

<b>BRE Global</b>	<b>PUBLICATIONS</b>	Doc No: PN 101
		Revision No: 15.0
<b>Terms And Conditions Listing and Certification</b>		Date: 1 April 2014
		Page: 1 of 5

## 1 Interpretation

### 1.1 In these Terms

'BRE Global', 'BRE Certification', 'LPCB', 'WIMLAS', 'BREEAM', 'EcoHomes' and any other brand owned and used by the BRE Group for certification means BRE Global Limited (registered in England, No.8961297), whose registered office is at Garston, Watford, Hertfordshire, WD25 9XX.

'Supplier' means the client, person, company, firm or other body which is responsible for the product, process, system, service or personnel Certified.

'Agreement' means the contract for the provision of the Listing and Certification Services (normally consisting of a proposal and/or scheme document, these Terms, PN 103 "Use of the Certification Mark(s)" PN 100 "Complaints and Appeals Procedure" and a Fee sheet), as amended, modified or supplemented from time to time in accordance with these Terms.

'User' means the person, firm, company or other body that uses the product, process, system, service or personnel being Certified.

'Certification' means assessment, approval, registration, initial or annual listing or recognition of products, processes, systems, services or personnel and 'Certification Services' and 'Certified' shall be construed accordingly.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.3 Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended or re-enacted.

1.4 The revision status of these terms and conditions is stated at the bottom of each page. This revision supersedes all previous revisions, and upon issue to Suppliers is deemed to be the prevailing Terms for all new and existing Agreements. Continued participation in the Agreement is deemed to be acceptance of these Terms.

## 2. Responsibilities of the Supplier

### Common to all Schemes

2.1 The Supplier shall at his own expense supply BRE Global personnel with copies of all documents, materials, information and data necessary to perform the Certification Services translated into English if necessary. The Supplier shall ensure the accuracy of all this material and insure against its accidental loss or damage. The Supplier shall at his own expense retain duplicate copies of all this material. BRE shall have no liability for any such loss or damage, however caused, including due to negligence.

2.2 The Supplier shall manufacture the product or provide the process, system, service or personnel as Certified by BRE Global and no changes which may affect the quality or performance of the product, process, system, service or personnel shall be made unless notice of the proposed change has been given and written authorisation obtained from BRE Global.

2.3 Should the Supplier become aware of any shortfall in the performance of the product, process, system, service or personnel, howsoever caused, the Supplier shall inform BRE Global immediately and shall take all steps that BRE Global shall reasonably require to rectify such shortfall as soon as reasonably practicable.

2.4 Where required by the Agreement the Supplier shall permit periodic audits and provide access to the facilities identified on certificates issued by BRE Global for the maintenance of Certification.

2.5 Where required by the Agreement audits shall also be undertaken at service and/or installation locations identified by the Supplier.

2.6 The Supplier shall ensure that BRE Global assessors are accompanied at all times by a representative of their Company. The Supplier's representative shall operate any equipment or machinery including computer terminals to access information.

2.7 The Supplier shall maintain a record of complaints, failures and remedial actions taken.

2.8 The Supplier shall notify BRE Global of any changes to its contact details or legal entity within 7 days of the change.

- 2.9 The Supplier may only use the BRE Global Marks and Notified Body number and/or claim Certification for the manufacture of product(s) or for the provision of process(es), system(s), service(s) or personnel identified on valid certificates issued by BRE Global and as set out in the publication PN 103 "Use of the Certification Mark(s)".
- 2.10 Those Suppliers who only have Certification against the requirements of a European Directive for CE/Pi/Wheel marking may not use the LPCB Mark or any of the other Marks or Brands belonging to the BRE Group.
- 2.11 If the product(s), process(es), system(s), service or personnel cease to be certified and or listed by BRE Global, then the Supplier shall cease using and will remove or obliterate any mark and notified body number from the product, service or promotional material.

