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# Terms and conditions for the supply of services

TC212(B) Rev 0.1

[BRE Global Limited]  
[Building Research Establishment Limited]:



## Contract details

Customer:	[COMPANY NAME] (company registration number: [NUMBER])
Customer's address:	[REGISTERED ADDRESS]
Customer's Contract Manager	[NAME] [CONTACT DETAILS]
BRE entity	<i>[Delete as appropriate and remove square brackets. You should do the same on the front page]</i> [BRE Global Limited (company registration number 08961297)] OR [Building Research Establishment Limited (company registration number 03319324)]
BRE's address:	Bucknalls Lane, Garston, Watford, Hertfordshire, WD25 9XX United Kingdom
BRE's Contract Manager	[NAME] [CONTACT DETAILS]
Commencement Date:	<i>[Delete as appropriate and remove square brackets]</i> [[DATE] OR [As set out in the Proposal.]
Services:	<i>[Delete as appropriate and remove square brackets]</i> [Testing Services] OR [Classification Services] OR, [Assessment Services], OR [Inspection Services], OR [Certification Services], OR [Verification Services], OR [Listing Services], OR [Conformity Assessment Services], OR [UKCA Marking Services], OR [Research and Advisory Services], as more specifically described in the Proposal.
[Special Conditions:]	<i>[To be added, if relevant, on a case by case basis. Delete entire row if not relevant]</i>



# Core terms and conditions

## 1. Definitions:

**"Affiliate(s)"** means a group corporate body including any subsidiary, holding company, parent or ultimate parent company of a party as of the date of the Contract.

**"Assessment Services"** means an engineering assessment, in lieu of a Test by BRE, by BRE personnel with the appropriate competencies, in relation to a product or system that has a supporting Classification.

**"Background IPR"** means any Intellectual Property Rights (including Confidential Information) other than Foreground Intellectual Property which is used in the course of or in connection with the Contract.

**"BRE"** means the BRE entity named in the Contract Details.

**"BRE Marks"** means the following names and logos: "BRE", "BRE Global", "BREEAM", "LPCB", "BRE Testing", "SABRE", "Building Research Establishment", "BRE Databook", "BRE Templater", "HQM", "Home Quality Mark", "Redbook", "Greenbook", "BRE Global Listings", "BRE Global Certification", and any other trademark or service mark (whether registered or unregistered) which is owned by BRE from time to time.

**"Certification Services"** means the process of third party assurance provided by BRE that the Materials have met, and continues to meet, a given standard or scheme.

**"Certificated Materials"** means the Customer product, system, (and where the context allows) process or service which has been certified by BRE as meeting a given standard or scheme.

**"Classification Services"** means an agreed way of comparing and declaring the results of Test against a defined set of performance criteria.

**"Core Terms"** means these terms and conditions.

**"Commencement Date"** means the date set out in the Contract Details, or if no such date has been set out, the date on which the Proposal has been signed by both parties.

**"Confidential Information"** means each Party's and their respective Affiliate's confidential information including though not limited to the business, affairs, customers, clients or suppliers of each Party (together with confidential information in Background IPR), disclosed by or on behalf of that Party to the other Party in respect of the Services, and any Results in which that Party owns the Intellectual Property.

**"Conformity Assessment Services"** means the quality management auditing services undertaken by a Conformity Specialist, to ensure that the Materials meet or continue to meet the requirements of the Standard or Scheme, and **"Conformity Assessment"** shall be construed accordingly.

**"Contract"** has the meaning given to it in Clause 3.4.

**"Contractor"** means a third party individual or company appointed by BRE to deliver the whole or any part of the Services, and/or provide any or all of the Deliverables, including BRE's Affiliates.

**"Contract Details"** means the contract details set out in the table on page 1.

**"Contract Manager"** has the meaning given to it in Clause 14.1.

**"Customer"** means the Party named in the Proposal.

**"Customer Information"** means all documents, drawings, data and other information that relates to the Materials which is the subject of the Services described in the Contract.



**"Customer's Premises"** means premises owned, controlled or occupied by the Customer or its Affiliates which are made available for use by BRE or BRE's Representatives or Contractors for the supply of the Services on the terms set out in the Contract.

**"Deliverables"** means the output of the Services usually in the form of a report to be provided by BRE to the Customer as a result of the Services and as more particularly specified in the Proposal.

**"Fee(s)"** means the sums to be paid by the Customer to BRE for the supply of the Services and the provision of the Deliverables, as set out in the Proposal.

**"Foreground IPR"** means any Intellectual Property Rights arising and/or created and/or developed during the supply of the Services.

