



TERMS AND CONIDITIONS

SmartWaste Scan

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Software as a Service (SaaS)

1. Software Subscriptions

- 1.1 Subject to the Customer purchasing the Software Subscription in accordance with the terms of this Contract, and subject to payment of the Fees by the Customer, BRE hereby grants to the Customer a non-exclusive, non-transferable, revocable right and licence, without the right to grant sublicenses, to permit the Authorised Users to use the Services and Documentation during the Licence Period, in accordance with the limits of the Software Subscription and in accordance with the terms of this Contract, solely for the Customer's internal business operations.
- 1.2 The Customer undertakes that:
- (a) it will not allow an Authorised User's login to be used by more than one individual Authorised User and ensure the login is only used by the relevant allocated Authorised User;
 - (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to BRE within 5 Business Days of BRE's written request;
 - (c) it shall ensure that each Authorised User shall keep a secure password for their use of the Services and Documentation, and that each Authorised User shall keep all their login details and/or passwords confidential;
 - (d) it will ensure all Authorised Users comply with the terms of this Contract; and
 - (e) it shall ensure all Authorised Users agree to the EULA before accessing and/or using the Software, and ensure that the Authorised Users shall at all times comply with the terms of the EULA;
 - (f) it shall use, and shall ensure that all Authorised Users use, the Software and/or Services only in accordance with the specifics of and within the limitations of the Software Subscription purchased by the Customer;

- (g) it shall be liable for any acts or omissions of any Authorised Users, including but not limited to, any breach of this Contract and/or breach of the EULA by any Authorised User.
- 1.3 The limitations of the Software Subscription purchased by the Customer shall be as set out in the Proposal and/or Contract Details. Where the Customer exceeds the limits of its Software Subscription, the Customer shall pay to BRE the relevant Fees for the upgrade of Software Subscription and/or additional Project(s) or Authorised Users.
- 1.4 The Customer must notify BRE immediately if the number of active Project(s) which need to use the Services change from those permitted under the Customer's Software Subscription and the Customer must upgrade its Software Subscription accordingly in accordance with clause 2.
- 1.5 The Customer must not and shall ensure that the Authorised Users shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (b) access all or any part of the Services in order to build a product or service which competes with the Services;
 - (c) resell, grant sub-licences or grant any third party (including sub-contractors) access to the Services;
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the

Services available to any third party except the Authorised Users, or

- (e) attempt to obtain or assist third parties in gaining access to the Services other than as provided under this Contract.

1.6 The Customer must, where possible, prevent any unauthorised access to, or use of, the Services, Software or Deliverables and in the event of any such unauthorised access or use, promptly notify BRE.

1.7 If the Customer believes there has been any breach of security such as the disclosure, theft or unauthorised use of any login details and/or passwords of any Authorised Users, the Customer must notify BRE immediately.

1.8 The rights provided under this clause 1 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer, unless stated to the contrary in the Proposal.

2. Additional Software Subscriptions

2.1 The Customer may, from time to time during any Licence Period, purchase an upgraded Software Subscription and subject to the Customer paying the additional Fees, BRE shall grant access to the Services in accordance with the upgraded Software Subscription in accordance with the provisions of this Contract.

2.2 In the event BRE grant access for additional Authorised Users and/or allow the Services to be used by additional Projects to the number of active Projects specified in the Proposal/Contract Details, BRE reserves the right to charge an additional fee for such in accordance with BRE's then current prices.

2.3 The Customer shall permit BRE or its designated auditor to audit the Services in order to audit compliance with this Contract. Each such audit may be conducted no more than once per quarter, at BRE's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business

3. Support

3.1 BRE will, as part of the Services and at no additional cost to the Customer, provide the Customer with the support services during Normal Business Hours in accordance with the Support Services Policy.

3.2 BRE is continually seeking to improve the Services. BRE reserves the right, at its discretion, to make changes to any part of the Services provided that it does not materially reduce its content or functionality.

4. Customer Data and Personal Data

4.1 The Customer and its licensees shall retain ownership of all intellectual property rights in the Customer Data.

4.2 The Customer shall ensure the legality, reliability, integrity, accuracy and quality of all the Customer Data.

4.3 The Customer grants to BRE a world-wide, irrevocable, perpetual licence to use, copy, modify and report on the Customer Data for its internal purposes and other purposes related to the Services, and to develop future Services.

