

The following terms and conditions apply to the provision of all services undertaken by Mattest Site Services Ltd.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In these Contract Terms, unless the context otherwise requires, the following words and expressions have the following meanings:
- 1.1.1 "Client" means the company, firm, sole trader or authority who purchases Services from The Company (unless specifically agreed otherwise in writing);
 - 1.1.2 "Contract" means each contract entered into for the supply of Services by The Company to the Client incorporating these Contract Terms;
 - 1.1.3 "Contract Terms" means these General Terms and Conditions for the Appointment of The Company (and its subsidiaries and related entities) and includes any special terms agreed in writing between The Company and the Client;
 - 1.1.4 "The Company" means Mattest Site Services Ltd. of Exchange Tower, 19 Canning Street, Edinburgh, EH3 8EH Registered in Scotland No. 214905 VAT number 761949295
 - 1.1.5 "Documents" means all documents of any kind and includes plans, drawings, reports, programmes, specifications, Bills of Quantities, calculations, letters, e-mails, memoranda, films and photographs (including negatives), or any other form of record prepared or provided or received by, or on behalf of The Company, and whether in paper form or stored electronically or on disk, or otherwise;
 - 1.1.6 "Force Majeure Event" has the meaning in Clause 14;
 - 1.1.7 "Intellectual Property" includes all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, programme or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;
 - 1.1.8 "Project" means the project described in the Proposal and any enquiry from the Client on which The Company have based the Proposal;
 - 1.1.9 "Proposal" means the document prepared by The Company in response to an enquiry or otherwise, in connection with the proposed provision of the Services;
 - 1.1.10 "Services" means the work and services relating to the Project to be provided by The Company pursuant to the Contract and as set out in the Proposal and includes any additions or amendments thereto made in accordance with the Contract;
 - 1.1.11 "Site" means any site which The Company requires access to for the provision of the Services to the Client;
 - 1.1.12 "T&M Rates" means The Company's standard time and materials rates from time to time prevailing.
- 1.2 Words importing the singular only shall also include the plural and vice versa, where the context requires. Words importing persons or parties shall include firms, corporations and any organisation having legal capacity and vice versa, where the context requires; and words importing a particular gender include all genders. The sub-headings to the clauses of these Contract Terms are for convenience only and shall not affect the construction of the Contract.
- 1.3 A reference to legislation includes that legislation as from time to time amended, re-enacted or substituted and any Orders in Council, orders, rules, regulations, schemes, warrants, by-laws, directives or codes of practice issued under any such legislation.
- 1.4 In the event of conflict between the documents in relation to the Services, the Contract shall prevail.

2 APPOINTMENT

- 2.1 The Client agrees to engage The Company and The Company agrees to provide the Services in accordance with the provisions of the Contract.
- 2.2 The Proposal shall not constitute an offer. The Client's order constitutes an offer to purchase Services in accordance with the Contract. No order shall be deemed to be accepted other than by written acknowledgement issued by The Company; or (if earlier), by The Company commencing provision of the Services.
- 2.3 Any subsequent variation to the Services (from those set out in the Proposal) must be agreed with The Company in writing. Any additional or alternative work arising from such an agreed variation or undertaken as additional Services as set out in the Proposal requested by the Client or arising from compliance with the Client's instructions or factors outside The Company's control, shall be subject to additional or alternative charges. The additional or alternative charges shall (in the total discretion of The Company) either (in so far as the basis is not set out in the Proposal) be agreed in writing between the parties or charged at T&M Rates, with any additional external costs charged at cost plus 25%.
- 2.4 Any work instructed and subsequently cancelled may attract abortive costs. Abortive costs will be charged at T&M Rates with any external costs charged for recovery at cost plus 25%, plus VAT. The Company reserves the right to recover payment of compensation for all loss and expense (arising directly or indirectly) as a result of the cancellation.

