

The following terms and conditions apply to the provision of all services undertaken by Vintec Laboratories Ltd.

## 9 DEFINITIONS AND INTERPRETATION

- 9.1 In these Contract Terms, unless the context otherwise requires, the following words and expressions have the following meanings:
- 9.1.1 "Analytical Services" means those services carried out under the "Animal Testing / Lab Results" Schedule, such services being animal studies of various types where medication is given to animals and various tests are completed over a defined time period, and this is measured through various blood tests, urine tests, and post-death of an animal other testing of certain organs;
  - 9.1.2 "Associated Company" means any company which is a subsidiary or holding company of the Client, or any subsidiary of such holding company, as defined in section 1159 of the Companies Act 2006;
  - 9.1.3 "Business Day" means Monday to Friday other than a bank holiday in England and, in relation to any services are to be provided in Scotland or Northern Ireland, excluding any bank holiday in Scotland or Northern Ireland (respectively);
  - 9.1.4 "Client" means the company, firm, sole trader or authority who purchases Services from The Company (unless specifically agreed otherwise in writing);
  - 9.1.5 "Contract" means each contract entered into for the supply of Services by the Company to the Client incorporating these Contract Terms;
  - 9.1.6 "Contract Terms" means these General Terms and Conditions for the Appointment of Celnor Group Limited (and its subsidiaries and related entities);
  - 9.1.7 "the Company" means Vintec Laboratories Limited of Building 26, Building Research Establishment, Watford, Hertfordshire, WD25 9XX. Registered in England No. 1743850 VAT number 403 9302 83.
  - 9.1.8 "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "processing" have the meanings given in the Data Protection Legislation;
  - 9.1.9 "Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended;
  - 9.1.10 "Documents" means all documents, data and materials of any kind and includes plans, drawings, reports, programmes, specifications, bills of quantities, calculations, letters, e-mails, faxes, memoranda, films and photographs (including negatives), or any other form of record prepared or provided by, or on behalf of the Company, and whether in paper form or stored electronically or on disk, or otherwise;
  - 9.1.11 "Force Majeure Event" has the meaning in Clause 20;
  - 9.1.12 "Intellectual Property" means all rights to, and any interests in, any patents, inventions, designs, trade marks, copyright, database rights, know-how, trade secrets and any other intellectual property rights whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, or to claim priority from, those rights and all similar or equivalent rights or forms of protection, in each case which subsist or will subsist now or in the future in any part of the world;
  - 9.1.13 "Liability" means every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), under any indemnity or otherwise howsoever arising and "Liable" shall be construed accordingly;
  - 9.1.14 "Losses" means all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and professional costs and expenses);
  - 9.1.15 "Normal Working Hours" means 9 am to 5pm on any Business Day;
  - 9.1.16 "Order" the Client's order for the supply of the services set out in the Proposal as set out in the Client's purchase order or other written acceptance of the Supplier's Proposal including the issuing of any confirmation or request that the Company provides it with the services set out in the Proposal;
  - 9.1.17 "Project" means the project described in the Proposal;

- 9.1.18 "Proposal" means any written document prepared by the Company in response to a request or an enquiry from the Client, in connection with the provision of services by the Company including any quotation, estimate, tender, proposal or services scope or specification;
- 9.1.19 "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;
- 9.1.20 "Site" means any site which the Company requires access to for the provision of the Services to the Client;
- 9.1.21 "T&M Rates" means the Company's standard time and materials rates from time to time prevailing; and
- 9.1.22 "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended from time to time.
- 9.2 Unless the context otherwise requires, words the singular shall also include the plural and vice versa and importing a particular gender include all genders.
- 9.3 A **person** includes natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 9.4 The sub-headings to the clauses of these Contract Terms are for convenience only and shall not affect the construction of the Contract.
- 9.5 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.
- 9.6 In the event of conflict between the Proposal and the Contract Terms, the Contract shall prevail. If there is any conflict or inconsistency between the clauses of these Contract Terms and the provisions of any schedule, the applicable schedule shall prevail.
- 9.7 A reference to **writing** or **written** excludes fax but not email.

