

## BRE AMERICA Terms and Conditions for USA Listings and Certifications

These Terms & Conditions of USA Listing and Certification (the “Terms”) govern the rights and responsibilities of BRE America, LLC, a California limited liability company, with a mailing address of 1130 Fremont Blvd., Ste. 105-332, Seaside, CA 93955 (“LICENSOR”) and its licensed provider of assessment services (“LICENSEE”), each a “Party” and together hereinafter, the “Parties”.

**WHEREAS**, LICENSOR has licensed LICENSEE to conduct the “Permitted Services”, as such term is defined in the underlying License Agreement between the Parties (the “License Agreement”);

**WHEREAS**, as part of the Permitted Services, LICENSEE will conduct environmental assessments of properties (“Property” or “Properties”) in the United States (“Assessment Services”);

**WHEREAS**, LICENSOR will review LICENSEE’s performance of the Assessment Services to verify that they comport with LICENSOR’s standards and will perform listing services for Properties that have been assessed by LICENSEE (such reviews and property listing services performed by LICENSOR collectively, the “LICENSOR Services”);

**WHEREAS**, LICENSOR desires to provide the LICENSOR Services to LICENSEE, and LICENSEE desires to represent to third parties that the Assessment Services have been performed in accordance with LICENSOR’s standards.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledge in the License Agreement, the Parties agree to adhere to and be bound by the terms and conditions listed herein:

### 1. Responsibilities of LICENSEE

- 1.1 LICENSEE shall at its expense supply LICENSOR with copies of all documents, materials, information and data necessary for LICENSOR to perform the LICENSOR Services. LICENSEE shall ensure the accuracy of all this material. LICENSEE shall retain duplicate copies of all such materials and shall provide copies of such materials to LICENSOR upon request.
- 1.2 Should LICENSOR need to access LICENSEE’s premises or the Property in order to conduct the LICENSOR Services, LICENSEE shall arrange for LICENSOR to have unhindered access to LICENSEE’s premises or the Property, as required by LICENSOR, and shall arrange for LICENSOR to have safe access and a safe working environment, in compliance with all health and safety law requirements. During such access, LICENSEE shall ensure that LICENSOR’s personnel are accompanied at all times by a representative of LICENSEE, and LICENSEE’s representative shall operate any LICENSEE equipment or machinery, including without limitation computer terminals, to access needed information.
- 1.3 Once LICENSOR has certified LICENSEE’s assessment of a particular Property, any changes to the Property which could affect the results of the assessment must be promptly disclosed to LICENSOR

by LICENSEE. If such changes could affect the results of the assessment, as determined by LICENSOR, any certification previously granted by LICENSOR may be withdrawn by LICENSOR upon notice to LICENSEE, whereupon LICENSEE shall immediately notify its client for whom the Assessment Services were performed of its withdrawal, and no refunds will be given to LICENSEE..

- 1.4 Should LICENSEE become aware of any perceived problem or deficiency in its performance of the Assessment Services after they have been performed, LICENSEE shall inform LICENSOR promptly and shall take any and all steps that LICENSOR shall reasonably require to rectify such problem or deficiency, as determined by LICENSOR, as soon as is reasonably practicable. Failure by LICENSEE to do so may result, upon notice by LICENSOR, in the withdrawal of any certificate issued by LICENSOR for such Assessment Services.
- 1.5 LICENSEE shall adhere to and be bound by all terms, conditions and responsibilities contained in the **“Operations Manual”**, located at <https://bretrust.sharepoint.com/BREEAM%20USA%20Assessor%20Portal> and incorporated herein by reference.
- 1.6 LICENSEE shall pay LICENSOR the fees for LICENSOR Services, as set out in the **“Fee Sheet”**, located at <https://bretrust.sharepoint.com/BREEAM%20USA%20Assessor%20Portal> and incorporated herein by reference, through the methods described in the Operations Manual or within thirty (30) days of the date of LICENSOR’s invoice, unless a shorter period is specified in the Operations Manual or Fee Sheet.
- 1.7 LICENSEE shall maintain a record of any and all complaints, failures and remedial actions taken in connection with the Assessment Services.
- 1.8 LICENSEE shall use the BRE AMERICA Marks (as such term is defined in the License Agreement) and any certificates provided by LICENSOR to LICENSEE only in connection with the Assessment Services, and only in accordance with the instructions in the **“Logos and Marks for Assessors and Assessor Organizations”** (PN101) document, located at <https://bretrust.sharepoint.com/BREEAM%20USA%20Assessor%20Portal> and incorporated herein by reference.
- 1.9 If for any reason any certificate issued by LICENSOR for any Assessment Services ceases to be valid, and/or the assessment ceases to be listed by LICENSOR, then LICENSEE shall cease using, and will instruct the owner of the Property which was the subject of the affected assessment(s) to remove or obliterate, any and all BRE AMERICA Marks from the Property.