4.4 Notwithstanding any other provision of this Contract, the Customer is solely responsible for any Customer Data inputted into the Software by the Customer or by any Authorised User. BRE shall have no liability for any errors or omissions in the Customer Data, nor for any actions taken by the Customer or any Authorised Users in connection with the Customer Data.

4.5 Each party shall comply with all applicable requirements of the Data Protection Legislation.

4.6 To the extent that BRE processes any personal data on the Customer's behalf in providing the Services, acting as a "processor" the parties each agree to comply with the terms set out in the Data Processing Terms appended to this Contract at ANNEX 1.

5. BRE's obligations

5.1 BRE will endeavour to perform the Services substantially in accordance with specification outlined in the Proposal and with reasonable skill and care.

- 5.2 BRE shall use reasonable skill and care in making the Software available to the Customer and ensuring its availability during the Licence Period.
- 5.3 BRE warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 5.4 Clauses 5.1 and 5.2 shall not apply to the extent of any non-conformance which is caused by the Customer or Customer's Authorised Users' use of the Services is contrary to BRE's instructions, breach of the terms of this Contract, breach of the EULA, or any modification or alteration of the Services, Software or Deliverables by any party other than BRE or BRE's duly authorised contractors or agents.
- 5.5 Because of the nature of software and the internet errors and omissions do occur and BRE does not give any other warranties in respect of the Services. In particular, BRE:
- (a) does not warrant that the Customer's use of the Services or the Software will be continuous, uninterrupted or error-free or that the Services will be free from Viruses or anything else that has contaminating or destructive properties, or that the Services, Software, Deliverables and/or the Documentation will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Documentation and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.6 This Contract shall not prevent BRE from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.
- 5.7 Save as expressly provided in this Contract, all implied warranties and representations are to the fullest extent permitted by applicable law excluded from this Contract.

6. The Customer's obligations

- 6.1 The Customer shall:
- (a) provide BRE with all necessary co-operation, consents, licences and assistance so that BRE may provide the Services;
 - (b) comply with all applicable laws and regulations with respect to its activities under this Contract;
 - (c) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms of this Contract and the EULA, and shall be responsible for any Authorised User's breach of a term of this Contract or the EULA; and
 - (d) ensure that it and its Authorised Users have the correct computer and network equipment to access the Services.
- 6.2 The Customer shall not (and shall procure that the Authorised Users shall not), in using the Services, access, store, distribute or transmit any materials or content that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (c) is otherwise illegal or causes damage or injury to any person or property.
- 6.3 BRE reserves the right, without liability to the Customer and without prejudice to BRE's other rights, to disable or suspend the Customer's or an Authorised Users access to any material or content, or use of the Services, in the event that BRE believes that there may have been a breach of the provisions of this clause.

General Terms and Definitions

7. Charges and payment

- 7.1 The Fees for the Software Subscriptions shall be calculated in accordance with the terms of this Contract. The Customer shall pay the Fees to BRE for access to the Services, and where applicable, any Training, in accordance with this clause 7.
- 7.2 BRE shall be entitled to increase any Fees by providing 60 days' prior written notice to the Customer.
- 7.3 As at the Commencement Date, the Customer shall be invoiced for the Fees applicable to the Initial Licence Period. The Customer shall be invoiced for the Fees for any Subsequent Licence Period in advance of the start date of any Subsequent Licence Period.
- 7.4 All amounts due under this Contract shall be paid in full without any set-off, counterclaim, deduction. Should a payment due under this clause be 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.
- 7.5 The Training Fees and Software Fees are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 7.6 All amounts payable under this Contract, unless otherwise expressly agreed by BRE, are to be paid in pounds sterling and shall be paid to an account nominated by BRE.
- 7.7 If BRE has not received payment of any invoice within 30 days of its date, and without prejudice to any other rights and remedies of BRE:
- (a) BRE may suspend performance of the Contract – including suspending the Customer's Authorised Users' access to the Software; and

(b) apply interest, accruing daily, on any unpaid amounts at an annual rate of 4% above the base lending rate of Barclays Bank PLC from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

(c) All Fees are non-cancellable and non-refundable unless the terms of this Contract expressly state otherwise.

