

These 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.

**1. INTERPRETATION**

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

- (a) **Affiliate** shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
- (b) **Agreement** means this agreement entered into between Intertek and the Client;
- (c) **Certificate of Conformity** means the certificate issued by Intertek to a third party on behalf of a government or regulatory body in accordance with the applicable CAP;
- (d) **Conformity Assessment Programme (CAP)** means a programme where Intertek assists governments in preventing the import of unsafe goods into the country by inspection and testing of these goods;
- (e) **Charges** shall have the meaning given in Clause 5.3;
- (f) **Confidential Information** means all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (ii) is information, howsoever disclosed, which would- reasonably be considered to be confidential by the receiving party.
- (g) **Intellectual Property Right(s)** means copyrights, trademarks, patents, patent applications (including the right to apply for a patent), service marks, design rights trade secrets and other rights (whether registered or unregistered), howsoever existing; **Reports (s)** shall mean any **memoranda, laboratory data, calculations, measurements, estimates, notes, Certificate of Conformity s and other material prepared by the Supplier indicating whether or not a recommendation to issue a Certificate of Conformity is to be made; Services** means the services set out 2.2 or in any relevant Intertek Proposal, any relevant Client purchase order, as applicable, and may comprise or include the provision by Intertek of a Certificate of Conformity
- (h) **Proposal** means the description of our Services, and an estimate of our Charges, 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 Unless Intertek receives prior written instructions to the contrary from the Client, no other party is entitled to give instructions, particularly on the scope of the Services or the delivery of the Certificate of Conformity resulting therefrom.
- 2.3 The Client hereby irrevocably authorises Intertek to deliver the Certificate of Conformity to a third party where so instructed by the Client, or at its discretion, where it implicitly follows from circumstances, trade custom, usage or practice.
- 2.4 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of this Agreement shall take precedence.
- 2.5 Certificate of Conformity .
- 3. The Client acknowledges and agrees that; (i) any Services provided and/or Certificate of Conformity 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 ; (ii) any information stated in the Certificates of Conformity are derived from the results of the inspection or testing procedures carried out in accordance with the CAP, and Intertek's assessment of such results are on the basis of any technical standards, trade customer or practice; (iii) either by entering into this Agreement or by providing the Services, neither takes the place of the Client or any third-party, nor releases them from any of their obligations, nor otherwise abridge, abrogate or 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; (iv) Intertek can suspend, withdraw or cancel the Certificate of Conformity if any third party fails to comply with the requirements of the CAP; and (v) Intertek cannot be held liable for any third party failing to comply with the requirements of the CAP.

**3. CAP. 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 relevant legislations and regulations in force as at the date of this Agreement in relation to the provision of the Services;
  - (b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;
  - (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 known to Intertek by the Client in accordance with Clause 4.3(f);
  - (d) that the Certificate of Conformity s produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek's reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).
- 3.2 In the event of a 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 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 any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information 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 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;
  - (c) that all products, information, records, samples and related documents it (or any of its agents or representatives) supplies to Intertek (including its agents, sub-contractors and employees) are , true, accurate representative, complete and is not misleading in any respect and made available when required by Intertek The Client further 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 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. In the event that such samples are not collected or disposed 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 Certificate of Conformity s 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.
- 4.2 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 Certificate of Conformity s 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 duly authorised to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
  - (b) to provide instructions and feedback to Intertek in a timely manner;
  - (c) 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;
  - (d) prior to Intertek attending any premises for the performance of the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;
  - (e) to notify Intertek promptly 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;
  - (f) to inform Intertek in advance of any applicable import/ export restrictions, including but not limited to any USA-based export controls such as International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) that may apply to the Services to be provided, or any Confidential Information, including any instances where any products, information or technology may be exported/ imported to or from a country that is restricted or banned from such transaction
  - (g) in the event of the issuance of a Certificate of Conformity , to inform and advise Intertek immediately of any changes during the term of the Certificate of Conformity which may have a material impact on the accuracy of the certification;
  - (h) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;
  - (i) that it will only use a Reports or Certificate of Conformity s issued by Intertek only in the manner prescribed herein and in the Certificate of Conformity for the purpose of the providing the Services Certificate of Conformity ;
  - (j) the Client agrees to publish the Certificate of Conformity in its entirety and its results shall solely represent the true and accurate results of the Services as agreed between the parties Certificate of Conformity or Report ; and
  - (k) that shall not use any Intellectual Property, including but not limited to any trademark, branding and the use of the Intertek name for any advertising and promotional materials or any statements made by the Client without the prior written consent of Intertek.
- 4.4 Intertek shall be neither in breach 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 any failure by the Client to perform its 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 the Charges pursuant to Clause 5 below.
- 5. **CHARGES, INVOICING AND PAYMENT**
- 5.1 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 which the Client has provided or may in the future provide to Intertek, whether in a purchase order or any other document.
- 5.2 The third party importer shall pay Intertek the charges as set out in any proposal or otherwise agreed in writing (the **Charges**) which cover all stages leading to completion of the assessment programme or operations and the submission of a Certificate of Conformity issued by Intertek. Intertek reserves the right to increase the Charges during the term of this Agreement. The third party will be notified in advance of any increase.
- 5.3 Additional Charges shall be charged for services that are not included in the Proposal and for additional services required for non – conformance being identified. These include, without limitation, costs including the following: (i) repeat of any part, or all, of the assessment programme or operations due to the registration procedures and rules not being met; (ii) additional work due to suspension , withdrawal and/or reinstatement of a Certificate of Conformity ; and (iii) any request for any additional work due to any investigation by any legal authority for documents or testimony relating to any Services performed by Intertek
- 5.4 The Charges are expressed exclusive of VAT and any other applicable taxes. **If a withholding Intertek shall provide the third party with a quote price including the applicable withholding tax.** The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, within thirty (30) days of the issue by Intertek of a valid monthly invoice
- 5.5 The third party importer 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.
- 5.6 The Charges represent the total fees to be paid by the third-party importer for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.
- 5.7 Intertek will issue an electronic invoice to the third-party importer each month as the Services progress. An electronic invoice may be sent by email and will be deemed to have been delivered to the third-party importer upon receipt of such email. Intertek is under no obligation to fulfil any request by the third-party importer for a paper copy to be sent by post. Any invoice sent by post will include a £25 administration fee and the paper invoice must be paid by the third-party importer within the credit terms referred to in 5.5 above.
- 5.8 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.
- 5.9 If the third-party importer fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least twice that payment is due within a reasonable period. In that case, the Client is liable to pay interest each week 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 third-party importer s default, both judicial and extrajudicial, are for the third-party importer 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.
- 5.10 If the third-party importer objects to the contents of the invoice, details of the objection must be raised with Intertek within seven (7) days of receipt of electronic invoice, otherwise the invoice will be deemed





