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| BRE Global                        | PUBLICATION | Doc No: PN 173     |
|                                   |             | Revision No: 6.0   |
| Terms And Conditions<br>Licensing |             | Date: 4 April 2014 |
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## Interpretation

### 1. In these Terms

'BRE, "LPCB", "BREEAM" mean BRE Global Limited (registered in England, No.8961297), hereinafter referred to as "BRE", whose registered office is at Garston, Watford, Hertfordshire, WD25 9XX.

'Standard' means the standard, scheme or Loss Prevention Standard (LPS) which is owned by BRE and which is the subject of the licence.

'Licensee' means the person, company, firm or other body which has been licensed by BRE to use the Standard for the purpose of delivering 'Services'.

'Agreement' means the contract for the licence (normally consisting of the Schedule, the Fee Sheet and these Terms).

'Services' means inspection, calculation, training, assessment, testing, certification or any other service provided by the Licensee under this Agreement.

'Associated Documentation' means any software, drawing, procedures, forms, certificates, guidance, presentations or any other material which can be used to help deliver the Service.

'Schedule' means specific details of the Services which are the subject of the licence.

'Fee Sheet' means the current fees payable to BRE for the licence.

'Terms' means these terms and conditions, together with any additional terms and conditions set out in the Schedule.

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

### 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.

## Intellectual Property Rights

### 4. BRE has developed, written and owns the intellectual property rights to the Standard(s) listed on the Schedule and the Licensee neither has nor acquires a proprietary interest in the Standard(s) through this Agreement.

### 5. BRE owns various marks and logos and the Schedule defines which logos and marks may be used by the Licensee and how these may be used.

### 6. Arrangements for any certificates of conformity will be set out in the Schedules.

## Responsibility of the Licensee

### 7. The Licensee shall:

i) perform the Services using reasonable skill and care in accordance with the requirements of the latest versions of the Standard, Associated Documentation and any other instructions given by BRE using the named persons listed in the licence proposal letter. No changes which may affect the quality or performance of the Services shall be made unless notice of the proposed change has been given to, and written authorisation obtained from BRE.

ii) notify BRE immediately of any complaints and appeals made against the Licensee and investigate and resolve these fairly and promptly (and where appropriate in accordance with the accredited procedures).

iii) pay all fees and payments specified in the Fee Sheet to BRE within 30 days of the date of the BRE invoice. All charges quoted are exclusive of Value Added Tax for the Licensee shall be additionally liable at the applicable rate;

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- iv) notify any relevant changes in the Services and fees to their existing customers;
  - v) not do anything which may bring BRE or its schemes into disrepute and abide by BRE's Code of Conduct;
  - vi) keep as confidential all Associated Documentation provided by BRE other than as necessary to perform the Services or unless otherwise agreed in writing or required by law.
8. Where required in the Schedule the Licensee shall:
- i) permit periodic audits and assessments of the performance of the Services by BRE and shall rectify any non-conformities within a reasonable time.
  - ii) supply BRE with copies of all documents, materials, information and data reasonably necessary to assess or audit the performance of the Services. BRE shall have no liability for any loss or damage, however, caused to this information including due to negligence.
  - iii) provide BRE with unhindered and safe access at all reasonable times to all relevant parts of the premises necessary to enable BRE to assess or audit the performance of the Services and to also provide any necessary personal protective equipment. During any such assessment or audit visit the Licensee shall ensure that BRE is accompanied at all times by a representative of the Licensee. The Licensee's representative shall operate their own equipment or machinery including computer terminals to access information.
  - iv) obtain accreditation from an IAF member organisation (UKAS, in the case of the United Kingdom) against the required accreditation standard.
  - v) participate in "round-robin" testing and assessments for quality assurance purposes, if required.
9. Should the Licensee become aware of any shortfall in the performance of the Services, the Licensee shall inform BRE immediately and shall take all steps that BRE shall reasonably require to rectify such shortfall as soon as reasonably practicable.
10. The Licensee shall not use the Standard and/ or Associated Documentation to develop and offer products and services which compete with those of BRE and the Licensee shall fully indemnify BRE in respect of this clause.
11. Unless otherwise specified in the Schedule, the Licensee shall indemnify BRE against any defects and/or failures in Licensee's Services and otherwise for any losses suffered by or claims made against BRE as a result of any breach by the Licensee of this Agreement. This indemnity shall be limited the greater of £1,000,000 or twice the total revenue derived from the licence granted. Such limit however shall not apply to any claim, suits, proceedings, costs, losses or damages for death or bodily injury arising from Licensee's negligence nor Licensee's breach of confidentiality or infringement of intellectual property rights.