3 GENERAL

- 3.1 The Company supplies all Services under these Contract Terms which shall be incorporated into all Contracts to the exclusion of all other terms or conditions.
- 3.2 These Contract Terms shall not be treated as varied or waived unless expressly agreed in writing by the parties that these terms are to be varied or waived. Subject to any such agreement, the Contract has precedence over any others contained in other documents or letters.
- 3.3 The Client's acceptance (or acceptance on its behalf) of any delivery or performance by The Company shall in any event be conclusive evidence of the Client's acceptance of these Contract Terms.
- 3.4 Each Contract supersedes all previous oral and written communications between The Company and the Client.

General Terms and Conditions for the Appointment of Celnor Group Limited (and its subsidiaries and related entities)

- 3.5 The Contract is personal to the Client and the Services and all written reports or other communications shall be for its sole benefit. The Client is the only person entitled to rely upon the Services, all written reports and other communications. The Client shall treat all such written reports and other communications as confidential in accordance with Clause 7. No reliance, obligation or liability is acknowledged to any other person.
- 3.6 Any request by the Client that The Company enter into a collateral warranty, letter of reliance, novation, assignment or any agreement similar to any of the foregoing shall be at The Company's discretion and shall be subject to payment of such additional fee and such terms and conditions as The Company may, in its discretion, deem appropriate.
- 3.7 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contract (Third Party Rights) (Scotland) Act 2017.
- 3.8 The Company will only use personal data (including personal details and contact information of the Client's officers, employees, agents and subcontractors) in accordance with The Company's privacy policy.

4 THE COMPANY'S OBLIGATIONS

- 4.1 The Company will exercise the skill, care and diligence to be expected of a professional undertaking services the like of those undertaken by The Company under the Contract in the performance of the Services. The Services shall conform in material respects with the description of the Services in the Contract (subject to any variation to the description of the Services in accordance with these Contract Terms). Where The Company gives a time for providing the Services, this must be taken as an indication of what The Company expects to be able to achieve. Whilst The Company will use reasonable endeavours to comply with any timescales, no guarantee is given, and timescales are subject to the Client's timely discharge of its obligations under the Contract. The Company shall not be liable for any loss, damage or expense arising from any delay or failure arising from the Client's failure to comply with its obligations under the Contract. Subject to clause 14 no delay shall entitle the Client to refuse to accept any delivery or performance or repudiate the Contract. The Company shall not be liable for the performance of any person not engaged by The Company who the Client requires The Company to work with as part of a wider project which includes the provision of the Services, nor responsible for checking or reporting on their performance.
- 4.2 The Company shall use reasonable endeavours to perform the Services in accordance with relevant safety legislation.
- 4.3 In performing its obligations under the Contract The Company shall at all times comply with all applicable laws and regulatory requirements. The Company reserves the right, on written notice to the Client, to alter the Services if necessary, to comply with any applicable law or regulatory requirement.
- 4.4 The Company provides the Services on a non-exclusive basis and may supply services that are the same as, or comparable to the Services to any third party.

5 CLIENT OBLIGATIONS

- 5.1 Throughout the period of the Contract the Client shall afford The Company, or procure for The Company's benefit, access to any site where access is required for the performance of the Services.
- 5.2 The Client accepts responsibility for ensuring that The Company is notified in writing of all special site and/or plant conditions, or any hazards prior to the commencement of the Services. The Client shall also inform The Company in writing of any relevant operating procedures including any site safe operating procedures and any other regulations relevant to the carrying out of the Services. The Client shall indemnify The Company against all costs, losses, claims, demands and expenses arising as a result of any non-disclosure in this respect, including but not limited to indemnification against any action brought by the owner of the land or otherwise.
- 5.3 If the Client discovers any conflict, defect or other fault in the information or designs provided by The Company pursuant to the Contract, the Client will advise The Company in writing of such defect, conflict or other fault and The Company shall have the right to rectify the same or where necessary, to design the solution for rectification of any works carried out by others pursuant the conflicting, defective or in any other way faulty information or designs.