8. Commencement, Duration and Termination

8.1 The Licence Period shall commence on the Activation Date and shall continue, unless otherwise terminated earlier in accordance with the terms of this Contract.

8.2 Without affecting any other right or remedy available to it, BRE may terminate this Contract by written notice to the Customer:

(a) if the Customer commits a material breach of this Contract and (if the breach can be remedied) the breach is not remedied within the period of fourteen (14) days after BRE have given the Customer notice of the breach;

(b) if the Customer fails to pay any amount due under this Contract on the due date for payment;

(c) if the Services are discontinued; or

(d) for convenience by giving 30 days' prior written notice to the Customer (and in this instance BRE will refund the Customer on a pro-rata basis for Fees paid upfront for Services not provided as at the date of termination).

8.3 Without affecting any other right or remedy available to it, the Customer shall have the right to terminate this Contract for convenience by giving 30 days' prior written notice to BRE. Where the Customer terminates this Contract pursuant to this clause 8.3, BRE shall not refund the Customer for any Fees paid, and the Customer shall pay any outstanding invoices for Fees immediately.

8.4 Without affecting any other right or remedy available to it, the Customer shall have the right to terminate this Contract immediately if BRE commit a material breach of this agreement and the breach is not remedied

within the period of fourteen (14) days after the Customer has notified BRE in writing of the breach.

8.5 On termination of the Contract for any reason BRE may destroy or otherwise dispose of or delete irrevocably from its systems and Customer Data in its possession.

8.6 On termination or expiry of this Contract for any reason, all rights and licences granted under this Contract shall immediately terminate and the Customer and Authorised Users shall immediately cease all use of the Services.

9. Intellectual Property Rights

9.1 The Customer acknowledges and agrees that BRE and/or its licensors own all intellectual property rights in the Services, the Software and the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Software or the Documentation.

9.2 BRE grants to the Customer a non-exclusive, non-transferrable, revocable, licence during the Licence Period to use the Deliverables for the purposes of obtaining the benefit of the Services.

9.3 BRE grants to the Customer a non-exclusive, non-transferrable, revocable, licence to use the Documentation for internal purposes only.

10. Use of Deliverables

10.1 Where the Customer wishes to Publish any Deliverables (whether in soft and/or in hard copy), it must obtain the prior written consent of BRE and the Customer must Publish the Deliverables in their full and unedited state and must not do anything to mislead 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.

10.2 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 Authorised User, or any third party.

10.3 Save for Clause 10.1 above, the Customer warrants that it shall not use, without express written permission, any BRE Marks including on any promotional or marketing material.

10.4 Where permission is granted in accordance with Clause 10.3, the Customer warrants that it shall not use the BRE Marks 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.

11. Confidentiality

11.1 A party may be given access to the other party's Confidential Information in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Contract.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or

agents in violation of the terms of this Contract.

11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental authority, accreditation or other regulatory body, or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.6 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.7 The above provisions of this clause 11 shall survive termination of this Contract, however arising.

12. Indemnity

12.1 The Customer shall indemnify and hold harmless BRE against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation any indirect and consequential losses, court costs or legal fees) arising out of or in connection with:

- (a) the Customer's breach of this Contract or the terms of the EULA;
- (b) any breach by an Authorised User of this Contract or the EULA;
- (c) any breach of any third party rights; or
- (d) any unauthorised use of the Services, Software or Deliverables.

12.2 BRE shall have the sole authority to defend or settle the claim, and the Customer shall provide reasonable co-operation to BRE in the defence and settlement of such claim.

13. Limitation of liability

13.1 Nothing in this Contract excludes either party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability that cannot be limited or excluded by law.

13.2 Subject to clause 13.1:

(a) BRE shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and

(b) BRE's total aggregate liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to the total of the Fees actually paid to BRE as at the date of claim.

(c) The Services may enable access to the website content of, correspond with, and purchase products and services from, third parties via third-party websites. BRE make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not BRE. BRE does not take any responsibility for or endorse or approve any third-party website nor the content of

any of the third-party website made available via the Services.

14. Force majeure

BRE shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of BRE or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of BREs or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. Rights and remedies

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

- 18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted,

but that shall not affect the validity and enforceability of the rest of this Contract.

- 18.2 If any provision or part-provision of this Contract is deemed deleted under clause 18.1 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.