**General Responsibilities of BRE**

- 12. BRE shall provide all such training, documentation and guidance to certified persons as is necessary to ensure that they can perform the Services satisfactorily.
- 13. BRE shall audit the Licensee to ensure that it and its certified personnel are performing the Services to an acceptable quality.
- 14. BRE shall from time to time make changes to the Standard and Associated Documentation which are necessary to reflect changes in technology, standards or any applicable safety or other statutory requirements. BRE shall advise the Licensee of such changes and provide all relevant documentation free of charge. Where additional training is required this shall be charged at the prevailing rate.
- 15. BRE shall promote the Standard and the Red and Green Books.
- 16. BRE shall take action against any Licensee who misuses the Standard or brings the Standard or Red or Green books or BRE and its brands into disrepute.

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**Warranties and Liability**

- 17. Except in respect of death or personal injury caused by BRE’s negligence, fraud, or as expressly provided in these Terms, BRE shall not be liable to the Licensee 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, its servants or agents or otherwise) which arise out of or in connection with the licence or provision of the Services by the Licensee and the entire liability of BRE under or in connection with the Agreement shall not exceed the greater of £10,000 or 115% of the amount which has actually been paid by the Licensee to BRE for the provision of the Licence.
- 18. Except in respect of death or personal injury, the Licensee will look only to BRE (and not to any individual engaged by BRE, including any directors of BRE for redress if the Licensee considers that there has been any breach of this Agreement. The Licensee 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 Agreement at any time, whether named expressly in the Agreement or not.
- 19. BRE 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.
- 20. Unless otherwise specified in the Schedule, the Licensee shall not sub-contract, transfer or assign any part of this Agreement to any other party.
- 21. Neither party shall be responsible to the other party for any non-performance due to causes beyond their reasonable control. However, they shall inform the other party in writing of the reasons and take all reasonable steps to comply with this agreement as fully and promptly as possible.
- 22. Unless otherwise specified in the Schedule, or agreed in writing with BRE, the Licensee shall (without prejudice to its obligations to fully indemnify BRE under these terms and conditions) take out and maintain an insurance policy in respect of professional indemnity to cover the period from the grant of the Licence and remain in effect for twelve years following its discontinuation with a limit of indemnity of no less than £1,000,000 for any one claim and in the aggregate provided such insurance is available at commercially reasonable rates without regard to the Licensee’s claim history.

**Suspension or termination**

- 23. Either party may terminate the Agreement immediately by notice in writing to the other if the other:
  - i) commits a breach of the Agreement which is irremediable or in the case of a remediable breach capable of remedy, shall not have been remedied within 14 days of the receipt of a notice from the innocent party identifying the breach and requiring its remedy;
  - ii) undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988;
  - iii) has a petition presented for its bankruptcy or has a criminal bankruptcy order made against it (or any partner in the case of a partnership);
  - iv) makes any composition or arrangement with or for the benefit of creditors;
  - v) makes any conveyance or assignment with or for the benefit of its creditors;
  - vi) passes a resolution for winding up or dissolution or has a winding-up order made against it;
  - vii) has an administrator, receiver, manager or supervisor appointed to manage its affairs or has an application is made for, or any meeting of its directors or members resolves to make an application for, an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it;
  - viii) has possession taken of any of its property under the terms of a fixed or floating charge;
  - ix) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

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- x) is subject of any similar event as above under the law of any other jurisdiction to which the party is subject.
24. 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 termination and, in particular, but without limitation, the right to recover damages against the other and the provisions of Clauses 17 to 22 inclusive and Clause 31 shall remain in force and effect.
25. The licence (and consequently, for the avoidance of doubt, the right to carry out the Services) may be suspended immediately until such time as the event is resolved to the reasonable satisfaction of BRE or the Agreement is terminated in accordance with Clause 23:
- i) if the Licensee fails any audit conducted by BRE or UKAS in respect of its business operations;
  - ii) for unsatisfactory performance in provision of Services;
  - iii) for unsatisfactory results in meeting requirements of any examination or re-examination relating to the licence;
  - iv) if the Licensee fails to resolve any serious complaint which is reasonably capable of resolution;
  - v) if any payments are not made within 30 days of the date of a BRE invoice; or
  - vi) if the Licensee is abusive or acts in an unprofessional manner towards BRE personnel.
26. In any event of termination or suspension of the licence under Clauses 23 to 25 inclusive, BRE may without prejudice to any other of its rights, complete and outstanding Services or have them completed by a third party and shall be entitled to recover any amount due from the Licensee. At BRE's request the Licensee shall assign or novate (on substantially same terms) any agreements for the Services to BRE or a designated third party to the extent required to enable completion of any of the Services.

### **Third Parties**

27. 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).

### **Entire Agreement**

28. 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.

### **Waiver**

29. No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement or any single or partial exercise of any such right or remedy shall be construed or shall operate as a waiver thereof.

### **Severability**

30. 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.

### **Governing Law**

31. 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.

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