**For Product(s), Process(es) and System(s) Certification Schemes**

- 2.12 Unless otherwise required in the Agreement the Supplier shall:
  - 2.12.1 provide the User with adequate instruction for the proper siting, installation, maintenance, and operation and, where required by law, disposal of the product(s) or system(s);
  - 2.12.2 provide BRE Global with samples, or access to samples, of Certified product(s) or system(s) which are representative of current production methods for re-examination or re-assessment;
  - 2.12.3 provide adequate facilities for repair of the product(s), process(es) or system(s) and/or supply replacement parts;
  - 2.12.4 provide services to ensure proper installation, inspection or maintenance for product(s), process(es) or system(s) of such nature that it would not be reasonable to expect the average user to be able to provide such installation, inspection or maintenance;
  - 2.12.5 keep adequate records to allow a product, process or system recall to be effected;
- 2.13 The Supplier shall not supply any product(s), process(es) or system(s) which do not conform to the requirements set out in the Agreement.

**3. Rights and responsibilities of BRE Global**

- 3.1 BRE Global will only grant Certification when the Supplier has demonstrated compliance with all requirements. BRE Global may at any time make changes to the Certification requirements which are necessary to comply with any applicable safety or other statutory requirements, or which are necessary to comply with the relevant standards or which are necessary to meet the requirements of the relevant accreditation authority and the Supplier shall comply with such changes as soon as reasonably practicable after notification of such changes.
- 3.2 BRE Global shall list all currently certified product(s), process(es), system(s), service or personnel in appropriate directories and make these available to interested parties.
- 3.3 BRE Global reserves the right in its sole judgement to change or revise its standards, criteria, methods or procedures, however reasonable notice will be given to the Supplier such that continued conformance with BRE Global's requirements is practicable.
- 3.4 BRE Global, its employees and agents agree to maintain as confidential and not to use or disclose to any third party any information derived from the Supplier in connection with the Certification Services without the consent of the Supplier except where it is necessary to enable BRE Global to perform its services.

The following shall not be subject to such restrictions:

- 3.4.1 Information which was already in the possession of BRE Global prior to its disclosure by the Supplier or which subsequently comes into its possession free from any obligation of confidentiality; or
- 3.4.2 Information which has been independently developed by BRE Global; or
- 3.4.3 Information which is or shall lawfully become part of the public domain; or
- 3.4.4 Information which is necessary to enable BRE Global to achieve or maintain approval and/ or accreditation.

**4. Charges**

- 4.1 The Supplier shall pay to BRE Global the charges set out in the Agreement.
- 4.2 All charges quoted to the Supplier for the provision of the Listing and Certification Services are exclusive of any Value Added Tax, for which the Supplier shall be additionally liable at the applicable rate.
- 4.3 All sums payable to BRE Global shall be paid by the Supplier (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of BRE Global's invoice unless a shorter period is

specified within scheme documents, when that shorter period shall apply. If payment is not received by the due date, BRE Global may suspend or withdraw Listing and Certification.

- 4.4 Initial assessments and testing will not be conducted until payment has been received.
- 4.5 If payment is not made by the due date, BRE Global will exercise its statutory right to claim interest and compensation for debt recovery under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debt Regulations 2002.

## **5. Safety**

- 5.1 Where BRE Global is required to access the property of the Supplier for the purposes of carrying out the Certification Services then the Supplier shall provide unhindered access together with all relevant working facilities required by BRE Global and shall provide safe access and a safe working environment which complies with all health and safety law requirements.
- 5.2 The Supplier agrees to make full and immediate written disclosure to BRE Global of all relevant information concerning any defect or potential hazards of the product or material when submitted for testing or as soon as they become aware of it.
- 5.3 The use by the Supplier of any work equipment owned by BRE Global (and/or its affiliated companies) shall be hired by BRE Global at its absolute discretion to the Supplier subject to BRE Global's prior consent and any conditions specified, and in accordance with the following terms and conditions.
- 5.4 The Supplier shall ensure that the use of that work equipment is restricted to those persons given the task of using it with BRE Global's consent, and who have received adequate health and safety training (and shall provide evidence thereof to BRE Global upon request).
- 5.5 The Supplier shall ensure equipment is used only for operations for which, and under conditions for which, it is suitable and the Supplier shall not use and immediately return to BRE Global any work equipment it does not consider to be in good working order. If the work equipment is involved in any accident immediate notification must be made to BRE Global.
- 5.6 The Supplier will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc Act, Provision and use of Work Equipment Regulations 1998, and the Road Traffic Acts as amended and applicable, including any insurances made necessary thereby and the Supplier shall indemnify BRE Global (and/or its affiliated companies) against any loss, damage or injury howsoever caused and for any charges or fines that BRE Global (and/or its affiliated companies) may become liable for as a result of the use of the work equipment to the extent permitted by law.