19. Entire agreement

- 19.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 19.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

20. Assignment

- 20.1 The Customer shall not, without the prior written consent of BRE, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

- 20.2 BRE may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

21. No partnership or agency

Nothing in this Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any

obligation or liability and the exercise of any right or power).

22. Third party rights

Unless otherwise expressly stated, this Contract does not confer any rights on any person or party (other than the parties to this Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. Notices

23.1 Any notice required to be given under this Contract shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract Details, or sent by email to the other party at its email address set out in the Contract Details, or such other addresses as may have been notified by that party for such purposes from time to time.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at 9am on the second Business Day after posting. A notice sent by email shall be deemed to have been received at the time of transmission, or, if this time falls outside of Normal Business Hours in the place of receipt, when Normal Business Hours resume.

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

24. Governing law

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

26. Definitions

26.1 The definitions below shall apply to Contract:

Activation Date: means the date that the Authorised Users gain access to the Software.

Authorised Users: those individual users of the Software working on a Project for the Customer including but not limited to employees, agents, temporary or fixed term workers and including third party subcontractors, who have been authorised to use the Software by BRE and/or the Customer in accordance with the Software Subscription, and subject to the EULA.

BRE Marks means the following names and logos: "SmartWaste", "YellowJacket", "SmartSite", "BRE", "BRE Global", "BREEAM", "LPCB", "BRE Testing", "Calibre", "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.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Commencement Date: the date stated in the Contract Details.

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 its intellectual property), disclosed by or on behalf of that party to the other party pursuant to the terms of the Contract.

controller, processor, data subject, personal data: shall have the meaning given in the Data Protection Legislation.

Customer: the customer as set out in the Contract Details.

Customer Data: the data inputted by the Customer or an Authorised User when using the Services but excluding any personal data.

Data Protection Legislation: the UK Data Protection Legislation and any other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deliverables: such reports, lists, or other documents produced or created by the Software and as may be accessed by the Customer.

Documentation: means the documents, information and other training materials relating to the Services and provided by BRE to the Customer.

End User Licence Agreement (EULA): means the agreement entered into between BRE and an Authorised User which grants the Authorised User access to the Software, and as may be amended by BRE from time to time.

Fees: means the Software Fees, the Training Fees, and any other fees as may be due to BRE from the Customer pursuant to this Contract.

Initial Licence Period: means the initial period the Customers' Authorised Users have access to the Services, commencing on the Activation Date and continuing for the initial period as set out in the Proposal.

Licence Period: means the Initial Licence Period and any Subsequent Licence Period(s).

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Project: a site for which the Customer has purchased a Software Subscription for Authorised Users on the site, as more

particularly set out in the Proposal and/or Contract Details.

Proposal: means the proposal at Schedule 1 to this Contract which outlines the details of the Services to be provided by BRE.

Publish: means to make available in the public domain via any means.

Services: the services to be provided by BRE to the Customer, pursuant to the terms of this Contract, to provide access to the Software, and including any Training and any Deliverables, in accordance with the Software Subscription.

Software Fees: means the fees for the Software Subscriptions as set out in the Contract Details and/or Proposal, or as may be amended and notified by BRE to the Customer from time to time in accordance with these terms.

Software Subscriptions: means the type of subscription bundle purchased by the Customer and specified in the Proposal and/or Contract Details which entitles individual Authorised Users working on the Project to access the Software and have use of the Deliverables.

Software: the online software application known as "SmartWaste Scan" provided by BRE to the Customer under this Contract via <https://swscan.bregroup.com/> (Desktop App) or <https://swscan-mob.bregroup.com/> (Mobile App) or any other website notified to the Customer by BRE from time to time and as more particularly described in the Documentation.

Subsequent Licence Period(s): means a period of twelve months where the Customer's Authorised Users have access to the Services commencing, where appropriate, on the date the Initial Licence Period expires or the date a Subsequent Licence Period expires.

Support Services Policy: BRE's policy for providing support in relation to the Services, as may be amended by BRE's at its sole and absolute discretion from time to time, and as made available at <https://www.bresmartsite.com/support-service/> or such other website address as

may be notified to The Customer from time to time.

Training Fees: means the fees for the Training as specified in the Contract Details and/or Proposal.

Training: means any Software training services to be provided by BRE to the Customer, as set out in the Contract Details and/or Proposal.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK.

