation, and is not misleading in any respects.

4.3 InterTek reserves the right to withdraw services, if InterTek or its agents or representatives or suppliers of Intertek (including its agents, sub-contractors and employees) are, true, accurate representation, and is not misleading in any respects, or if the Client does not comply with this Agreement or any instructions, or if the Client or any of such clients or any of their agents or representatives are, true, accurate representation, and is not misleading in any respects.

4.4 InterTek shall invoice the Client for reasonable charges incurred by Intertek including the cost of any third parties or any other person or any duty or obligation of any person to the Client.

4.5 CHARGES, INVOICING AND PAYMENT

5.1 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).

5.2 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 issue by InterTek of a valid invoice.

5.3 The Client agrees that it will reimburse Intertek for any expenses incurred by Intertek relating 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 Client represents and warrants to the Client by the Client for the Services pursuant to this Agreement. Any additional work performed by InterTek will be charged on a time and materials basis.

5.5 InterTek shall invoice the Client for the Charges and expenses, if any. The Client shall pay each invoice within thirty (30) days of receiving it.

5.6 If any notice is not paid on time or in full for payment, InterTek shall have the right to charge, and the Client shall pay, interest on the unpaid amount, calculated from the due date of the invoice to the date of payment, at a rate equal to 2% per annum above the base rate from time to time of HSBC Bank in the relevant currency.

6. INTELECTUAL PROPERTY RIGHTS AND DATA PROTECTION

6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement will be owned and shall be the property of that party. All Intellectual Property Rights from either 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 by InterTek. Any use of InterTek’s trademarks or brand names must be in accordance with the terms and guidelines agreed by InterTek and the Client. InterTek reserves the right to terminate the use of the Services in the event of non-compliance.

6.3 In the event of provision of training services, the 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 medium) produced by InterTek pursuant to this Agreement shall belong to InterTek. InterTek reserves the right to terminate the use of the Services in the event of non-compliance.

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 services rendered by any of its representatives or contractors 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 InterTek processes or gets access to personal data in connection with the Services or otherwise, for any other purpose or on behalf of any other person or body, InterTek will take all reasonable organisational measures to ensure the security of such data (and to guard against unauthorised access or unlawful processing, accidental loss, destruction or damage to such data).

7. CONFIDENTIALITY

7.1 Intertek, (the “Receiving Party”) obtains Confidential Information from the other party (the “Disclosing Party”) in connection with this Agreement (whether before or after the execution of this Agreement) or in connection with the provision of the Services to the Client.

7.2 the Receiving Party agrees to keep the Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
1.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, loss, damage, or cost incurred in connection with or in respect of any claim, suit, action, or proceeding arising out of or in connection with the Services provided hereunder. Intertek may take such action at its own cost and expense as it deems necessary to protect its rights or interests. Intertek may, at its own option and expense, (a) contest or settle any such claim or suit, or (b) settle any such claim or suit by paying the amount claimed to be owed by the Client for the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above.

4. ASSIGNMENT

14. ASSIGNMENT AND SUB-CONTRACTING

15. GOVERNING LAW AND DISPUTE RESOLUTION

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. No invalidity or unenforceability as if this Agreement has been executed by 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 amount of Charges due by the Client to Intertek under this Agreement.

10.1 Neither party excludes or limits liability to the other party for (a) 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 In the event of a maximum aggregate amount of Intertek's liability arising out of or in connection with the Services (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 provided hereunder this Agreement shall be the amount of Charges due by the Client to Intertek under this Agreement.

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 sales or business;
(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 profits or revenue;
(f) cost or expenses incurred in relation to making a product recall;
(g) loss of use or corruption of data or information;
(h) any indirect, consequential loss, punitive or special loss (even when advised of their possibility).

10.4 Any claim by or against Intertek always subject to the provisions of this Clause

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, loss, damage or expense of whatever nature and howsoever arising relating to the performance, purported performance or non- performance of any Services provided hereunder. The Client further agrees 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 unauthorized use of any Reports or records prepared by Intertek or any other party for which Intertek or any other party, is responsible (including trade marks) pursuant to this Agreement; and

(f) any arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the reports) based in whole or in part on the Reports, if applicable.

11.2 The limitations set out in this Clause shall survive termination of this Agreement.

12. INSURANCES

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 shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

13.2 This Agreement may be terminated by:

(a) either party if the other party 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 in written notice to the Client in the event of the receipt by Intertek of a request to provide any invoice by its due date and/or fails to make payment after 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 is an individual or corporate bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or becomes subject to the provisions of the Bankruptcy Act or other similar law relating to bankruptcy, insolvency, or similar events affecting its ability to carry on business.

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 termination date and shall deliver to Intertek, if requested, the invoices for such services to the extent that they have not been paid in full. Payment shall be made within ten (10) days of the receipt of such invoices. Any sums due to the Client in respect of any Services not performed may be deducted from any sums due to the Client.

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 notice to the Client.

15.1 Intertek shall be entitled to terminate this Agreement forthwith in the event that the Client breaches any of the terms of this Agreement and does not, within ten (10) days of the Client receiving written notice of such breach, rectify the same.

15.2 Intertek may terminate this Agreement forthwith in the event that the Client shall not pay any sums due under this Agreement when due and Intertek has given the Client written notice of its intention to do so.

15.3 Intertek may terminate this Agreement forthwith in the event that the Client shall cease to be solvent or be wound up, or to be dissolved, or for any reason whatsoever be incapable of performing its obligations hereunder.

15.4 Intertek may terminate this Agreement forthwith in the event that the Client shall be sold or merged with another business or ceases to exist as a result of the winding up or dissolution of the Client.

15.5 Intertek may terminate this Agreement forthwith in the event that the Client shall be subject to any compulsory administrative action or order or any administrative action or order.

15.6 Intertek may terminate this Agreement forthwith in the event that the Client shall do or attempt to do any act which would constitute an act of bankruptcy or any act or omission which would or might reasonably be considered to be an act of bankruptcy or any act or omission which would, if done by a company, result in the company being wound up, or dissolved, or subject to any compulsory administrative order or any administrative order.

16.3 Subj ect 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 to the other party in writing.

16.5 This Agreement and the Proposal contain the whole agreement between the parties relating to the transaction to which this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that. The matters included in this Proposal, order, statement or other similar document will add and modify 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 or other assurance (other than those set out or referred to in this Agreement) made by or on behalf of any other party before the acquisition 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 or other assurance.

16.7 This Agreement replaces any liability for Intertek's or Client's misrepresentation. THIRD PARTY RIGHTS

16.8 Each party that is not a party to this Agreement has no right to enforce any of its terms.

16.9 Each party shall, in the cost and request of any other party, execute and deliver such further instruments and documents as each may reasonably request to give full effect to its obligations.