**"Health and Safety Policy"** means the health and safety policy of the Customer as provided to BRE on or before the commencement date as set out in Clause 4 and as notified to BRE from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law, practices and codes regarding health and safety.

**"Inspection Services"** means the examination by BRE of a Customer's product, process, or installation or its design and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements.

**"Intellectual Property Rights" or "IPR"** means patents, utility models, rights to Inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of Information (including know-how and trade secrets), semiconductor topography rights, image rights, rights of personality and other similar rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Invention"** means any invention, idea, discovery, development, improvement or innovation made in connection with the supply of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**"Listing Services"** means, where the context allows, either (a) the publications, including on GreenBook Live, RedBook Live, and BREGlobal Listings, which contain a list of BRE's customers together with their Certificated or Verified Materials; or (b) the process of adding the Customer's name together with its Certificated or Verified Materials to those publications, and the **"List"** shall be construed accordingly.

**"Materials"** means the Customer product, system, (and where the context allows) process or service which is the subject of the Services described in the Contract, and **"Customer Materials"** shall be construed accordingly.

**"Party" or "Parties"** means BRE and/or the Customer.

**"Proposal"** means the proposal or quotation letter issued by BRE to the Customer in writing, setting out the Services BRE is to deliver to the Customer, together with the applicable Fees.

**"Publish"** means the publication of an abstract, clause or paper in a journal or an electronic repository, or its presentation at a conference or seminar, or other announcement or like communication.

**"Research and Advisory Services"** means the research and advisory services to be supplied by BRE to the Customer for as more specifically set out in the Proposal.

**"Results"** means all results which arise from or relate to the supply of the Services including the provision of the Deliverables and/ or the Works and/ or any Invention.

**"Representative"** means any employee, officer, consultant or other professional adviser of a Party.

**"Schedule"** means the schedule attached to these Core Terms.



**"Services"** means the Testing Services, Classification Services, Assessment Services, Inspection Services, Certification Services, Verification Services, Listing Services, Conformity Assessment Services, UKCA Marking Services, or Research and Advisory Services to be supplied by BRE to the Customer, as set out in the Contract Details and Proposal.

**"Special Conditions"** means any additional terms and conditions which the Parties agree in writing shall apply to the Contract, as set out in the Contract Details.

**"Standard"** means an agreed way of defining methods of assessing the conformity of a product, system, process or personnel in delivering a service or supplying a product. These include though are not limited to BS, EN, ISO or Loss Prevention Standard (LPS) standards.

**"Term"** has the meaning given to it in Clause 5.

**"Testing Services"** means an agreed methodology and required measurements used to assess the conformity of a product, system, process or personnel in delivering a service or supplying products. These include though are not limited to BS, EN, ISO or Loss Prevention Standard (LPS) standards, and **"Test"** shall be construed accordingly.

**"UKCA Marking Services"** has the meaning given to it by the Department for Business, Energy & Industrial Strategy and found at: [Using the UKCA marking - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/using-the-ukca-marking)

**"Verification Services"** means the reviewing by BRE of evidence provided by the Customer relating to the Customer's product or system or process or service or personnel to provide third party confirmation that it meets the relevant Verification Protocol.

**"Works"** means the report and any and all records, reports, documents, papers, drawings, transparencies, photos, graphics, logos, typographical arrangements, software programmes, Inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, whether or not protected or capable of protection as Intellectual Property Rights, and prepared by BRE and/ or its Contractors in connection with the supply of the Services.

## 2. Interpretation:

- 2.1 Clause, schedule and paragraph headings are for convenience only and shall not affect the interpretation or construction of the Contract.
- 2.2 Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, unincorporated association, firm, partnership or other legal entity.
- 2.3 The words 'other' 'including' and 'in particular' shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 2.4 References to any statute or statutory provision shall include (a) any subordinate legislation made under it (b) any provision which it has modified or re-enacted (whether with or without modification) and (c) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.
- 2.5 All references to clauses, schedules and paragraphs are to the clauses, schedules and paragraphs in the Contract unless otherwise stated.
- 2.6 All of the provisions of these Core Terms shall apply to all of the Services supplied by BRE, except where application to only one particular type of service is explicitly specified.

## 3. Contract:

- 3.1 The Proposal constitutes an offer by BRE to the Customer, for the Customer to purchase the Services in accordance with the Contract (as set out in Clause 3.4).



