



SmartWaste

END USER LICENCE AGREEMENT

SmartWaste

Revision: 2.2

Issue Date: 30 April 2019



By clicking “Accept” at the bottom of the page You are agreeing to all the terms contained in this End User Licence Agreement (EULA) and all other documents referred to within. For the avoidance of doubt this EULA and the documents referred to within them apply to new and existing SmartWaste Account holders.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.

1. Accessing SmartWaste

- 1.1. You and the Designated User may access SmartWaste, in accordance with the Proposal, either by BRE providing:
 - (a) You and the DU with the API Key, which shall be used to ‘call’ the API and transfer the SmartWaste Data to the SmartWaste Account. An automated email from BRE to You will confirm whether a successful transfer of SmartWaste Data has taken place; or
 - (b) You and the DU are provided by BRE with a username and password for the Site.

2. Intellectual Property Rights

- 2.1. All intellectual property rights, whether registered or unregistered in the Services shall remain the exclusive property of BRE and its licensees. Nothing in this Agreement shall be deemed to transfer any intellectual property rights to You or the DU in the Services.
- 2.2. “SmartWaste” is a UK registered trademark for which We own all intellectual property rights.
- 2.3. You may only use the SmartWaste name and/or logo with the express written permission of BRE. Amongst other things, permission will only be granted on condition that You agree to use the SmartWaste name and/or logo in accordance with the provided policy and guidance.

3. Licence to use the Services

- 3.1. In consideration of the Initial Fee, or where appropriate the Subsequent Fee, BRE provides You with a royalty-free, revocable, non-exclusive licence to use the Services from the Activation Date. You may not transfer, assign or otherwise deal with this licence, save that BRE grants You a right to sub-licence this licence to the DU (the **Licence**). BRE’s granting of the Licence is subject to:
 - (a) You and the DU’s use of the Services solely for the purposes outlined in the Proposal (the **Permitted Purpose**);
 - (b) You not using the Services to upload malicious code or corrupted data to SmartWaste;
 - (c) You having an active SmartWaste Account;
 - (d) You having paid either the Initial Fee or, where appropriate, most recent Subsequent Fee;
 - (e) You having appropriate security measures against unauthorised access to the Services; and
 - (f) You having the appropriate Equipment to use the Services and access the SmartWaste Account.
- 3.2. BRE:
 - (a) may from time to time provide You with an updated version of the API; and
 - (b) reserves the right to revoke the Licence where either You or Your DU has breached either clause 3.1 or clause 4 of this Agreement.

4. Warranty and Indemnity

4.1. BRE provides you with the Services on an “as is” basis and We do not warrant or represent that they will be:

- (a) free of bugs or errors;
- (b) uninterrupted, secure, timely or error-free; or
- (c) compatible with your Equipment or any other third-party software or hardware.

4.2. You Warrant not to:

- (a) use, or permit the use of, the Services to in any way adversely affect or corrupt the Services, BRE’s System or SmartWaste Data;
- (b) use the Services in any way which will result in You accessing or retrieving any data which You are not entitled to access;
- (c) use or permit the use of any automated software programme (such as - without limitation - a web crawler) through the API to access BRE’s System or to search, monitor or obtain links to any part of BRE’s System except where this is necessary in connection with the Permitted Purpose;
- (d) use or permit the use of the Services in any way which may infringe the intellectual property rights of third parties or for any fraudulent or otherwise unlawful purpose;
- (e) decompile, observe, study or test the functioning of the Services, or modify, add to or otherwise enhance the Services, except with BRE’s express prior written agreement.

5. Licence to SmartWaste Data

5.1. You warrant that both You and the DU have the authority and capacity to enter SmartWaste Data into SmartWaste either through the Site or the API.

5.2. You shall retain ownership of Your SmartWaste Data.

5.3. You grant, and shall procure that the DU grants to BRE a perpetual, irrevocable, sub-licensable, worldwide, non-exclusive, royalty-free licence to use Your SmartWaste Data to both deliver SmartWaste to You and to manipulate it into an anonymised form.