6 COPYRIGHT

- 6.1 The copyright in all Intellectual Property prepared by The Company or on behalf of The Company in connection with the Project for delivery to the Client shall remain vested in The Company.
- 6.2 Subject to the prompt and proper payment of all fees and expenses due to The Company under the Contract, The Company grants to the Client (or shall procure the grant of) a non-exclusive, non-transferable, royalty free right (without the right to sub-license) to use the Documents provided by The Company to the Client resulting from the provision of the Services for all reasonable purposes connected with the Contract. If the Client wants to alter, modify, or use for other purposes any Documents provided by The Company to the Client resulting from the provision of the Services the Client will be entitled to subject to negotiating a licence (which shall include a fair and reasonable royalty) in good faith from The Company (or its applicable licensors). Any licence granted to the Client under this clause 6.2 will be automatically revoked with immediate effect if The Company terminates the Contract for the Client's failure to make any payment when and as due.
- 6.3 Should the Client wish to use such Intellectual Property in connection with any other works or for any other purpose not directly related to the Project or wish to pass any Intellectual Property to any third party, the Client must obtain The Company's prior written consent. The giving of such consent shall be at The Company's absolute discretion and shall be upon such terms as the Company may require. Should such Documents be provided to any third party then the Client shall indemnify The Company against any liability which may be incurred by The Company.
- 6.4 The Company accepts no responsibility for, and the Client shall indemnify The Company against the use by the Client or others on the Client's behalf of such Documents for any purpose other than for which they were intended, prepared and provided by The Company.
- 6.5 Ownership of any proposals submitted to the Client that are not subsequently confirmed as part of the Services to be provided for the Client remain with The Company and such proposals must not be used as the basis for any future work undertaken by the Client or a third party and no liability can be accepted howsoever arising from such proposals.

7 CONFIDENTIALITY

- 7.1 Neither the Client nor The Company shall at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clauses 7.2 and 7.4.
- 7.2 Each party may disclose the other party's confidential information:

General Terms and Conditions for the Appointment of Celnor Group Limited (and its subsidiaries and related entities)

- 7.2.1 to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this Clause 7; and
- 7.2.2 as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- 7.3 Neither party shall use any other party's confidential information for any purpose other than to exercise their rights or perform their respective obligations under or in connection with the Contract.
- 7.4 Subject to the above and The Company's privacy policy which can be found the website of The Company, The Company shall be permitted to use information related to the Services The Company provide in connection with the Project for the purposes of marketing its services and in proposals for work of a similar type.

8 ASSIGNATION

- 8.1 The Client may assign the benefit of the Contract on two occasions with The Company's prior written consent (not to be unreasonably withheld) and any additional assignments shall be with The Company's prior consent.
- 8.2 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of The Company's rights and obligations under the Contract.

9 INSURANCE

- 9.1 The Company shall maintain a professional indemnity insurance policy covering The Company's liabilities for negligence under the Contract, with a limit of indemnity of £1,000,000 (ONE MILLION POUNDS) in the aggregate. This policy is annually renewable and whilst renewal is not automatic, The Company shall maintain such insurance at all times until six years from the date of the completion (or termination) of the Services under the Contract, provided such insurance is available at commercially reasonable rates and terms.
- 9.2 The Company shall maintain a public liability insurance policy in respect of its own business requirements with a limit of indemnity of £5,000,000 (FIVE MILLION POUNDS) in the aggregate.
- 9.3 The Company does not exclude its liability for death or personal injury caused by its negligence; fraud and/or fraudulent misrepresentation; or any matter in respect of which it would be unlawful for The Company to exclude or restrict liability.
- 9.4 If for any period such insurance is not available at commercially reasonable rates and terms, The Company shall inform the Client and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for The Company to obtain.
- 9.5 The Company will be liable to the Client for direct damage to tangible property in relation to the Services in an amount which will not exceed £1,000,000 (ONE MILLION POUNDS) unless otherwise agreed in writing by The Company.
- 9.6 The Company will not be liable for: loss of data or use; any form of indirect, consequential or special loss; any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether the loss is direct or indirect in each case, however arising; or any claims as a result of delays, errors or losses arising from any third party the Client requires The Company to work with as part of a wider project which includes the provision of the Services.

