

## AUDIT/VERIFICATION APPLICATION FORM

### Section 1: Service request

#### 1.A – AUDIT PROGRAM/PROTOCOL

Intertek Community Programs:

☐ WCA

☐ SQP

☐ GSV

[Click here – for more details](#)

☐ Inlight Network [Click here for more details](#)

Industry Association Programs:

☐ amfori BSCI

☐ ICS

☐ RBA (formerly EICC)

☐ SA8000

☐ SLCP

☐ SMETA 4 Pillar

☐ SMETA 2 Pillar

☐ Sedex Virtual Assessment

☐ WRAP

If audit program applicable, please provide a list of your clients that you will share the audit report with (we will arrange the audit according to your client's requirement, for example, some clients only accept semi-announced audit, etc.)

Client Specific Programs (Please specify client name):

#### 1.B- AUDIT TYPE & AUDIT DATE

Audit Type:

☐ Full Initial

☐ Annual Audit / Renewal Audit

☐ Follow-up Audit

☐ Other \_\_\_\_\_

☐ SMETA (complete section 5)

Audit Announcement:

☐ Announced

☐ Unannounced

☐ Semi – Announced with window period \_\_\_\_\_

Desired Audit Date/Period (DD-MM-YYYY or MM-YYYY):

### Section 2: Details of physical facility to be assessed

#### 2a - Generic information

<p>Audited Facility Company Name (English &amp; Local Language)</p>	
<p>Address (English &amp; Local Language)</p>	
<p>Additional sites (address)</p>	<p>Provide address if the facility has additional sites remote from the premises:</p>
<p>Company Registration Number</p>	



Location of the Employee Documents	Provide address if employee documents (e.g. HR / Pay Roll/ Time Attendance Records) are stored in a different location:		
Primary Facility Contact & Title		Secondary Facility Contact & Title	
E-mail Address		E-mail Address	
Telephone Number		Telephone number	

## 2b - Size Information

Facility Size	Facility Land Size (m2)			
	Total Facility Floor Size (m2)			
Number of Buildings	Production		Dormitory	
	Warehouse		Other (specify)	
Onsite Service Providers (e.g. security, janitor)	Provide name of each service provider and roles:			

## 2c - Employee Information

Total Number of Employees				
Employee Breakdown by Gender	Male		Female	
Number of Employee Breakdown	Permanent Employee		Temporary/ Agency	
	Migrant labour		Home workers	
Employee Type Breakdown	# of Production Employees		# of Office / Admin staff	
	# of Management			
Language Spoken by Employee	Language 1:		Total workforce in %	
	Language 2:		Total workforce in %	
	Language 3:		Total workforce in %	
	Language 4:		Total workforce in %	
	Language 5:		Total workforce in %	
Language Spoken by Management	Language 1:		Language 2:	





## 2d - Product Classification of the facility to audit

For Manufacturing facility (describe what product do you produce):

For non-manufacturing facility (describe your business):

### Section 3: Information of applicant (complete ONLY if different from facility)

#### 3.A-Information of applicant

Company Name (English & Local Language)			
Address (English & Local Language)			
Contact Person's Name & Title		Telephone Number	
E-mail address		Fax Number	

#### 3.B-Information of vendor (If Applicable)

Company Name (English & Local Language)			
Address (English & Local Language)			
Contact Person's Name & Title		Telephone Number	
E-mail address		Fax Number	

### Section 4: Invoiced details (complete ONLY if applicant is payee)

Company Name (English & Local Language) *
Address (English & Local Language) *
Contact Name *
Telephone Number *
E-mail Address *
Tax/VAT number (if applicable) *

\* compulsory information





Section 5: SMETA Audit Additional Information

SMETA Audit Type

☐ Full Initial

☐ Partial Other Define below

☐ Periodic

☐ Full Follow-up

☐ Partial Follow-Up

Sedex Company Reference: (only available on Sedex System) if applicable	ZC:	Sedex Site Reference: (only available on Sedex System) if applicable	ZS:	
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Do you have access to Sedex SAQ (Self-assessment Questionnaire)?