- 3.2 The Proposal given by BRE to the Customer shall be valid for the period set out in the Proposal. The Proposal shall only be deemed to be accepted when the Customer signs and returns the Proposal, at which point a binding contract shall form between the Parties.
- 3.3 Until the Customer has accepted the Proposal in accordance with Clause 3.2, BRE reserves the right to withdraw the Proposal, or amend any aspect of the Proposal, at its discretion.
- 3.4 The Contract consists of:
  - 3.4.1 the Proposal;
  - 3.4.2 these Core Terms; and
  - 3.4.3 any scheme documentation identified in the Proposal or these Core Terms, as may be updated from time to time.
- 3.5 In the event of conflict between any of the provisions contained in any of the documents comprising the Contract the conflict will be resolved in the order in which the documents appear in Clause 3.4 above.
- 3.6 The Contract embodies and sets forth the entire agreement and understanding of the Parties and supersedes any prior oral or written agreements, understandings or arrangements relating to the subject matter of the Contract.
- 3.7 Neither Party shall be entitled to rely on any warranty, statement, promise or representation by the other Party, which is not expressly stated in the Contract.
- 3.8 Each Party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.

#### 4. Supply of Services:

In consideration of the Fees, BRE will supply the Services to the Customer in accordance with the Contract.

#### 5. Term:

The Term shall commence on the Commencement Date, and shall automatically terminate upon completion of the Services, unless terminated earlier in accordance with Clause 19.

#### 6. Fees and payment terms:

- 6.1 The Fees payable in respect of the Services shall be exclusive of any value added tax, which shall be payable in addition on receipt of a valid VAT invoice.
- 6.2 If a payment due from the Customer under this Clause 6 is subject to tax (whether by way of direct assessment or withholding at its source), BRE shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to BRE in respect of the payment is the same as it would have been were the payment not subject to tax.
- 6.3 All sums payable to BRE shall be paid by the Customer within 30 days of the date of BRE's invoice.
- 6.4 If payment of a sum is not received by BRE by the date on which it is due, BRE may:
  - 6.5 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 as amended from time to time; and/or
  - 6.6 cease all further work and withhold the supply of the Services and/ or provision of any Deliverables, until payment is received by BRE.



- 6.7 All amounts due from the Customer to BRE shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. Intellectual Property:

- 7.1 Subject to this Clause 7, all Background IPR is, and shall remain, the exclusive property of the Party owning it, or where applicable, the third party from which its right to use the Background IPR is derived.
- 7.2 The Customer grants to BRE a royalty free, non-exclusive, non-transferrable, world-wide licence to use its Background IPR regarding the supply of the Services and the provision of the Deliverables.
- 7.3 BRE shall own all Foreground IPR in the Results and all materials embodying such rights fully permitted by law.
- 7.4 Subject to Clause 8, BRE grants to the Customer, a royalty-free, revocable, global, perpetual licence to use the Deliverables to have the full benefit of the Services.
- 7.5 The Customer undertakes to BRE:
- 7.5.1 to do all acts necessary to confirm that absolute title in all Foreground IPR in the Deliverables and Results has passed, or will pass, to BRE;
- 7.5.2 not to register nor attempt to register any of the Foreground IPR in the Deliverables or Results, unless BRE has provided its express written approval to do so; and
- 7.5.3 not to give permission to any third party to use any of the Deliverables or Results, nor any of the Foreground IPR in the same.
- 7.6 BRE warrants that, insofar as it is aware, the receipt and the use of the Deliverables by the Customer shall not infringe the rights of any third party.

## 8. Permitted Use of Deliverables:

- 8.1 Neither Party will use the other Party's logos, trade marks or trade names in any press release or product advertising, or for any other promotional purpose, without obtaining the other Party's prior written consent.
- 8.2 Where the Customer wishes to Publish the Deliverables (whether in soft and/ or in hard copy):
- 8.2.1 the Customer must Publish the Deliverables in their full and unedited state and must not do anything to mislead the industry, consumers or any third party, or in a way that suggests or infers endorsement, approval or certification by BRE where no such endorsement, approval or certification exists.
- 8.2.2 The Customer may only use or refer to the Deliverables in accordance with any guidance notes included within them.
- 8.3 The Customer must immediately notify BRE if it becomes aware of the unauthorised use of the whole or any part of any of the Services and/or of the Deliverables by any third party.
- 8.4 The Customer warrants that it shall not use the BRE Marks and any other of BRE's and/ or of BRE's Affiliates' trade marks, logos or trade names (whether registered or unregistered) in any way as to mislead industry, consumers or any third party or in a way that suggests or infers endorsement, approval, verification or certification by BRE where no such endorsement, approval, verification or certification exists.