10 PAYMENT

- 10.1 The Company's fees and expenses for the Services as set out in the Proposal remain open for acceptance for 60 days from the date of the Proposal.
- 10.2 Invoices for services rendered will be submitted for payment in accordance with the Contract.
- 10.3 VAT will be applied to qualifying Services and items at the standard rate on all invoices rendered. The Client shall pay any VAT properly chargeable on the Services and any amount expressed as payable to The Company under the Contract is exclusive of VAT unless stated otherwise.
- 10.4 Unless otherwise agreed, invoices will include reasonably incurred reimbursable costs and expenses associated with the Services for travel, accommodation, subsistence, printing, computing and any other reasonable expenses.
- 10.5 Invoices will be submitted monthly from the start of the Services, unless stated otherwise in the Proposal. Payment in full (without any set-off, counterclaim, deduction or withholding) shall be made within 30 days of the date of the invoice. Time for payment shall be of the essence. Without prejudice to any other rights The Company may have, The Company may add interest at the statutory rate as set from time to time for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 from the final date for payment until payment is made in full. The Client shall also pay all legal and other costs incurred by The Company in recovering any amounts owing from the Client.
- 10.6 If the Client disputes the amount included for payment in an invoice then the Client must serve a written notice on The Company no later than 14 calendar days before the final date for payment. If no notice is given within the required timeframe the amount due shall be the amount stated in the invoice.
- 10.7 Where the Services are to be performed outside of the United Kingdom, The Company will at its option invoice the Client either in GBP or in the relevant local currency. If as a consequence of any movement in exchange rates or fluctuations in currency values or similar The Company suffers loss and expense of any description, The Company shall be entitled to invoice the Client for the amount of the loss and expense.
- 10.8 It will often not be possible to gauge accurately the amount of time it will take The Company to complete the provision of Services in any particular case until after The Company has commenced provision of the Services. Any estimate of costs therefore is an indication of the likely costs for the Services and will not constitute a fixed price unless expressly specified as a fixed price in writing by an authorised representative of The Company.
- 10.9 The Company may, at its discretion, require at any time that all or part of its fees and expenses be paid in advance or on account and the sums so demanded shall be immediately payable by the Client, the balance remaining payable as otherwise provided hereunder and The Company may suspend provision of the Services until such payment has been made or until receipt of other security satisfactory to The Company.

11 QUALITY

- 11.1 The Company shall have no liability:

General Terms and Conditions for the Appointment of Celnor Group Limited (and its subsidiaries and related entities)

- 11.1.1 for any discrepancy which results from the Client's failure to comply with its obligations under the Contract; or
- 11.1.2 in respect of any failure of the Services to conform with the description of the Services in the Proposal (subject to any variation to the description of the Services in accordance with the Contract) unless the Client gives The Company notice in writing within 30 days of delivery of the Services (such notice to include details of any non-conformance).
- 11.2 As The Company's sole warranty, The Company will within a reasonable period of receiving notice as per clause 11.1, at its discretion, either make such reasonable alterations to the Services as may be required to bring them into conformance with the description of the Services in the Proposal; or re-perform the Services to bring them into conformance with the description of the Services in the Proposal.
- 11.3 Services in respect of which no claim is made in accordance with the Contract shall be deemed to have been accepted by the Client.