☐ Yes☐ No

Note:

(1) For SEDEX members, all audits must be uploaded. For non-SEDEX members, please ensure that all SMETA audits are uploaded onto the Sedex platform when allowed by the auditee/audit requestor.

(2) For non-Sedex member upload, the uploaded report cannot be shared with the Sedex A member and CAP/evidence cannot be uploaded onto the Sedex platform.

SEDEX Fee:

£50 per SMETA audit/SVA for Sedex member with ZS Code

£150 per SMETA audit/SVA for non-Sedex member

£200 per NON-SMETA audit for SEDEX member

Note: Sedex fee is applicable to every SMETA audit and SVA no matter the report is uploaded to Sedex platform or not.

Audit Upload Fee:

£ \_\_\_\_\_ to upload SMETA

£ \_\_\_\_\_ to upload Non SMETA report

Desk Top Verification:

There is an extra cost for Desktop verification. Please contact your local Intertek office for prices





**Section 6: Declaration of Consent (only applicable for Intertek Programs audit)**

**6.1 Declaration of Consent for Intertek Community Programs ONLY – GSV/SQP/TGI/WCA**

- a. The goal of the Intertek Community Programs is to help the manufacturing and export community to avoid redundant assessments/audits. Manufacturers/facilities that voluntarily choose to participate in these Programs agree to an on-site independent assessment/audit, to measure and verify the compliance of their operation/ management systems with the standards outlined in the relevant Programs.
- b. At the end of an on-site audit, if the audit meets the required performance criteria (“Successful Audit”), Intertek will grant an Achievement Award/ Record of Participation to the applicant.
  - Performance Criteria:** Achievement Award / Record of Participation (ROP)
    - TGI and WCA: Overall score 85 or above and without Zero Tolerance or Major Finding.
    - SQP: 85 score or above and without Major Finding.
    - GSV ROP: 76 score or above
- c. By signing this application form, the applicant expressly authorizes Intertek to share the audit report of a Successful Audit with Intertek’s other standard community members.
- d. The applicant agrees that Intertek is entitled to list the Achievement Award / Record of Participation (ROP) information on the Achievement Award / ROP directory which will be posted on the related Intertek website for the Programs.
- e. The follow up audit (if applicable) shall be completed within 6 months from initial/annual/renewal audit, otherwise, no Achievement Award could be granted.

**6.2 Further declaration of consent where the applicant is not the audited facility/manufacturer**

Unless otherwise agreed between the parties, where the applicant is not the audited facility/manufacturer, the applicant agrees that a copy of the audit report and of the physical Achievement Award / ROP (if any) will be issued to the facility/manufacturer audited. Unless otherwise specify, it is the responsibility of applicant, prior to apply for these audit services, to seek the permission from the facility/manufacturer to be audited for Intertek to share the results of the audit with the relevant clients requesting for the audit results.

**Section 7: additional information/obligations**

To make sure Intertek receive the requisition form, kindly follow up with a phone call. The audited facility must ensure that the relevant audit document is available at the location of the audit at time of the audit. Failure to have proper documents on-site at the time of the audit may result in issuance of nonconformity. The audited facility should be in full operation at the time of audit, otherwise it may result in cancellation of audit.

By signing this Audit Application form, we hereby apply for the above services and expressly agree to the terms set out in this Audit Application Form, including Intertek Specific Terms and conditions set out on page 6 and Intertek General Terms and Conditions of Services as set out on page 7 to 9 of this Audit Application form. Please note the following specific terms and terms and conditions are only relevant if you are the payee.

Any amendment to this form should be first reviewed and approved by Intertek before being legally binding.