## 9. Confidentiality:

- 9.1 Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Contract.
- 9.2 Each Party undertakes that it shall not during the Term, and for an additional period as set out in Clause 9.5, disclose to any person any Confidential Information of the other Party, except as permitted by this Clause 9.



- 9.3 Each Party may disclose the other Party's Confidential Information:
  - 9.3.1 to its Representatives who need to know such information for the purposes of carrying out the Party's obligations under the Contract (in which case that Party shall procure that its Representatives to whom it discloses the other Party's confidential information shall comply with this Clause 9);
  - 9.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;
  - 9.3.3 where it had already been in the possession of the Party prior to its disclosure by the other Party or which subsequently comes into its possession free from any obligation of confidentiality;
  - 9.3.4 has been independently developed by the other Party;
  - 9.3.5 where approval for release is provided in writing by the other Party; and/ or
  - 9.3.6 where the information has lawfully become part of the public domain.
- 9.4 Additionally, BRE may disclose the Customer's Confidential Information:
  - 9.4.1 as may be required to be disclosed by BRE to enable it to achieve or maintain approval and/ or accreditation; or
  - 9.4.2 where it is necessary for the supply of the Services and the provision of the Deliverables.
- 9.5 The obligations of confidentiality set out in this Clause 9 shall apply during the Term, and for the following periods after termination or expiry of this Contract:
  - 9.5.1 for a period of five years after termination or expiry of the Contract where BRE has supplied Research and Advisory Services.
  - 9.5.2 for an indefinite period after termination or expiry of the Contract where BRE has supplied any of the following Services: Testing Services, Classification Services, Assessment Services, Inspection Services, Verification Services, Listing Services, Conformity Assessment Services, UKCA Marking Services.

## 10. Laboratory Access:

- 10.1 The provisions of this Clause 10 shall apply where a Customer or its Representatives are permitted to attend in, at, or near any experimental facility or laboratory operated by BRE ("**Laboratory**"), in connection with the Services.
- 10.2 The Customer shall (and shall procure that its Representatives shall):
  - 10.2.1 Comply with any instructions provided by BRE.
  - 10.2.2 On request, sign a separate confidentiality agreement with BRE prior to entering the Laboratory.
  - 10.2.3 On request, leave any personal effects including mobile phones, cameras, laptops and other electronic and/or digital recording devices, equipment and media capable of recording any text, data, software, executable code, images, audio or video material in any medium or form ("**Personal Effects**"), outside of the Laboratory. For the avoidance of doubt, all Personal Effects shall remain at the risk of the Customer or Customer's Representative who owns them and BRE shall not be held responsible for any loss or damage to the Personal Effects howsoever caused.
- 10.3 The Customer and its Representatives shall be accompanied by BRE's Representatives at all times when attending a Laboratory.
- 10.4 In the event of a failure to comply with this Clause 10, BRE reserves the right to escort the Customer or its Representatives out of and/or away from a Laboratory.

## 11. Compliance:

- 11.1 At all times during the Term, each Party shall:





- 11.1.1 perform its respective obligations under the Contract in accordance with all applicable laws, practices and codes concerning health and safety in the jurisdiction where the Services are being supplied;
- 11.1.2 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015;
- 11.1.3 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015 if carried out in the United Kingdom.
- 11.1.4 comply with all applicable anti-bribery and anti-corruption laws, statutes, regulations and codes from time to time in force, including the Bribery Act 2010; and
- 11.1.5 not engage in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010 if carried out in the United Kingdom.
- 11.1.6 comply with any Health and Safety Policy notified to it.
- 11.2 Each Party shall notify the other Party as soon as practicable, of any health and safety incidents or material health and safety hazards at the Customer's Premises of which it becomes aware, and which relate to, or arise in connection with, the performance of the Contract. BRE shall instruct BRE's Representatives or Contractors to adopt any necessary associated safety measures to manage any such material health and safety hazards.
- 11.3 The Customer shall provide to BRE copies of all relevant documents, information and data concerning any defects, dangers or hazards that will be relevant to BRE's supply of the Services, including with respect to the handling and preparation of any product supplied to BRE.

## 12. BRE's responsibilities:

- 12.1 BRE will supply the Services and provide the Deliverables using reasonable care, skill and diligence, in accordance with the service description set out in the Proposal.
- 12.2 BRE may deliver the whole or any part of the Services, and/or provide any or all of the Deliverables, through Contractors.
- 12.3 BRE does not give any warranty, guarantee or other term as to quality, fitness for purpose or otherwise for the supply of the Services where provided by a third party that is not an Affiliate.