12 LIMITATIONS ON LIABILITY

- 12.1 Unless otherwise agreed in writing, The Company's total liability under or in connection with the Contract whether in contract, delict, negligence, breach of statutory duty or otherwise (other than in respect of personal injury or death) shall be limited to and shall not exceed the lesser of either £500,000, or 20 times the total value of invoices issued to the Client for the Services.
- 12.2 No action or proceedings under or in respect of the Contract whether in contract, delict, negligence, under statute or otherwise shall be commenced against The Company after the expiry of a period of six years from the date of the completion (or termination) of the Services under this Contract.
- 12.3 The Company shall not be liable for any damage to underground services, cables, pipes, drains or underground buildings, constructions and the like which were either not marked on site or for which accurate plans were not provided.
- 12.4 The Company shall not be liable for the cost of rectifying any defect, conflict or other fault in the information or designs provided by the Company or for the cost of designing a solution for and rectifying any subsequent works carried out by others pursuant to the conflicting, defective or in any other way faulty information or designs, unless The Company has been advised in writing of the same by the Client and has been given the opportunity to rectify the same or where necessary, to design the solution for rectification of any subsequent works carried out by others pursuant to the same.
- 12.5 Any claim by the Client or acceptance of liability by The Company in respect of any particular Services shall not entitle the Client to reject or refuse to pay for any other Services comprised in the Contract or any services comprised in any other agreement between the parties.
- 12.6 The extent to which any loss or damage will be recoverable by the Client from The Company will also be limited so as to be in proportion to The Company's contribution to the overall fault for such loss or damage taking into account any contributory negligence by the Client, the Client's other advisers and/or any other third party responsible to the Client and/or liable in respect of such loss.

13 DELAY

- 13.1 The Company shall comply with any timescale agreed for completion of the Services unless delayed or prevented by circumstances beyond The Company's reasonable control and in the event of any such circumstances arising The Company undertake to complete the Services within a reasonable period, but will not be liable to the Client for any delay as a result.

14 FORCE MAJEURE

- 14.1 If The Company is prevented, hindered or delayed from or in providing the Services in accordance with these Conditions or the Contract by an event which is beyond The Company's reasonable control including acts of terrorism, insurrection, riots, civil unrest and military action, the exercise of emergency powers by any local, regional or national governmental authority, fire, flood, earthquake, storm and other natural disasters, industrial action, strikes and lock-outs, blockage or embargo or the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials) (a **Force Majeure Event**) The Company may at its discretion:
 - 14.1.1 suspend the provision of the Services while the Force Majeure Event continues;
 - 14.1.2 if The Company has insufficient capacity and/or resources to meet its commitments, apportion available capacity and/or resources between its customers as it decides; and/or
 - 14.1.3 terminate any Contract so affected with immediate effect by written notice to the Client; The Company will not be liable for any loss or damage suffered by the Client as a result.

15 NON-SOLICITATION

- 15.1 For the duration of the Contract and for a period of six months after its expiry or termination neither the Client nor any of the Client's associated companies shall directly or indirectly, interfere with, entice away or solicit (other than by way of general advert open to all comers and not specifically targeted at any of the employees of The Company) for employment or hire any of The Company's staff without prior agreement.
- 15.2 Should the Client breach Clause 15.1, the Client in breach agrees to pay on demand to The Company a sum equal to one year's basic salary (or equivalent earnings) for the employee concerned plus any reasonable recruitment costs incurred in replacing the employee.

16 SUSPENSION & TERMINATION

- 16.1 The Company shall be entitled, without prejudice to any other remedy, at its discretion to suspend provision of the Services or (whether or not provision of the Services has previously been suspended) to terminate the Contract in the event of the Client:
 - 16.1.1 failing to make any payment when and as due; or
 - 16.1.2 committing any breach of the Contract and in the case of a breach capable of remedy if the Client has not remedied the breach within 7 days of The Company serving notice to do so; or
 - 16.1.3 repeatedly breaches any terms of the Contract in such a manner as to reasonably justify the opinion that the Client's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
 - 16.1.4 if the Client is unable to pay its debts in the ordinary course of its business or becomes bankrupt or commits an act of bankruptcy or makes any arrangement or composition for the benefit of its creditors or goes into liquidation (save for the purpose of reconstruction or amalgamation without insolvency) or has a petition for winding up presented against it or if a receiver, administrative receiver, administrator or manager is appointed in respect of any or all of its undertaking or assets; or