## 10 APPOINTMENT AND TERM

- 10.1 The Client agrees to engage the Company and the Company agrees to provide the Services in accordance with the provisions of the Contract.
- 10.2 **Applicable schedules.**  
The following services: Asbestos Surveying (including Management, Refurbishment, Demolition, Re-inspection & Bulk Sampling), Air monitoring (including Four-stage Clearance Testing), Asbestos identification, and Asbestos Consultancy Services.
- 10.3 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:
- 10.3.1 by written acknowledgement issued by the Company; or
- 10.3.2 (if earlier), by the Company commencing provision of the Services.  
at which point the Contract shall come into existence (the **Commencement Date**).
- 10.4 The Company supplies all Services under these Contract Terms which shall apply to each Contract to the exclusion of all other terms or conditions including those that the Client seeks to impose or incorporate or that are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 10.5 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 20%.
- 10.6 **Cancellation.** Unless agreed otherwise in writing by the Company, or unless otherwise set out in a service-specific schedule to these Contract Terms or in the Proposal, if the Client cancels a pre-agreed visit to a Site or the Company is unable to gain access to a Site to carry out a pre-agreed Site visit then the Client shall pay the Company:

- 10.6.1 100% of the charge for such visit as set out in the Proposal (the **Visit Charge**) if the visit has been cancelled by the Client giving not less than 24 hours prior written notice to the Company or has not been cancelled by the Client on written notice to the Company; or
- 10.6.2 60% of the Visit Charge if the visit has been cancelled by the Client giving at least 48 hours but less than 72 hours prior written notice to the Company; or
- 10.6.3 20% of the Visit Charge if the visit has been cancelled by the Client giving at least 3 days prior written notice to the Company.

Any such cancellation must be notified in writing to the Company. The Company may invoice the Client for any applicable cancellation charges, which shall be payable in accordance with clause 9 (Payment).

#### 10.7 **Term and Renewal.**

- 10.7.1 The term of the Contract shall be as specified in the Proposal. If the Proposal does not specify a term, then the Contract will commence on the date it comes into force and shall continue until the Services have been completed, subject in each case to earlier termination in accordance with the Contract.
- 10.7.2 Subject to earlier termination in accordance with any other provisions of the Contract Terms and subject to any express terms set out in the Proposal, where the Proposal specifies a fixed term (the **Initial Term**), the Contract shall continue for the Initial Term and shall renew automatically for successive periods of 12 months following the Initial Term.

### 11 **THE COMPANY'S OBLIGATIONS**

- 11.1 The Company will in providing the Services exercise the skill, care and diligence to be expected of a professional undertaking such Services the Company. 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). Unless otherwise stated within the Proposal, the Company shall not be obliged to provide the Services outside Normal Working Hours. 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, but whilst the Company will use reasonable endeavours to comply with any timescales, no guarantee is given that the Company will meet such timescales, and any obligation of the Company to meet such 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 12 (*Force Majeure*) 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.
- 11.2 The Company shall use reasonable endeavours to perform the Services in accordance with relevant safety legislation.
- 11.3 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. For the avoidance of doubt, the Company is not responsible for adapting or modifying any deliverables to meet legal or regulatory requirements introduced after completion of the Services unless agreed in writing by the Company and in which case the Company reserves the right to make additional charges for doing so.
- 11.4 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.
- 11.5 Where the Company supplies goods or parts:
  - 11.5.1 the Company shall pass through to the Client the benefit of any manufacturer's warranty to the extent permitted by the terms of the manufacturer's warranty;
  - 11.5.2 title to any such goods and/or parts supplied by the Company shall not pass to the Client until the Company receives payment in full and cleared funds for those goods and any other sums due under the Contract; and
  - 11.5.3 to the fullest extent permitted by law, all warranties, conditions and other terms implied by statute or common law or otherwise are excluded from the Contract.
- 11.6 The Company may correct any typographical, clerical or other error or omission in the Proposal or any information issued in connection with the Contract without liability.
- 11.7 Unless otherwise agreed in writing, any and all reports, deliverables and other output are provided for the sole benefit of the Client only and no third party shall have any right to rely on them. The parties agree that

the Company's advice applies only in the context of the Client's instructions and any qualifications to such advice specified by the Company. The Client shall not be entitled to rely on any advice or recommendations given as part of the Services and the Company shall have no Liability in relation to the same unless these have been confirmed in writing by the Company.