5.4. Your SmartWaste Data shall be anonymised by BRE in accordance with clause 5.3 above, and shall be combined with other users’ anonymised SmartWaste Data to form a data set (the **Dataset**).

5.5. BRE shall own all intellectual property rights in the Dataset.

6. Confidentiality

6.1. For the purposes of this clause “**Confidential Information**” shall include:

- (a) the content of the Proposal and any Invoice;
- (b) any information that would be regarded as confidential by a reasonable business person;
- (c) the operations, processes, product information, know-how, designs, trade secrets or software of either party;
- (d) any information or analysis derived from Confidential Information.

6.2. The parties agree to continue to protect the Confidential Information and agree that neither party shall at any time:

- (a) divulge or communicate to any person, company, business entity or other organisation any Confidential Information;
- (b) use any Confidential Information for its own purposes or for any purposes other than satisfying their obligations under this Agreement; or

- (c) through any failure to exercise due care and diligence, cause any unauthorised disclosure of the Confidential Information.
- 6.3. A party shall delete or destroy the other party's Confidential Information, to the extent reasonably possible, further to a written request from the other party. Such deletion or destruction must take place within 30 days of the date of the written request.
- 6.4. Both parties shall apply the same prudent security measures to the Confidential Information that it applies to its own Confidential Information in the normal course of business.

7. Data Protection

- 7.1. "Data Protection Legislation" means the General Data Protection Regulation (EU 2016/679) and any legislation which amends, re-enacts or replaces it in England and Wales. The definitions and interpretations in the Data Protection Legislation apply to this clause.
- 7.2. For the purposes of this clause 7 'Personal Data', 'Data Controller', 'Data Processor', 'Data Subject' and 'Processing' shall have the same meanings ascribed to them in the Data Protection Legislation and shall be construed accordingly.
- 7.3. BRE may collect and Process your Personal Data, however will only do so in compliance with the Data Protection Legislation. For more information on how BRE may Process your Personal Data, please visit the BRE Group Privacy Policy which is available on the BRE Group Website [here](#).
- 7.4. By using accepting these terms, You agree to the content of the Privacy Policy and You warrant that all data provided by You to Us is accurate.
- 7.5. **Cookies.** BRE Website use Cookies, to find out how BRE Websites use cookies please visit out Cookie Policy on the BRE Group Website.
- 7.6. **Acceptable Use.** When using the BRE website and services which allow you to contribute and upload content, we expect our customers to comply with the BRE Group [Acceptable Use Policy](#) . You must comply with this Acceptable Use Policy; failure to do may result in Your access to the Services being denied/revoked.

8. Termination

- 8.1. Where the Agreement has Expired or is terminated in accordance with this clause 8, BRE shall deactivate the API Key and suspend access to the SmartWaste Account.
- 8.2. Without affecting any other right or remedy available to it, BRE may terminate the Agreement with immediate effect by giving written notice to You if:
 - (a) Your financial position deteriorates to such an extent that in the BRE's opinion Your capability to adequately fulfil Your obligations under the Agreement has been placed in jeopardy; or
 - (b) You commit a breach of clauses 3.1 or 4.2.
- 8.3. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
 - (a) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or

- (b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

- 8.4. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 8.5. Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 8.6. You shall not be entitled to a pro-rata refund of either the Initial Fee or Subsequent Fee from the date of termination of this Agreement for whatever reason.

9. Limitation of Liability

- 9.1. Nothing in this Agreement shall exclude or limit either party's liability for fraud, death or personal injury caused by negligence, or any other liability that cannot be limited or excluded by law.
- 9.2. You accept that BRE's maximum aggregate liability to You, whether in contract, tort (including negligence), statute or otherwise is limited to the Initial Fee.
- 9.3. We shall not be liable to You for any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential).