## 13. Customer obligations:

- 13.1 Where BRE's Representatives or Contractors are required to access any property of the Customer for the purposes of supplying the Services, the Customer shall provide unhindered access together with all relevant working facilities required by BRE and BRE's Representatives, and shall provide safe access and a safe working environment which complies with all applicable environmental, health and safety laws.
- 13.2 The Customer shall:
  - 13.2.1 Co-operate with BRE and its Contractors (where applicable) in respect of the Services;
  - 13.2.2 At its own expense and prior to the commencement of the Services, provide to BRE such information as it requires in order to supply the Services, including without limitation the Materials and Customer Information where applicable (and where necessary, the Customer shall procure that they are translated into English prior to the commencement of the Services); and
  - 13.2.3 Retain copies of and/ or insure against any loss or damage to all Materials and Customer Information supplied to BRE (and BRE shall have no liability for any such loss or damage to the Customer Information, however caused, including due to negligence).
- 13.3 The Customer warrants that the Materials and Customer Information supplied to BRE shall be accurate and complete in all material respects.



## 14. Contract Management:

- 14.1 Each Party shall nominate a contract manager who shall be the primary point of contact for the other Party in relation to matters arising from the Contract ("Contract Manager"). The Contract Manager for each Party shall initially be those individuals set out in the Contract Details, however should either Party's Contract Manager need to be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager.
- 14.2 Any nominated Contract Manager shall be of sufficient seniority and experience to make decisions on the day-to-day operation of the Contract.
- 14.3 Each Party confirms and agrees that it will work closely and cooperate with the other Party's Contract Manager.
- 14.4 Both Parties' Contract Managers, together with any other appropriate or relevant Representatives of each Party, shall regularly attend meetings (the frequency of which shall be agreed by both Parties) for the purpose of reviewing the performance of the Contract and to discuss matters arising generally under the Contract.

## 15. Insurance:

The Customer shall hold such public liability and other insurance as BRE may reasonably require for the protection of BRE's Representatives, and shall provide evidence of such insurance on request.

## 16. Collection:

- 16.1 The Customer shall, at its own expense, collect the Materials (or samples thereof) and Customer Information from BRE within 45 days of BRE's written request.
- 16.2 If the Customer fails to comply with Clause 16.1, then BRE may, without prejudice to any other right or remedy available to it, at its option either;
  - (a) use its own Representatives to remove or dispose of the Materials (or samples thereof) and Customer Information; or
  - (b) store the Materials (or samples thereof) and Customer Information,and charge the Customer for all associated costs incurred by BRE.

## 17. Data Protection:

- 17.1 The following definitions shall apply in this Clause 17:

**"DP Legislation"** means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including UK GDPR, the DPA (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.

**"UK GDPR"** has the meaning given in section 3(10) (as supplemented by section 205(4)) of the UK Data Protection Act 2018.

**"Personal data", "process" and "data subject"** shall have the same meaning as defined in the DP Legislation.
- 17.2 This Clause 17 applies to personal data provided to BRE by the Customer or on the Customer's behalf in connection with the supply of the Services ("**Personal Data**").
- 17.3 Both Parties will comply with all applicable requirements of the DP Legislation.



- 17.4 The Customer warrants and represents that it has any necessary consent, has provided any necessary notice and has done all other things required under the DP Legislation to lawfully disclose the Personal Data to BRE in connection with the supply of the Services.
- 17.5 BRE shall process the Personal Data in accordance with its Information Governance and Data Protection Policy (as amended from time to time), which can be accessed here ([XA22 Information Governance and Data Protection Policy.pdf](#))
- 17.6 BRE shall notify the Customer promptly:
  - 17.6.1 upon receiving a request from a data subject, or if BRE receives any claim, complaint or allegation relating to the processing of the Personal Data; and/or
  - 17.6.2 upon becoming aware of any breach of security leading to the destruction, loss or unlawful disclosure of the Personal Data in BRE's possession or control.
- 17.7 Upon request, each Party shall provide the other with information relating to its processing of personal data as reasonably required for the other to satisfy its obligations under the DP Legislation.