- 11.8 The Company may adjust the times or dates on which the Services are performed in order to meet operational requirements and will provide the Client with notice of the same where reasonably practicable.
- 11.9 Except as otherwise expressly set out in the Proposal, the Company shall be entitled to determine in its sole discretion the manner of delivery to the Client, and the format, of any deliverables which form part of the Services, and which the Client acknowledges may include access via such IT platform as the Company may determine from time to time.

## 12 CLIENT OBLIGATIONS

- 12.1 The Client shall ensure that the terms of any order (including any applicable specification) are complete and accurate and shall provide the Company with all information, instructions, data and items necessary for the performance of the Services (the **Required Materials**) (and shall ensure that the same are complete and accurate) promptly and in any event within a sufficient time to enable the Company to perform the Contract in accordance with its terms. The Company shall be entitled to rely on the completeness and accuracy of the Required Materials without verifying the same and is not Liable for Losses arising from the provision by the Client of incomplete or inaccurate Required Materials or the failure of the Client to provide these in a timely manner or otherwise in accordance with the Contract or from the Client's failure to follow the Company's written advice or recommendations.
- 12.2 The Client shall afford the Company, or procure for the Company's benefit, such access to any Site, the facilities at such Site and any staff at such times as, in each case, the Company may reasonably require for the performance of the Services and to fulfil its obligations under the Contract. The Client will obtain and maintain, at its own cost, all licences, consents, permits, safe-access permissions and authorisations necessary for the Company to perform the Services at the Site. The Client shall provide all other co-operation to the Company as the Company may reasonably require in order to carry out the Services and to fulfil its obligations under the Contract.
- 12.3 The Client acknowledges that the quality of any report produced or work carried out by the Company depends on the Client complying with the term of this clause 4 and that failure by the Client to do so may prevent or adversely affect the performance of the Services and may affect the conclusions reached by the Company in any such reports.
- 12.4 **Site Conditions, Health & Safety.**
  - 12.4.1 The Client accepts responsibility for ensuring that the Company is notified in writing of all site and/or plant conditions which could affect or impact the Services, including the existence and precise location of underground services, cables, pipes, drains, underground buildings, constructions, or any hazards (including dangerous, toxic, adhesive, or inflammable substances) which the Client shall clearly mark on the ground or identify on accurate location plans supplied to the Company prior to commencement of the Services.
  - 12.4.2 The Client shall provide the Company with all necessary information to enable the safe completion of the Services, including any site conditions, hazards, or works that may impact the Services. The Client shall promptly inform the Company of any additional risks or required contingencies and shall bear any additional costs incurred due to undisclosed risks. Following a risk assessment, the Company reserves the right to refuse to provide Services in respect of any such items referred to in this clause 4.4.
  - 12.4.3 The Client shall ensure that any employees or agents of the Client attending the Client's premises comply with all applicable health, safety, welfare, IT, and security measures in force, together with any anti-harassment policies and statutory requirements.
  - 12.4.4 The Client shall indemnify the Company against all Losses arising as a result of or in connection with any failure of the Client to comply with this clause 4.4, including any action brought by the owner or occupier of the Site.
- 12.5 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 promptly 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.
- 12.6 The Client shall indemnify the Company against all Losses suffered or incurred by the Company arising out of or in connection with any breach by the Client of any applicable law or regulation.

- 12.7 The Client shall not allow any person other than the Company or the Company's agents to maintain, service, remove or relocate any equipment supplied by the Company, or to use products other than those supplied by the Company with such equipment. The Client shall indemnify the Company against all Losses incurred as a result of any breach of this obligation.
- 12.8 The Client shall promptly notify the Company of any changes or proposed changes to the Client's premises or systems, or any relocation or proposed relocation of any equipment installed by the Company at those premises, which may impact the provision of the Services. The Company shall not be liable for any effect on, or interruption to, the Services caused by such changes, proposed changes, relocations or proposed relocations. If any such change or relocation results in any additional work and/or cost for the Company in order to carry out the Services (including where the Company is required to rectify any resulting issues), then the Client shall be responsible for and shall pay the Company for all associated additional work and/or costs.
- 12.9 The Client remains responsible for assessing recommendations and advice given by the Company and for all commercial decisions it makes based on such recommendation and advice. In doing so, the Client shall take into account the limitations of its own instructions and all commercial or other factors of which the Client and its other advisers are, or ought reasonably to be, aware.

