



SmartWaste

TERMS AND CONDITIONS

SmartWaste

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## Software as a Service (SaaS)

### 1.1 Where:

- (a) the Customer agrees to purchase the Software Subscriptions; and
- (b) in accordance with the terms of this Contract,

BRE grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services during the Subscription Period solely for the Customer's business operations.

### 1.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow a User Subscription to be used by more than one individual Authorised User unless it has been reassigned to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services.
- (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; and
- (c) it will ensure all Authorised Users use the Software strictly in accordance with the terms of the EULA (which may be amended from time to time).

### 1.3 Where the Customers Subscription is limited by the number of Projects, the maximum number of Projects for which the Software Subscriptions is limited, shall be detailed in the Proposal.

### 1.4 The Customer must 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.

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

- 1.6 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 or Extension Period, purchase additional Software Subscriptions in excess of the number set out in the Proposal and BRE shall grant access to the Services to the additional Authorised Users and/or Projects in accordance with the provisions of this Contract.

- 2.2 In the event BRE grant access for additional Authorised Users, BRE reserves the right to charge an additional fee for such. This will be quoted to the Customer at the time of enquiry.

## 3. Services

- 3.1 Save where clause 3.2 applies, BRE shall use all reasonable commercial endeavours to make the Services available 24 hours a day, 7 days a week and 365 days a year.
- 3.2 BRE may undertake the following:
- (a) planned maintenance of the Software outside of a Business Day and for which BRE shall provide the Customer with 48-hours prior notice; or
  - (b) unscheduled maintenance performed on the Software either inside or outside Normal Business Hours, provided that BRE has used reasonable endeavours to give the Customer at least 6 hours' notice in advance.
- 3.3 BRE will, as part of the Services and at no additional cost to the Customer, provide the Customer with BRE's standard support services during Normal Business Hours. The Customer may purchase enhanced support services; the cost and terms of which are subject to a separate agreement.

#### **4. Customer Input Data and Personal Data**

- 4.1 The Customer acknowledges and agrees that BRE and/or its licensors own all Intellectual Property Rights in the Software.
- 4.2 The Customer and its licensees shall retain ownership of all Intellectual Property Rights in the Customer Input Data.
- 4.3 The Customer shall ensure the legality, reliability, integrity, accuracy and quality of all the Customer Input Data.
- 4.4 The Customer grants to BRE a world-wide, irrevocable, perpetual licence to use, copy, modify and report on the Customer Input Data for its internal purposes and other purposes related to the Services, and to develop future Services.
- 4.5 For YellowJacket, BRE will share the Customer Input Data with third party's such as the "Main Contractor" on a given project or the "Ultimate Client" on a project for the purposes of reporting on instances of health and safety practice and to improve the working environment individuals engaged on the Project(s).

- 4.6 Where BRE anonymises and combines Customer Input Data to form an aggregated data set ("the Data Set"), BRE shall have sole ownership of the Data Set and all intellectual property rights in it.

- 4.7 Where BRE processes personal data within the meaning of the Data Protection Legislation, it shall do so in accordance with each EULA and in accordance with the BRE Group Privacy Policy (<https://bregroup.com/privacy-policy/>), which may be updated from time to time.

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

#### **5. BRE's obligations**

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

- 5.2 BRE warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.

- 5.3 Clause 5.1 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, or modification or alteration of the Services by any party other than BRE or BRE's duly authorised contractors or agents.

- 5.4 BRE:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, 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.

- 5.5 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 agreement.

## **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 shall be responsible for any Authorised User's breach of a term of this Contract; and
- (d) ensure that it and its Authorised Users have the correct computer and network equipment to access the Services.

## General Terms and Definitions

### 7. Charges and payment

- 7.1 The Customer shall pay the Software Fees and any Training Fees to BRE for access to the Software, and where applicable, any Training.
- 7.2 Once BRE have received a signed copy of the Contract Details, BRE shall issue to the Customer an invoice, where relevant, for both the Software Fees and the Training Fees or Software Fees only for the Initial Licence Term.
- 7.3 Subject to clause 8.2, BRE shall invoice the Customer for the Software Fees 7 days before the expiry of a Subsequent Licence Term.
- 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.

### 8. Commencement, Duration and Termination

- 8.1 The Licence Period shall commence on the Activation Date and shall continue in full force, for the Initial License Period Term and thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Subsequent Licence Period) unless:
  - (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial License Period or any Subsequent License Period, in which case this agreement shall terminate; or
  - (b) otherwise terminated in accordance with the provisions of this agreement;
- 8.2 Upon termination by the Customer under this clause 8, the Customer shall immediately pay any outstanding invoices raised by BRE up to the date of termination of this agreement.

### 9. Intellectual Property Rights

- 9.1 The Customer acknowledges and agrees that BRE and/or its licensors own all Intellectual Property Rights in the Documentation, Deliverables, and the Software.
- 9.2 BRE grants to the Customer a non-exclusive, non-transferrable, revocable, world-wide licence 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, world-wide licence to use the Documentation for internal purposes only, and to get the full benefit of the Training.

### 10. Use of Deliverables

- 10.1 Where the Customer wishes to Publish the Deliverables (whether in soft and/or in hard copy), 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 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 third-party claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the unauthorised use of the Software and/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 Software Fees and Training Fees actually paid to BRE as of the date of claim.

### **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 in the Project Proposal, 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 or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Contract.

- 23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in 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 the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **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 Customer's Authorised Users gain access to the Software, being the date that BRE communicates to the Customer (in writing) BRE's receipt of the Software Fees.

**Authorised Users:** those working either directly or indirectly for the Customer including employees, agents, temporary or fixed term workers but excluding third party subcontractors. Authorised Users must be authorised by the Customer to use the Services and are limited to a maximum number as set out in the Proposal.

**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.

**Customer Data:** the data – excluding personal data as defined by the Data Protection Legislation - inputted by the Customer or each Authorised User when using the Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all 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:** means the deliverables, such as reports, lists, or other documents produced or created by the Software and as may be exported or downloaded by the Customer.

**Documentation:** means the documents, information and other training materials provided to the Customer's Authorised Users by BRE as part of the Training.

**End User Licence Agreement (EULA):** means each agreement entered into between BRE and an Authorised User which grants the Authorised User access to the Software.

**Initial Licence Period:** means the initial period the Customers' Authorised Users have access to the Services, commencing on the Activation Date and continuing for a period of twelve months from that date.

**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(s):** Project or Projects shall have the meaning given to it in the Proposal.

**Proposal:** means the proposal at Schedule 1 to this Contract which outlines the Services and any Deliverables to be provided by BRE.

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

**Services:** the combined provision of the Training, access to the Software provided by BRE, and any Deliverables.

**Software Fees:** means the fees for the Software Subscriptions as set out in the Contract Details or as may be notified by BRE to the Customer from time to time.

**Software Subscriptions:** means the fees specified in the Contract Details which entitles the Customer's Authorised Users to access the Software and have use of the Deliverables. The number of Projects under a Software Subscription may be limited in accordance with clause 1.3.

**Software:** the online software applications provided by BRE as part of the Services and as referred to in the Proposal and Contract Details.

**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 Term expires or the date a Subsequent Licence Period expires.

**Support Services Policy:** BRE's policy for providing support in relation to the Services

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 Proposal.

**Training:** means the Software training services provided by BRE for the Customer's Authorised Users, as may be referred to in the Contract Details and 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.