## 18. Limitation of Liability:

- 18.1 BRE shall not be required to fulfil its duties and obligations under the Contract if at any time BRE is prevented from doing so by any acts or omissions of the Customer or the Customer's Representatives provided always that BRE must give written notice to the Customer of any such act or omission of the Customer within 72 hours of becoming aware of its occurrence.
- 18.2 Notwithstanding Clause 18.1, if BRE's performance of the Services is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, or Representatives:
  - 18.2.1 BRE shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
  - 18.2.2 BRE shall be entitled to payment of the Fees despite any such prevention or delay; and
  - 18.2.3 BRE shall be entitled to recover from the Customer any additional costs, charges or losses that BRE sustains or incurs that arise directly or indirectly from such prevention or delay.
- 18.3 BRE shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising:
  - 18.3.1 from any Materials (or samples thereof) or Customer Information supplied by the Customer 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 Customer; and/or
  - 18.3.2 where BRE performs invasive surveys or collects samples of the Materials, when supplying the Services.
- 18.4 BRE shall not be liable to the Customer due to any representation, or any implied warranty, statement, promise, condition or other term not expressly set out in the Contract.
- 18.5 BRE shall not be liable to the Customer 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, its Affiliates or servants or agents or otherwise) which arise out of or in connection with the supply of the Services including the provision of the Deliverables and/ or their use by the Customer.
- 18.6 BRE shall not be liable for any loss or damage to the Customer's Materials or Information, howsoever caused.
- 18.7 The Customer will look only to BRE (and not to any individual engaged by BRE, its employees or directors) for redress if the Customer considers that there has been any breach of the Contract or any other cause of action in relation to the Services and Deliverable. The Customer 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 in carrying out its obligation under the Contract at any time, whether named expressly in the Contract or not. This Clause may be enforced by any individual engaged by BRE and by its employees, officers or other Representatives.
- 18.8 Nothing in the Contract shall limit or exclude either Party's liability to the other Party for:



- 18.8.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- 18.8.2 fraud or fraudulent misrepresentation; and or,
- 18.8.3 any other liability which cannot be limited or excluded by law.
- 18.9 BRE shall use reasonable endeavours to meet the timescales set out in the Contract but shall not be liable for any losses arising from any delay. Time shall not be of the essence in respect of BRE's obligations under this Contract.
- 18.10 Subject to Clause 18.8, BRE's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall not exceed the Fee.
- 18.11 The Customer agrees to indemnify BRE against any losses suffered by or claims made against BRE as a result of any breach of Clause 7 (Intellectual Property), Clause 8 (Permitted Use of Deliverables), Clause 9 (Confidentiality), Clause 11 (Compliance), and Clause 17 (Data Protection) by the Customer or the Customer's Representatives.

## 19. Termination:

- 19.1 Either Party may terminate the Contract for convenience by giving 30 days written notice to the other Party.
- 19.2 Either Party may terminate the Contract immediately by notice in writing to the other Party if:
  - 19.2.1 the other Party commits a breach of the Contract which in the case of a breach capable of remedy has not been remedied within 14 days of the receipt by the other Party of a notice from the innocent Party identifying the breach and requiring its remedy;
  - 19.2.2 the other Party 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 this 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 Party may be unable to pay its debts; or
  - 19.2.3 the acts or omissions of the other Party or the other Party's Representatives causes or risks causing reputational damage to it.
- 19.3 Where Clause 21 applies to the Contract, BRE may terminate the Contract forthwith if it has exercised its right to suspend or withdraw Certification or Verification under Clause 21.7.
- 19.4 Once the Contract has been accepted, the Customer will be liable for all costs reasonably incurred and committed by BRE until the date of termination.
- 19.5 Termination of the Contract for whatever reason shall not affect the accrued rights of the Parties arising in any way out of the Contract as at the date of termination and the following Clauses shall survive expiration or early termination of the Contract: Clause 7 (Intellectual Property), Clause 8 (Permitted Use of Deliverables), Clause 9 (Confidentiality), Clause 17 (Data Protection), Clause 18 (Limitation of Liability), Clause 21.3 (Customer obligations post-Certification/ Verification) and Clause 30 (Governing Law and Jurisdiction).

## 20. Testing, Classification, Assessment, and Inspection Services:

- 20.1 The provisions of this Clause 20 shall apply in respect of Testing Services, Classification Services, Assessment Services and Inspection Services only.
- 20.2 BRE may:



- 20.2.1 make any changes to the requirements which are necessary to comply with any applicable safety or other statutory requirement standards, or requirements of relevant accreditation authorities and the Customer shall comply with such changes as soon as reasonably practicable after being notified of them; and
- 20.2.2 at any time change or revise its Standards, criteria, methods, protocols or procedures. If it does so, reasonable notice will be given to the Customer such that continued conformance with BRE's requirements is practicable.
- 20.3 The Customer acknowledges and accepts that BRE may supply the Services through a team, department, employee or Contractor which has not been granted a UKAS accreditation.