10. Communication between the Parties

- 10.1. When we refer in this Agreement to "in writing", this will include e-mail.
- 10.2. Any notice or other communication given by you to us, or by us to you, under or in connection with the Agreement shall be in writing and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, or e-mail.
- 10.3. A notice or other communication shall be deemed to have been received if delivered personally, when left at our registered office, 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. If sent by e-mail, one Business Day after transmission.
- 10.4. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.
- 10.5. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11. Survival

The following clauses shall survive the expiry or early termination of the Agreement: clause 2, clauses 5-7, clause 9 and clauses 12.3-12.5.

12. General

- 12.1. BRE reserves its right to amend this Agreement, or any other document referenced in this Agreement, at any time at its sole discretion by sending a new or amended version of this Agreement to You by email and/or by posting the new or updated version on the Site.

- 12.2. Nothing in this Agreement shall be construed as constituting a partnership, joint venture or relationship of employer and employee between the parties.
- 12.3. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall not affect the validity and enforceability of the rest of this Agreement.
- 12.4. This Agreement shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of England and Wales.
- 12.5. Nothing in this Agreement is intended to confer on any third party (whether referred to in this Agreement by name, class, description or otherwise) any benefit or any right under any legislation in any country to enforce any provision of this Agreement.

Definitions:

“Activation Date” means the date that You gain access to the Services, being the date that BRE communicates to You BRE’s receipt of the fees.

“Agreement” means these terms and conditions, the Proposal and any BRE or BRE Group policy referred to in this EULA.

“API” means an Application Programme Interface which allows Your computer systems and those of Your DU to call SmartWaste tool access Your SmartWaste Account and transfer SmartWaste Data to it.

“API Key” means the code key used to call the API, this key will be unique to Your SmartWaste Account.

“BRE”; “We”; “Our” means Building Research Establishment Limited (Company No. 03319324) whose registered office is Bucknalls Lane, Garston, Watford WD25 9XX.

“BRE’s System” means the computer equipment – whether owned and operated by BRE or its suppliers - and software that allows BRE to host SmartWaste.

“Company”; “You”; “Your” means, where the context allows, either the organisation that holds a SmartWaste Account, or its representative using SmartWaste.

“Conclusion Date” means the expiry date of the Agreement, and the licence granted at clause 3, as stated in the Proposal.

“Designated User”; “DU” means the organisation You appoint to export SmartWaste Data either via the API, or via the Site to your SmartWaste Account.

“Equipment” means the computer equipment and software that allows You to collect the SmartWaste Data and access SmartWaste.

“Expired” means the Company has decided not request a Subsequent Fee following the expiry of the period specified in the Proposal or preceding Invoice.

“Initial Fee” means the amount specified for the SmartWaste Account in accordance with the Proposal.

“Invoice” means the invoice which specifies the Subsequent Fee and the applicable period of time for access to the SmartWaste Account after the period specified in the Proposal.

“Proposal” means the proposal document drafted by BRE, and addressed to the Company, which describes the benefits for the Company of using SmartWaste, outlines the nature of the SmartWaste Account and its Fee, together with the costs of any associated training to use SmartWaste.

“Reference Data” means data inputted into Your SmartWaste Account which relates to the real-world movement and management of waste by Your relevant Waste Management Contractor, and further details as to relevant licences, permits and waste facility recycling rates on a given construction project.

“Services” means the Site, SmartWaste and API collectively.

“Site” means www.smartwaste.co.uk ; www.bresitesmart.com

“SmartWaste Account” means the membership account You hold with BRE to use SmartWaste as further described in the Proposal.

“SmartWaste” means the environmental compliance, recording and reporting software tool owned and operated by BRE.

“SmartWaste Data” means both the Transactional and Reference data entered by You, your DU or (where the context allows) other users of the Services.

“Subsequent Fee” means the amount specified for the SmartWaste Account in accordance with the relevant Invoice.

“Transactional Data” means data inputted into your SmartWaste Account which relates to the real-world types of waste being moved on a given construction project. This aids in the recording and reporting upon the relevant duty of care information and the affiliated waste transfer note.