### **13 INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All Intellectual Property arising out of or in connection with the performance of the Services (including in any Documents prepared by the Company or on behalf of the Company in connection with the Project whether or not for delivery to the Client) shall remain vested in the Company.
- 13.2 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. The Client shall not use any of the Documents except as specifically set out in clause 5.2.
- 13.3 Should the Client wish to use the Documents in connection with any other work other than the work carried out under this Contract or for any other purpose not directly related to the Project or wish to pass such Documents 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 as a result of any third party using such Documents.
- 13.4 The Company accepts no responsibility for, and the Client shall indemnify the Company against all Losses arising out of or in connection with the use by the Client or others on the Client's behalf of any Documents for any purpose other than for which they were intended, prepared and provided by the Company.

### **14 CONFIDENTIALITY, PUBLICITY AND DATA PROTECTION**

- 14.1 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 14.2 and 14.4.
- 14.2 Each party may disclose the other party's confidential information:
  - 14.2.1 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 6; and
  - 14.2.2 as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights or perform its respective obligations under or in connection with the Contract.
- 14.4 Subject to the obligations in this clause 6, the Company shall be permitted to use information related to the Services for the purposes of marketing its services and in proposals for work of a similar type.
- 14.5 Neither party shall use the other party's name or logo in any publicity, promotion or advertising without the other party's prior written consent, unless legally required to do so.

- 14.6 Each party shall comply with its obligations under the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.7 For the purposes of the Data Protection Legislation, the Client is the Controller, and the Company is the Processor in respect of any Personal Data processed by the Company on behalf of the Client in connection with the Services. The details of the data processing are set out in Schedule 1.
- 14.8 The Client shall ensure that it has all necessary consents and notices in place to enable lawful transfer of Personal Data to the Company for the duration and purposes of the Contract.
- 14.9 the Company shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Contract:
- 14.9.1 process that Personal Data only on the documented written instructions of The Client unless required by Domestic Law to otherwise process that Personal Data, in which case the Company shall notify the Client unless prohibited by law;
- 14.9.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing and against accidental loss, destruction or damage of Personal Data, appropriate to the harm that might result and the nature of the data to be protected;
- 14.9.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 14.9.4 not transfer any Personal Data outside the UK without the prior written consent of The Client and compliance with the Data Protection Legislation;
- 14.9.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;
- 14.9.6 notify The Client without undue delay on becoming aware of a Personal Data Breach;
- 14.9.7 at the written direction of The Client, delete or return Personal Data and copies thereof on termination of the Contract unless required by law to store the Personal Data; and
- 14.9.8 maintain complete and accurate records and information to demonstrate compliance with this clause and allow for audits by The Client or its designated auditor on reasonable notice.
- 14.10 The Client consents to the Company appointing sub-processors as reasonably necessary for the provision of the Services, provided that the Company ensures that any sub-processor is subject to written terms that are substantially similar to those set out in this clause. The Company shall remain fully liable for all acts or omissions of any sub-processor appointed by it.

## **15 ASSIGNMENT**

- 15.1 The Client may not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Company's prior written consent (not to be unreasonably withheld).
- 15.2 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.

## **16 INSURANCE AND LIMITATIONS ON LIABILITY**

- 16.1 The Company shall maintain the following insurance cover throughout the term of the Contract and for six (6) years after completion or termination of the Services, subject to availability on commercially reasonable terms:
- 16.1.1 Employers' Liability insurance with a limit of indemnity of £10,000,000 for any one claim;
- 16.1.2 Public Liability insurance with a limit of indemnity of £10,000,000 for any one claim;
- 16.1.3 Products Liability insurance with a limit of indemnity of £10,000,000 for any one period of insurance;
- 16.1.4 Professional Indemnity insurance with a limit of indemnity of £10,000,000 in the aggregate for any one period of insurance
- Evidence of such insurance shall be provided to the Client on request.
- 16.2 The Company does not limit or exclude its liability for:
- 16.2.1 death or personal injury caused by its negligence;