- to have been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in 5.5 above.
- 5.11 Any request by the third-party importer 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 third-party importer 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 5.9 above. 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 third-party importer from its obligation to pay within the period referred to in 5.5 above.
- 5.12 If actions by the third-party importer 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.
- 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.
- 6.2 Any use by the Client (or its Affiliates) or third-party importer, of the name "Intertek" or any of Intertek's trademarks or brand names for any marketing, media or publication purposes must be prior approved in writing by Intertek. Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.
- 6.3 All Intellectual Property Rights in any Certificate of Conformity, document, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have the right to use any such Certificate of Conformity, document, graphs, charts, photographs or other material for the purposes of this Agreement.
- 6.4 The Client and the third-party importer 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 Certificate of Conformity (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.
- 6.5 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.
- 7. CONFIDENTIALITY**
- 7.1 Where a 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) it shall, subject to Clauses 7.2 to 7.4:
- (a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
- (b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and
- (c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.
- 7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:
- (a) to any legal advisers and statutory auditors that it has engaged for itself;
- (b) to any regulator having regulatory or supervisory authority over its business;
- (c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and
- (d) where the Receiving Party is Intertek, to any of its subsidiaries, Affiliates or subcontractors.
- 7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:
- (a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
- (b) is or becomes public knowledge other than by breach of this Clause 6.5;
- (c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) is independently developed by the Receiving Party without access to the relevant Confidential Information.
- 7.4 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 (which, 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 given 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 and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.
- 8. AMENDMENT**
- 8.1 No amendment to 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 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.
- 9.2 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.
- 9.3 A party whose performance is affected by an event described in Clause 9.1 (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
- (c) continue to provide Services 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) days' written notice to the other party.
- 10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**
- 10.1 Neither party excludes or limits liability to the other party:
- (a) for 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 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 in accordance with this agreement shall be an amount equal to the fees paid by the Client or the third-party importer to Intertek in accordance with this Agreement. (
- 10.3 Notwithstanding the above clause 10.2, Intertek shall not be liable to the Client or third-party importer, in contract, tort (including negligence and breach of statutory duty) or otherwise for any: (i) loss of profits; (ii) loss of sale or business; (iii) loss of or damage to goodwill or reputation; (iv) cost or expense of making a product recall; (v) loss or use or corruption of software, data or information; (vi) any indirect, consequential, punitive, or special loss (even when advised of their possibility); (vii) any incorrect results Certificate of Conformity arising from any false, unclear, incomplete, or misleading information provided to Intertek; and (viii) the third-party importer failure to comply with requirements of any government body or rectify any non-conformities as set out by the government body, including if the product sold or distributed.
- 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 IRREVOCABLE WAIVER TO ANY CLAIM, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT.
- 11. INDEMNITY**
- 11.1 Except in cases of proven negligence or fraud by Intertek, the Client and the third-party importer shall indemnify and hold harmless Intertek, its officers, employees, agents, Affiliates, contractors and subcontractors 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 failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- (b) claims or suits in connection with the third-party importer product which has been sold or distributed, process or service where Intertek have not issued any Certificate of Conformity as the product fails to meet the requirements of the CAP and the government.
- (c) the breach or alleged breach by the Client or third-party importer, of any of its obligations set out in Clause 4 above;
- (d) any claims made by any third party for loss, damage or expense of whatsoever nature and whatsoever arising relating to the performance, of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above; and
- (e) any claims or suits arising as a result of any misuse or unauthorised use of any Reports or Certificate of Conformity issued by Intertek which may damage the goodwill or reputation of Intertek including but not limited to any use by the Client or the third-party importer, of the name "Intertek" or any of Intertek's trademarks or brand names for any media, marketing or publication purposes must be prior approved in writing by Intertek pursuant to this Agreement. Certificate of Conformity Certificate of Conformity
- 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.
- 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 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 third-party importer in the event that the third-party importer 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.
- 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 third-party importer shall pay Intertek for all Services performed up to and including date of termination. This obligation shall survive 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 on or 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 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. GOVERNING LAW AND DISPUTE RESOLUTION**
- 15.1 This Agreement and the Proposal shall be governed by English law. 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).
- 16. MISCELLANEOUS**
- Severability**
- 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 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.
- No partnership or agency**



16.2 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.

**Waivers**

16.3 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 to the other party in writing.

**Whole Agreement**

16.5 This Agreement and the Proposal contain the whole 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 purchase order, statement or other similar document will add to or vary 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 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.

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

**Third Party Rights**

16.8 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.

**Further Assurance**

16.9 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.