## 21. Certification, Verification, Listing, Conformity Assessment and UKCA Marking Services:

- 21.1 The provisions of this Clause 21 shall apply in respect of Certification Services, Verification Services, Listing Services, Conformity Assessment Services and UKCA Marking Services only (in each case, to the extent that each provision is applicable in respect of each type of service).
- 21.2 The following definitions shall apply to this Clause 21:

**"Accreditation Authority"** means in the United Kingdom, the United Kingdom Accreditation Service ("UKAS") which is recognised by HM Government as the sole UK national accreditation body that assesses against internationally agreed standards, the competence of organisations – including BRE - that provide certification, testing, inspection and calibration services.

**"Approved Body"** means the organisation (and in connection with the Contract, BRE) including any approved body, technical assessment body, and Northern Ireland (NI) notified body, that is designated by a UK Government appointed conformity assessment body to assess the conformity of certain products, systems, processes or services before being placed on the market in Great Britain or NI. These approved bodies carry out tasks relating to conformity assessment procedures set out in the applicable regulations owned by the Department for Business and Trade (DBT), when a third party is required to do so. In the case of BRE, the approved legislative areas are construction products regulation and marine equipment requirements. DBT publishes a list of such approved bodies.

**"BRE Certificate"** means the independent written assurance issued by BRE following the successful completion of Certification.

**"Certification"** is the process of third party assurance provided by BRE that the Materials have met, and continues to meet, a given Standard or Scheme, and **"Certify"** shall be construed accordingly.

**"Conformity Specialist"** means the BRE employee who performs the Conformity Assessment.

**"Conformity Testing"** means testing by BRE of a sample of the Certificated Materials to confirm that they continue to satisfy the defined Scheme or Standard required by Certification, and **"Conformity Test"** shall be construed accordingly.

**"Scheme(s)"** means the published technical documents, including a Standard, or Verification Protocol, which describes the means of achieving Certification or Verification.

**"Type Testing"** means testing (carried out in connection with the Contract by BRE) to determine the conformity of the representative type of the Materials, against an agreed methodology, and **"Type Test"** shall be construed accordingly.

**"Verification"** means the reviewing by BRE of evidence provided by the Customer relating to the Customer's product or system or process or service or personnel to provide third party confirmation that it meets the relevant Verification Protocol.

**"Verified"** means that a Customer's product or system or process or service or personnel has completed the requirements of Verification and is provided by BRE with a written statement of confirmation and added to the List.



**"Verification Protocol"** means a document containing details of a technology and its application; performance claim(s); performance and operational parameters; test and evaluation methods and quality procedures that are used together to confirm that a technology fulfils its claimed performance and purpose.

*Customer Obligations post-Certification and Verification*

- 21.3 Once BRE has Certified or Verified the Materials, the Customer shall comply with the following obligations for as long as the Materials remain in use thereafter:
  - 21.3.1 The Customer shall not make any changes which may affect the quality or performance of the Certificated or Verified Materials unless notice of the proposed change has been given and written authorisation obtained from BRE.
  - 21.3.2 Where the Customer becomes aware of any shortfall in the performance of the Certified or Verified Materials (howsoever caused), the Customer shall inform BRE immediately and take all steps that BRE shall reasonably require, to rectify any shortfall as soon as reasonably practicable;
  - 21.3.3 The Customer shall allow BRE to carry out periodic Conformity Assessments in support of Certification (including providing access to facilities identified on any BRE Certificate or to any service or installation locations identified by the Customer);
  - 21.3.4 The Customer shall ensure that any Conformity Specialist is accompanied at all times by a Representative of the Customer who shall operate any necessary equipment machinery or computer terminals;
  - 21.3.5 The Customer shall maintain a record of complaints, failures and remedial actions taken in relation to its Certificated or Verified product or system or process or service or personnel;
  - 21.3.6 The Customer shall provide BRE with samples, on demand, for the purpose of BRE selecting samples for Conformity Testing of Certificated Materials which are representative of current production, as part of ongoing Certification;
  - 21.3.7 The Customer shall not "pass off" similar products or systems or processes or services or personnel that have not been Certified as Certified or Verified as Verified;
  - 21.3.8 The Customer shall notify BRE in writing of any changes to its contact details or legal entity;
  - 21.3.9 The Customer shall only use any BRE Marks, or claim Certification or Verification which relates to the Materials which are either Verified or Certificated, and provided that any such use or claim must be compliant with the written guidance or instructions of BRE issued from time to time.
  - 21.3.10 The Customer shall immediately cease using any BRE Marks, or any claim of Certification or Verification relating to the specific product, system, process, service or personnel that ceases to be Certified or Verified.
- 21.4 For the avoidance of doubt, Conformity Assessments do not apply to a product or system or process or service or personnel subject to Verification.
- 21.5 Clause 7.5.3 shall not apply to the Contract when a party connected to the Customer is seeking to have the Materials "cross-listed".