- 16.2.2 fraud and/or fraudulent misrepresentation; or
- 16.2.3 any matter in respect of which it would be unlawful for the Company to exclude or limit liability.
- 16.3 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.
- 16.4 The Company will not be Liable for:
  - 16.4.1 loss of profit, revenue or anticipated savings;
  - 16.4.2 loss of data or use;
  - 16.4.3 loss of goodwill or reputation;
  - 16.4.4 any pure economic loss  
whether direct or indirect,
  - 16.4.5 any indirect, consequential or special loss; or
  - 16.4.6 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.
- 16.5 Unless otherwise agreed in writing, subject to clause 8.2, the Company's total liability under or in connection with the Contract whether in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the corresponding limit of insurance maintained under clause 8.1, namely:
  - 16.5.1 the Employers' Liability limit stated in clause 8.1.1 for any one claim;
  - 16.5.2 the Public Liability limit stated in clause 8.1.2 for any one occurrence;
  - 16.5.3 the Products Liability limit stated in clause 8.1.3 for any one period of insurance;
  - 16.5.4 the Professional Indemnity limit stated in clause 8.1.4 in the aggregate for any one period of insurance; and
  - 16.5.5 for all other claims not covered by clauses 8.5.1 to 8.5.4, the total fees payable under the Contract in the 12 months immediately preceding the event giving rise to the claim.
- 16.6 No action or proceedings under or in respect of the Contract whether in contract, tort, 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.
- 16.7 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.
- 16.8 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.
- 16.9 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.
- 16.10 The Company shall have no Liability for any Losses arising from any instructions supplied by the Client that are incomplete, incorrect, inaccurate or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 16.11 The Client shall take all reasonable steps to mitigate any loss or damage it suffers arising out of or in connection with the Contract.
- 16.12 The Company shall have no Liability for any Losses arising from any fault of the Client, including any breach of its obligations under the Contract. the Company shall not be Liable to the extent that any failure or delay in performance of the Services arises from any act, omission or performance of the Client and any document or information provided by the Client.
- 16.13 The Company shall have no Liability for any damage to building fabric where remedial works are carried out without the Company's prior knowledge and consent.
- 16.14 **Control of claims.** If the Client becomes aware of any circumstances that might lead to a claim against the Company, or of a potential claim by a third party in connection with the Services, the Client shall (a) notify

the Company promptly in writing; (b) provide all information reasonably available; (c) allow the Company, at its cost, to investigate and undertake reasonable corrective works; (d) allow the Company to take part in all negotiations and proceedings; and (e) not admit liability or settle any claim without the Company's prior written consent. the Company shall reimburse the Client's reasonable costs of assistance requested by the Company.

## 17 PAYMENT

- 17.1 Unless otherwise confirmed in writing by the Company, the Company's fees and expenses for the Services as set out in the Proposal remain valid for 30 days from the date of the Proposal. the Company may make a fair and reasonable adjustment to the fees and expenses to reflect: (a) the Client's request for expedited responses or out-of-hours performance; (b) any change to delivery dates, method, scope or specification requested by the Client; or (c) delay or additional costs caused by the Client's instructions, late information, or failure to provide access, consents or cooperation.
- 17.2 the Company may, by giving notice to The Client at any time before commencement of the Services, increase the price of the Services to reflect any increase in the cost to the Company in respect of the Services which is due to any factor beyond the Company's reasonable control (including, foreign exchange fluctuation, currency regulation, changes in legislation, alteration of taxes or duties, significant increase in labour or material or fuel costs), or any delay caused by any instructions of The Client or failure of The Client to give adequate information or instructions. Where the Contract continues for more than a year, the Company may review and adjust prices annually on the anniversary of the Contract.
- 17.3 Invoices for services rendered will be submitted for payment in accordance with the Contract.
- 17.4 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.
- 17.5 Unless otherwise set out in the Proposal, the Company may charge the Client for all reasonably incurred reimbursable costs and expenses associated with the Services, including travel, accommodation, subsistence, printing, computing and any other reasonable expenses, as they are incurred. Such expenses shall be charged as specified in the Proposal.
- 17.6 Invoices will be submitted monthly from the start of the Services, unless stated otherwise in the Proposal. The Client shall make payment in full (without any set-off, counterclaim, deduction or withholding) of all invoices 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. The Company reserves the right to unilaterally vary payment terms without the Client's written agreement.
- 17.7 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 stating which element of the invoice is disputed and setting out its reasons for disputing the invoice together with reasonable evidence for the same. If no notice is given within the required timeframe the amount due shall be the amount stated in the invoice. Notwithstanding any dispute, the Client shall pay any undisputed amount of the invoice in accordance with this Contract by the final date for payment.
- 17.8 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 of the place of performance of the Services. 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.
- 17.9 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.
- 17.10 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.
- 17.11 No discounts apply unless expressly agreed in writing by an authorised representative of the Company.
- 17.12 While any sum is overdue for payment, the Client shall not use, copy or distribute any report, study result or other deliverable provided by the Company under the Contract.