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, Hardware or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Annex 1 – Data Processing Terms

This Annex 1 shall apply to the extent that BRE process any Personal Data on behalf do the Customer, in connection with the provision of the Services, acting as a Processor.

1. Definitions and Interpretation

- 1.1. In this Annex 1 (Data Processing Terms), terms defined in the main body of the Contract (as defined below) shall have the meaning given in the Contract, and the following terms shall have the following meanings:

"Contract" means the Contract to which this Annex 1 (Data Processing Terms) is appended (including the terms of this Annex 1).

The terms **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"**, **"processing"** and **"appropriate technical and organisational measures"** shall have the meanings given in the Data Protection Legislation.

2. Data Protection

- 2.1. Compliance with Data Protection Legislation: Both parties will comply with all applicable requirements of the Data Protection Legislation. This Annex 1 (Data Processing Terms) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 2.2. Roles and Responsibilities: To the extent that BRE, within the scope of this Annex 1, processes any Customer Personal Data on behalf of the Customer pursuant to this Contract, or in connection with the provision of the Services, the Customer will be the Controller of that Personal Data and BRE shall be a Processor in relation that Personal Data.
- 2.3. The Customer's Obligations Concerning Data Protection: Without prejudice to the generality of Section 2.1 of this Annex 1 (Data Processing Terms), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal

Data to the Customer, and processing of Personal Data by the Customer, for the duration and purposes of this Contract.

- 2.4. BRE's Obligations Concerning Data Protection: To the extent that BRE processes any Customer Personal Data on behalf of the Customer pursuant to this Contract, or in performing any part of the Services, then without prejudice to the generality of its obligations under Section 2.1 of this Annex 1 (Data Processing Terms), BRE shall:

- 2.4.1. process that Personal Data only on the documented written instructions of the Customer unless BRE is required by law to otherwise process that Personal Data. Where BRE is relying on law as the basis for processing Personal Data, BRE shall promptly notify the Customer of this before performing the processing required by the law unless the law prohibits BRE from so notifying the Customer;
- 2.4.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of

the technical and organisational measures adopted by it);

this Annex 1 (Data Processing Terms).

- 2.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 2.4.4. not transfer any Personal Data outside of the UK or EEA unless the following conditions are fulfilled: (i) the Customer or BRE has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) the Customer complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) BRE complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 2.4.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.4.6. notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 2.4.7. at the written direction of the Customer, delete or return Personal Data held by BRE and copies thereof to the Customer on termination of the this Contract unless required by law to store the Personal Data; and
- 2.4.8. maintain complete and accurate records and information to demonstrate its compliance with

- 2.5. Sub-processors: The Customer consents to BRE appointing third-party processors of Personal Data under this Contract ("Sub-processors"). BRE confirms that it has entered or (as the case may be) will enter with any such Sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this Annex 1 (Data Processing Terms) and in either case which will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and BRE, BRE shall remain fully liable for all acts or omissions of any Sub-processor appointed by it pursuant to this Section 2.5 of this Annex 1 (Data Processing Terms).

3. Personal Data Processing Purposes and Details

- 3.1. This Section 3 of this Annex 1 (Data Processing Terms) details the subject-matter and duration of the processing which will be carried on under the Contract, the nature and purpose of such processing, as well as the type of personal data and categories of data subjects.
- 3.2. Subject Matter of Processing: BRE has been engaged by the Customer to provide the Services to the Customer on the terms set out in this Contract. The Service is a hosted software as a services (SaaS) solution which serves as a waste record management tool.
- 3.3. Nature of Processing: In the course of using the Services, the Customer (and is Authorised Users) may upload to or store on the Services Customer Personal Data, and in the course of providing the Services, BRE may be required to process Customer Personal Data on behalf of the Customer.
- 3.4. Purpose of Processing: The purpose of the processing shall be to provide the Services.
- 3.5. Duration of Processing: The Personal Data shall be processed for so long as the

Services is being provided to the Customer.

- 3.6. Categories of Data Subject: The categories of Data Subject whose Personal Data will be processed will include: (i) Authorised Users that access the Services and/or Software.
- 3.7. Types of Personal Data: The types of Personal Data concerning the Data Subjects detailed above, which may be processed, includes: (i) names, contact details, access credentials and usage data, working locations, and training information.