## **6. Warranties and liabilities**

- 6.1 BRE Global warrants to the Supplier that the Certification Services will be undertaken using reasonable care and skill.
- 6.2 BRE Global shall have no liability to the Supplier for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by the Supplier which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Supplier.
- 6.3 Except in respect of death or personal injury caused by BRE Global's negligence, or as expressly provided in these Terms, BRE Global shall not be liable to the Supplier by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of BRE Global, its servants or agents or otherwise) which arise out of or in connection with the provision of the Certification Services or their use by the Supplier and the entire liability of BRE Global under or in connection with the Agreement shall not exceed the amount which has actually been paid by the Supplier to BRE Global for the provision of the Certification Services.
- 6.4 Except in respect of death or personal injury, the Supplier will look only to BRE Global (and not to any individual engaged by BRE Global, including any directors of BRE Global) for redress if the Supplier considers that there has been any breach of this Agreement. The Supplier agrees not to pursue any claims in contract, tort (including negligence) or for breach of statutory duty against any individuals working for and on behalf of BRE Global in carrying out its obligation under the Agreement at any time, whether named expressly in the Agreement or not.
- 6.5 BRE Global shall use reasonable endeavours to meet the timescales set out in the Agreement and shall not be liable for any losses arising from any delay.
- 6.6 Certification does not imply or express any warranty of any kind with respect to the Supplier's product or service, and BRE Global assumes no responsibility for defects, failure in service or infringement of patents, trademarks or brands.
- 6.7 The Supplier agrees to indemnify BRE Global against any losses suffered by or claims made against BRE Global as a result of any breach by the Supplier of the Agreement including, but not limited to, misuse by the Supplier of any Certification granted by BRE Global under this Agreement.

**7. Suspension and Termination**

- 7.1 At the date of suspension or termination of this Agreement for whatever reason any Certification granted under this Agreement shall immediately cease to be valid.
- 7.2 Either party may terminate this Agreement by giving 90 days notice in writing to the other.
- 7.3 BRE Global may immediately suspend any Certification granted or terminate the Agreement due to unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality system or non-conformance with any part of this Agreement.
- 7.4 Either party may terminate the Agreement forthwith by notice in writing to the other if the other:
  - 7.4.1 commits a breach of the Agreement which, in the case of a breach capable of remedy, shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy;
  - 7.4.2 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the Contract) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.
- 7.5 Once the Agreement has been accepted, the Supplier will be liable for costs incurred and committed until the date of termination.
- 7.6 Suspension or termination of the Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement as at the date of suspension or termination and, in particular, but without limitation, the right to recover damages against the other. The provisions of clause 5 and sub-clauses 2.9, 3.4, 6.2, 6.3, 6.4, 6.6, 6.7 and 14 shall survive any termination.

**8. Assignment**

Certificates remain the property of BRE Global. Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit of the Agreement, without the prior written consent of the other. The burden under this Agreement shall only be transferred under a novation agreement.

**9. Third parties**

Save as expressly provided in this agreement, no term shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties, their permitted successors and assignees).

**10. Entire agreement**

The Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of the Agreement. Neither party shall be entitled to rely on any understanding or arrangement, which is not expressly set forth in the Agreement.

**11. Waiver**

No failure or delay on the part of either party hereto to exercise any right or remedy under the Agreement shall be construed as or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy, as the case may be. The rights and remedies provided in these Terms are cumulative and are not exclusive of any rights or remedies provided by law.

**12. Notices**

A notice to be given hereunder shall be in writing and may be delivered personally or by sending it by pre-paid first class post or facsimile to the intended recipient's address given herein or to any other address supplied with reference to and in accordance with this clause to the other party hereto at their address for the purposes of service under the Agreement. A notice delivered personally shall be deemed to have been served on delivery. A notice sent by post shall be deemed to have been served at an address within the United Kingdom at the expiry of 48 hours from the date of posting and at an address outside the United Kingdom at the expiry of 72 hours from the date of posting. Where any notice is given by facsimile service of the same shall be deemed to be effected upon receipt of the normal confirmation of receipt.

**13. Severability**

If any provision of the Agreement is held to be invalid or unenforceable such provision shall be deemed to be severed from the Agreement and the remaining provisions shall remain in force.

**14. Governing law**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.