## 18 QUALITY

- 18.1 The Company shall have no liability:
- 18.1.1 for inaccurate information provided by the Client or any failure of the Client to provide any information which causes the Company to be in breach of its obligations under the Contract; or
  - 18.1.2 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).
- 18.2 As the Company' sole remedy, the Company will within a reasonable period of receiving notice as per clause 18.1, at its discretion, either
- 18.2.1 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
  - 18.2.2 re-perform the Services to bring them into conformance with the description of the Services in the Proposal.
- 18.3 Services in respect of which no claim is made in accordance with the Contract shall be deemed to have been accepted by the Client.

## 19 DELAY

- If the Company's performance of any obligation is prevented or delayed by any act or omission of the Client or failure by the Client to perform any relevant obligation, the Company shall not be liable for such non-performance or delayed performance and may suspend performance of the Services until the Client remedies the default. The Client shall reimburse the Company on written demand for all costs and losses sustained or incurred by the Company arising directly or indirectly from such default.

## 20 FORCE MAJEURE

- 20.1 If the Company is prevented, hindered or delayed from or in providing the Services in accordance with the Contract by an event which is beyond the Company's reasonable control including acts of terrorism, insurrection, riots, civil unrest and military action, epidemic or pandemic 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:
- 20.1.1 suspend the provision of the Services while the Force Majeure Event continues;
  - 20.1.2 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;
  - 20.1.3 terminate the Contract with immediate effect by written notice to the Client; or
  - 20.1.4 and the Company will not be liable for any loss or damage suffered by the Client as a result.

## 21 NON-SOLICITATION

- 21.1 For the duration of the Contract and for a period of six months after its expiry or termination, neither the Client nor any Associated Company of the Client 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' staff without prior agreement.
- 21.2 Should the Client breach Clause 21.1, 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.

## 22 SUSPENSION & TERMINATION

- 22.1 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:
- 22.1.1 failing to make any payment when and as due; or
  - 22.1.2 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

- 22.1.3 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
- 22.1.4 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;
- 22.1.5 if the Company reasonably considers that any of the events listed in clause 22.1.4 is likely to occur; or
- 22.1.6 where the Client is an individual or a partnership, and the Client or any partner of the Client dies.
- 22.2 On termination of the Contract for any reason:
- 22.2.1 the Client must immediately pay to the Company all outstanding and unpaid invoices and interest 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
- 22.2.2 the Client shall immediately return all 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.
- 22.3 **TUPE.** The parties do not anticipate that any person will transfer from the Client or any of its sub-contractors to the Supplier (whether pursuant to TUPE or otherwise) as a result of or arising out of the commencement of any of the Services or this Agreement (a "**Relevant Transfer**"). Accordingly, the Client shall indemnify and keep indemnified the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of any claim by any such person that they have transferred to the Supplier including in relation to: (i) any claim or demand by any person or a trade union or other body or person representing such person (whether in contract, tort, under statute) by any person who was employed by the Client or any of its sub-contractors arising from any act, fault or omission of the Client or any of its sub-contractors on or before the date on which such person claims to have transferred, or (ii) any failure by the Client to comply with its legal obligations in relation to any such transfer of any person from the Client or any of its sub-contractors.
- 22.4 If there is a Relevant Transfer, then if the Supplier serves a notice terminating the employment of such person within six months after the date of such transfer, the Client shall indemnify and keep indemnified the Supplier for any costs, claims, liabilities and expenses (including reasonable legal expenses) arising out of such termination, including any amounts payable in respect of such person (including any statutory or contractual redundancy payment) and any compensation or damages which the Supplier is obliged to pay to such person for unfair and/or wrongful dismissal or settlement of a claim for such compensation or damages.
- 22.5 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.
- 22.6 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.
- 22.7 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.