\_\_\_\_\_  
Date of Application

\_\_\_\_\_  
Application completed by





## SPECIFIC TERMS & CONDITIONS – AUDITING SERVICES

TERMS	DEFINITION/ CONDITION	RATE
Onsite Audit Access	The facility managements shall be responsible to ensure full cooperation in providing access to all areas of the facility and an appropriate work environment for auditors to conduct their job in accordance with the audit scope. This may include employees for confidential interviewing, documentation for review and other requirements.	/
Booking Lead Time	Applications should be made at least 30 calendar days prior to the desired date.	/
Man-day	8 hours spent business and/or traveling with 1-hour break or in compliance with local labor law.	As agreed with client/applicant
Normal Business Day	Monday to Friday or in compliance with local labor law and customs	/
Working/Traveling on Holidays Charge (Saturday, Sunday or Public Holiday)	Holidays and Weekends will vary depending on local law and customs. A surcharge will be applied for work and travel on such days.	50% surcharge of audit fee
Audit Preparation, Administration / Scheduling & General administration fee for audit scheduling, preparation and report writing. Report Writing		As agreed with client/applicant
Express Booking	For audit booking within 5 working days from desired audit date.	50% surcharge of audit fee
Late Cancellation & Rescheduling Charge	If notice of cancellation or rescheduling is made prior to the committed <i>audit date</i> (or start date of the semi-announced audit window), the indicated billing party will be responsible for the following audit fees and expenses:	Within 2 Business Days: 100% of the audit fee plus expenses already incurred; More than 2 and within 10 business days: 50% of the audit fee plus expenses already incurred; More than 10 business days: any incurred expenses
Access Denied Charge	Scheduled audit was not performed on the committed audit date due to the facility management not allowing Intertek auditor to enter or conduct the audit for reason outside the control of the auditor.	100% audit fee plus all expenses incurred
Extra Traveling Time Charge	If travel cannot be completed within the same day of service execution and if the distance from the nearest Intertek office is over 100 km, the traveling time (including the waiting time due to lack of transport resources) will be charged.	- up to 4 hours: 0.5 man-day - more than 4 hours: 1.0 man-day
Out of Pocket Expenses (OPE)	Other expenses include traveling, hotel expenses (if any), applicable governmental taxes, visa and administrative fee, etc.	Invoiced in accordance with travel cost matrix or pre-approved price agreement
Value Added Tax (VAT)	In countries where legally applicable, Value added taxes will be added to the invoice as per local country practices	Where applicable
Mailing Expenses	Documents, samples, materials, etc. sent to clients or between different offices at the request of the client.	Invoiced at cost plus 10% handling fee
Service Document Re-issuance Charge	Any changes other than Intertek own corrections required after the original document has been issued (report or certificate)	US 30 per copy
Payment Terms	Full prepayment term will be applied.	



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 goods 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) **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;
- (d) **Charges** shall have the meaning given in Clause 5.3;
- (e) **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.
- (f) **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;
- (g) **Report(s)** shall mean any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by the Supplier in the course of providing the Services to the Customer, together with status summaries or any other communication in any form describing the results of any work or services performed;
- (h) **Services** means the testing, assurance, and inspection services as set out in clause 2 of this Agreement .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 Report
- (i) **Proposal** means the description of our Services, and an estimate of our Charges, if applicable, provided to the Client by Intertek.
- (h) **Remote Inspection** means a form of visual inspection, conducted by the Inspector by directing the Client or the Clients suppliers to move to certain areas to allow the Inspector to carry out the audit remotely via a direct video link via an app or software technology;

(i) **Inspector** means Intertek inspector responsible for performance of the Services

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 (i) the limits of instructions received by the Client; and (ii) the content of the audit program as set out by Intertek or any applicable audit regulatory body.
- 2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the Client in the terms of this Agreement shall take precedence.
- 2.3 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. For the purposes of this clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.
- 2.4 Where the Client has instructed Intertek to carry out the Services on behalf of its suppliers, the Client's suppliers 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 and Intertek shall provide a copy of the Report to the Client. The content of any Report represent Intertek's review of facts and documents in existence at the time of performance of the Services only and within the limits of the instructions received by the Client and are for the benefit of the Client or any regulatory body, which is responsible for acting as they see fit on the basis of such Reports.
- 2.5 The Client and its suppliers further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports which represent Intertek's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.
- 2.6 Where the Client instructs Intertek to perform a Remote Inspection, the Client and/or the Clients suppliers agrees and warrants: (i) to provide Intertek, with complete, accurate, and the most current information and documentation to perform the Remote Inspection; (ii) to download the App, if applicable, onto the Clients or their suppliers smartphone and use the app solely for the purposes of the 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 and/or the Clients suppliers shall be solely responsible for ensuring sufficient internet connectivity to perform the remote inspection. If internet connectivity fails during the Remote Inspection, the Client and/or the Clients suppliers shall make all attempts to reconnect, if reconnection is not possible a physical inspection will be scheduled.
- 2.7 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.
- 2.8 In agreeing to provide the Services pursuant to this Agreement, Intertek does not 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.