*BRE's rights and obligations*

- 21.6 BRE reserves the right to Type Test or Conformity Test, either the whole or part of the Materials, as it deems necessary.
- 21.7 BRE reserves the right to either suspend or withdraw Certification or Verification and shall notify the Customer in writing of the same.
- 21.8 A Customer's Materials shall only be Certificated or Verified by BRE when the Customer has demonstrated compliance with all requirements of the relevant Standard or Scheme.
- 21.9 BRE shall Publish and maintain up-to-date lists of Materials that have been Certified or Verified.
- 21.10 BRE may at any time, and in its sole judgement, make changes to the Scheme(s) which are:



- 21.10.1 necessary to comply with any applicable safety or other statutory requirements; or
- 21.10.2 which are necessary to meet the requirements of the relevant Accreditation Authority, in which event the Customer shall comply with such changes as soon as reasonably practicable after notification of such changes in writing by BRE.

*Additional Warranties and Limitations of Liability applicable to Certification and Verification*

- 21.11 Where BRE has Certificated or Verified the Materials, it does not mean that BRE:
  - 21.11.1 grants any express or implied warranty of any kind;
  - 21.11.2 endorses the Materials in any way; or
  - 21.11.3 assumes any responsibility for defects, failure in service or infringement of any patents, trade marks or brands, in relation to the Materials which have been Certificated or Verified.
- 21.12 The Customer agrees to indemnify BRE against any losses suffered by, or claims made against BRE, as a result of any breach by the Customer of the Contract, including but not limited to, in respect of misrepresentation by the Customer of the Services and misuse of the BRE Marks.

*Suspension and Termination of Certification*

- 21.13 At the date of suspension or termination of Certification, for whatever reason, any Certification granted to that date shall immediately cease to be valid.
- 21.14 BRE may immediately suspend any Certification granted or terminate the Contract due to unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality system or non-conformance with any part of the Contract.
- 21.15 A BRE Certificate remains the property of BRE. In accordance with Clause 21.13 to Clause 21.15, BRE may request the return of a BRE Certificate.

*UKCA Marking*

- 21.16 A Customer's Materials which only meet the requirements of a UK legislation UKCA/Wheel marking must not use the BRE Marks, in particular those attributable to LPCB.

## 22. Research and Advisory Services:

- 22.1 The provisions of this Clause 22 shall apply in respect of Research and Advisory Services only.
- 22.2 The Customer shall not without BRE's prior written consent use the BRE Marks or suggest an association with BRE Global Limited or Building and Research Establishment Limited, or disclose to any third party the nature or existence of this Contract. Where such consent is given, the Customer shall comply with any conditions attached to the consent.

## 23. Third Party Rights:

Save as expressly provided in the Contract, 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).

## 24. Severability:

- 24.1 If any provision or part provision of the Contract is held to be invalid, illegal or unenforceable such provision or part provision shall be deemed to be severed from the Contract and the remaining provisions shall remain in force and effect.
- 24.2 If any provision or part-provision of the Contract is deemed deleted under Clause 24.1, 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.



## 25. Waiver:

No failure or delay on the part of either Party hereto to exercise any right or remedy under the Contract 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 the Contract are cumulative and are not exclusive of any rights or remedies provided by law.

## 26. Assignment and variation:

- 26.1 The Contract is personal to the Customer who may not without the prior written consent of BRE assign, transfer, sub-contract or deal in any other manner with any or all of its rights under this Contract.
- 26.2 BRE may, at any time, assign (absolutely or by way of security and in whole or in part) transfer mortgage, charge or deal in any other manner with any or all of its rights under this Contract.
- 26.3 No variation to the Contract shall be valid unless in writing and signed by both Parties.

## 27. Force majeure:

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 28. Notices:

- 28.1 A notice under the Contract shall be served in writing and may be delivered personally or by sending it by pre-paid first-class post to the intended recipient's registered company address.
- 28.2 Notices may not be delivered by facsimile or email.
- 28.3 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.
- 28.4 This Clause 28 shall not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## 29. Disputes:

If any dispute, controversy or claim including without limitation, any dispute as to the validity, construction, enforceability or breach arises, the Parties shall follow BRE's complaints and appeal procedure (as set out in document XP107E which has previously been supplied to the Customer and is available at: XP107E Complaints and Appeals.pdf and as amended from time to time.





### 30. Governing Law and Jurisdiction:

- 30.1 The Contract shall be governed by and construed in accordance with the law of England and Wales.
- 30.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

#### **BRE Global**

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