General Terms and Conditions for the Appointment of Celnor Group Limited (and its subsidiaries and related entities)

16.1.5 if The Company reasonably considers that any of the events listed in clause 16.1.4 is likely to occur.

16.2 On termination of the Contract for any reason:

16.2.1 the Client must immediately pay to The Company all outstanding and unpaid invoices and interest;

16.2.2 for Services supplied but for which no invoice has been submitted, The Company shall be entitled to submit an invoice (payable immediately on receipt) for Services performed before termination or suspension at T&M Rates together with compensation for loss and expense (arising directly or indirectly) as a result of the termination of the Contract; and

16.2.3 the Client shall immediately return all Intellectual Property and Documents provided by The Company to the Client in the provision of the Services which have not been fully paid for. Until they have been returned, the Client shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the discharge of its obligations under the Contract.

16.3 The Company's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Client and no waiver by The Company in respect of any breach shall operate as a waiver in respect of the same or any subsequent or other breach.

16.4 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties which have accrued up to the date of termination, including the right to claim damages for any breach of the Contract which existed at or before the date of termination.

16.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

17 THIRD PARTY RIGHTS

17.1 The Contract shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of the Contract for the purposes of the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.

18 COLLATERAL WARRANTIES & LETTERS OF RELIANCE

18.1 The Company shall consider a request made by the Client for The Company to provide a collateral warranty or letter of reliance for a beneficiary who has an interest in the Project regarding relation to the Services provided under the Contract. The giving of such consent shall be at The Company's absolute discretion. The Client will agree to The Company's standard form of collateral warranty or letter of reliance (subject to any reasonable changes to be approved by The Company at our absolute discretion) and the Client will pay a fee to The Company for the provision of each collateral warranty or letter of reliance the cost of which will be notified by The Company to the Client at the time of the request.

15 NOTICES

18.2 Any notice provided for in the Contract shall be in writing and shall be deemed to be properly given if delivered by hand or sent by pre-paid first class post to the address of the relevant party as may have been notified by each party to the other or, in the absence of notification, to the respective registered office addresses.

18.3 Such notice shall be deemed to have been received on the day of delivery if delivered by hand or email on the second working day after the day of posting if sent by pre-paid first-class post.

19 ENTIRE AGREEMENT

19.1 The Contract constitute the complete and entire agreement between the Company and the Client with respect to the Services and supersedes any prior oral and/or written warranties, terms, conditions, communications and representations, whether express or implied and any claim against us in respect of the Services can only be made in contract under the provisions of this Agreement and not otherwise under the law or delict or otherwise.

19.2 No amendments, modifications or variation of the Contract, which for the avoidance of doubt includes the Contract Terms, shall be valid unless made in writing and agreed to by The Company; such agreement must be recorded in writing by at least one of party.

19.3 The Company shall not be bound by any standard or printed terms or conditions furnished by the Client in any of the Client's documents unless The Company specifically state in writing separately from such documents that The Company intend such terms and conditions to apply.

20 DISPUTES, JURISDICTION AND GOVERNING LAW

20.1 The Contract shall be governed by and construed in accordance with Scots law and The Company and Client irrevocably and unconditionally submit to the jurisdiction of the Scottish Courts.

20.2 Where the Housing Grants, Construction and Regeneration Act 1996 applies, any dispute between the parties may be referred to adjudication in accordance with The Scheme for Construction Contracts (Scotland) Regulations 1998 or any amendment or modification thereof being in force at the time of the dispute, as applicable to Scotland.