## 3. INTERTEK'S WARRANTIES

- 3.1 Intertek warrants exclusively to the Client:
  - (a) that it has the power and authority to enter into this Agreement and that it will comply with 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 Reports 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 information, records, and related documents (including but not limited to any clients or supplier books, code of ethics, internal policies, records (including employment records), information systems) 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) shall comply with Intertek's request to conduct interviews, meetings or discussions with the Clients personnel and the personnel of the Clients suppliers for any matters relating to the Services within the timeframe as agreed between the parties; and
  - (e) that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will not, in any circumstances, 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 Reports or the benefit of any Services.
- 4.3 The Client and its suppliers 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 in due time to enable Intertek to perform the Services in a timely manner as agreed between the parties;
  - (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 and/or any Confidential Information to be provided, 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, to inform and advise Intertek immediately of any changes during the term of the certificate 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 not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
  - (j) in no event, will the contents of any Reports or any extracts, excerpts 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;
  - (k) shall not suspend any Services for more than five (5) days and shall pay Intertek each day of suspension the Inspectors day rate and any other expenses for the duration of the suspension; and
  - (l) that shall not use any Intellectual Property, including but not limited to any trademark, and branding for any advertising and promotional materials or any statements made by the Client and/or its suppliers 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 Client shall pay Intertek the charges as set out in any proposal or otherwise agreed in writing (the **Charges**)
  - 5.3 Charges shall be charged for services that are not included in the Proposal and for additional services as requested by the Client.
  - 5.4 The Charges are expressed exclusive of VAT and any other applicable taxes. **If a withholding Intertek shall provide the Client 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 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.
  - 5.6 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.
  - 5.7 Intertek will issue an electronic invoice to the Client each month as the Services progress. 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 fulfil 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 paper invoice must be paid by the Client 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 Client fails to pay within the period referred to in 5.5 above, it is in breach 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.
- 5.10 If the Client 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 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 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 Client from its obligation to pay within the period referred to in 5.5 above.
- 5.12 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.
- 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) 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 In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.
- 6.4 All Intellectual Property Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have the right to use any such Reports, document, graphs, charts, photographs or other material for the purposes of this Agreement.
- 6.5 The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.
- 6.6 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. The Client warrants that the consent of their direct and/or contracted personnel has been obtained prior to any commencement of the Services. The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with its noncompliance with the Data Protection Law and any breach of its obligations as set out in this clause 6.6.
- 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 6.6;
- (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 and/or its suppliers to Intertek for the Services performed in accordance with this Agreement. (
- 10.3 Notwithstanding the above clause 10.2, Intertek shall not be liable 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, or special loss (even when advised of their possibility); (vii) any incorrect results in any Reports arising from any false, unclear, incomplete, or misleading information provided to Intertek; and (viii) the Clients failure to comply with requirements of any applicable law and regulation.
- 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 shall indemnify and hold harmless Intertek, its officers, employees, agents, Affiliates, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:
- (a) any claims or suits by any regulatory body or 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 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 or related to the Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors and sub-contractors;
- (c) the breach or alleged breach by the Client 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 howsoever arising relating to the performance, purported performance or non-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, unauthorised or false use of any Reports issued by Intertek which may damage the goodwill or reputation of Intertek, including but not limited to any use by the Client of the name "Intertek" or any of Intertek's trademarks or brand names for any media, marketing or publication purposes without obtaining the prior written consent of Intertek.
- 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 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.
- 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 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.