## 23 GENERAL

- 23.1 **THIRD PARTY RIGHTS.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person. 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 6 (*Confidential Information*).
- 23.2 **NOTICES.**
- 23.2.1 Any notice or communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address(es) specified in the Proposal.

23.2.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when Business Hours resume.

23.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 23.3 **ENTIRE AGREEMENT.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.
- 23.4 **VARIATION.** 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.
- 23.5 **WAIVER.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.6 **SEVERANCE.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 23.7 **GOVERNING LAW AND JURISDICTION.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation
- 23.8 **DISPUTES.** 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 Regulations 1998 or any amendment or modification thereof being in force at the time of the dispute, as applicable to England, Wales, Scotland and Northern Ireland.

## SCHEDULE 1 – DATA PROTECTION

- 1 **Subject matter:** The Company's provision of the Services to the Client including Asbestos Surveying (including bulk sampling), Air Monitoring, Sub-Contracted Testing, Asbestos Identification, and Asbestos Consultancy.
- 2 **Nature and purpose of processing:** The Company will process the Client's Personal Data for the purposes of providing the Services to the Client in accordance with the Contract
- 3 **Duration of processing:** The term of the Contract plus the period from the end of the term until the deletion or return of all of the Client's Personal Data by the Company.
- 4 **Types of personal data:** Names, contact details (including telephone number and email addresses), payment details,
- 5 **Categories of data subject:** Employees, Customers, Tenants, Clients.

## SCHEDULE 2 – ASBESTOS SERVICES

1. **Sampling and accuracy.**
  - a. Unless expressly stated in the Proposal that the Company will arrange conveyance of samples or test items, the Client shall, at its own expense and risk, arrange for the conveyance of all test items to and from the Company's laboratories or the agreed testing location.
  - b. Any reports, data, photographs or other deliverables provided by the Company are based on information supplied by the Client and evidence available at the time of testing. Results relate solely to the samples tested and not to any wider bulk or untested areas. Results are a snapshot subject to normal experimental uncertainties and environmental factors. the Company does not warrant that equivalent results would be achieved by others or in different circumstances.
  - c. All reports and other deliverables are prepared exclusively for the Client for the purposes of the Contract and may not be used by any third party or for any other purpose without the Company's prior written consent. The Client shall indemnify the Company against any Losses arising from unauthorised use or reliance by a third party.
  - d. **Sample disposal.** the Company accepts no Liability for loss or damage to goods or samples submitted for examination. Residual samples will be returned only on written request. Unless the Company receives written notice to the contrary, the Company may dispose of all goods and/or samples six months after completion of the Contract.
2. **UKAS accreditation warranty.** the Company warrants that it is accredited by UKAS for inspection and testing relating to asbestos (ISO 17020 and ISO 17025) and that such Services will be provided in accordance with applicable accredited procedures. Advisory services, re-inspection surveys and priority scoring are not UKAS-accredited.
3. **Photography.** the Company may take and use photographs of site conditions, sampling points and suspect materials as required by applicable HSE and UKAS guidance, and may include such photographs in reports or other deliverables provided to the Client for the purposes of the Contract. The Client is deemed to have granted permission to do so unless it notifies the Company in writing otherwise.
4. **Jurisdiction.** Where adjudication applies in respect of a dispute relating to asbestos services, clause 15.8 of the Contract Terms applies, failing which the referring party may apply to the Asbestos Testing and Consultancy Association (ATaC) for nomination, or otherwise to an adjudicator nominating body under The Scheme for Construction Contracts Regulations 1998.