- 1.10 LICENSEE shall notify LICENSOR of any changes to its contact information or legal entity within seven (7) days of the change.
- 1.11 Where required by the Operations Manual, LICENSEE shall arrange for LICENSOR to conduct audits and to have access to LICENSEE's premises or the Property for such purposes.
- 1.12 LICENSEE shall keep complete records pertaining to all Assessment Services for six (6) years after the performance of such Services, with such records being open to inspection by LICENSOR at all reasonable times. LICENSEE consents to such inspection by LICENSOR during the term and after termination of this Agreement.
- 1.13 LICENSOR may at any time change its standards for Assessment Services or the standards for the results of the Assessment Services in order to comply with any applicable safety or other statutory requirements, to comply with the applicable standards, or to meet the requirements of the relevant accreditation authority. LICENSEE shall comply with such changes as soon as is reasonably practicable after receipt of notification of such changes from LICENSOR.

## 2. Rights and Responsibilities of LICENSOR

- 2.1 LICENSOR shall notify LICENSEE of its certification of LICENSEE's Assessment Services with respect to any Property. LICENSOR shall publicly list all assessments which have been so certified in appropriate directories and shall make these available to interested parties.
- 2.2 LICENSOR reserves the right in its sole judgment to change or revise its standards, criteria, methods or procedures. Reasonable advance notice of any such change will be given to LICENSEE by LICENSOR, such that continued conformance with LICENSOR's requirements is practicable.
- 2.3 LICENSOR, its employees and agents, agree to maintain as confidential and not to use or disclose to any third party any information received from LICENSEE in connection with the Assessment Services, without the consent of LICENSEE, except where it is necessary to enable LICENSOR to perform the LICENSOR Services. This provision will not prevent LICENSOR from aggregating data received from LICENSEE and other sources, which aggregated data may be disclosed publicly or to third parties, provided such data does not identify LICENSEE or any particular Property.

## 3. Warranties and Liabilities

- 3.1 In carrying out their obligations pursuant to these Terms, the Parties will abide by all applicable laws.

- 3.2 LICENSOR warrants to LICENSEE, and LICENSEE warrants to LICENSOR, that the LICENSOR Services and Assessment Services, respectively, will be undertaken using reasonable skill and care.
- 3.3 LICENSOR shall have no liability to LICENSEE arising from any material supplied or instructions given by LICENSEE which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of LICENSEE.
- 3.4 Except as otherwise provided in these Terms, LICENSOR shall have no liability to LICENSEE arising out of the provision of LICENSOR Services.
- 3.5 In the event LICENSOR is found liable to LICENSEE pursuant to these Terms, in no event shall LICENSOR's liability exceed the amount which has been actually paid by LICENSEE to LICENSOR for the LICENSOR Services.
- 3.6 LICENSEE shall look only to LICENSOR, and not to any individual engaged by LICENSOR, including without limitation any officers, directors or employees of LICENSOR, for redress if LICENSEE considers that there has been a breach of these Terms.
- 3.7 LICENSOR shall use reasonable efforts to meet any deadlines set out in the Operations Manual and shall not be liable for any losses arising from any delays.
- 3.8 LICENSEE agrees to indemnify and hold harmless LICENSOR, their parents, subsidiaries, officers, employees, agents and affiliates, against any loss, damage, or injury whatsoever arising as a result of any breach of these Terms by LICENSEE, including, but not limited to, misuse by LICENSEE of any certificates provided to LICENSEE by LICENSOR in connection with any Assessment Services conducted by LICENSEE.

#### **4. Term, Renewal, Suspension and Invalidation of Certification**

- 4.1 Any certification granted by LICENSOR for any Assessment Services conducted by LICENSEE will remain valid for the period of time set forth in the Operations Manual.
- 4.2 To renew certifications granted by LICENSOR for additional one (1) year terms (to the extent such annual renewals are available), LICENSEE must pay LICENSOR the certification renewal fees, as detailed in the Fee Sheet, prior to the requested renewal date and must permit LICENSOR to conduct a quality control audit of LICENSEE's Assessment Services. In addition, at the time of requesting the renewal, LICENSEE must represent to LICENSOR in writing that no changes have

been made to the assessed Property which could affect the results of the assessment, as set forth in the Operations Manual. Should LICENSEE inform LICENSOR of any such changes, LICENSOR will determine, in its sole discretion, whether to renew certification. If LICENSOR determines not to renew the certification based on such changes, or if LICENSEE fails to meet LICENSOR's quality control standards, as determined solely by LICENSOR, or if LICENSEE fails to timely pay the certification renewal fees, LICENSOR will not renew the certification. In such event, the Property must undergo a full reassessment process to be re-certified, including payment by LICENSEE of the associated fees.

- 4.3 LICENSOR may immediately suspend or withdraw any certification granted by LICENSOR for any Assessment Services conducted by LICENSEE due to LICENSEE's unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality or non-conformance with any of these Terms. Suspension will result in the immediate removal of the assessment from LICENSOR's listings, and any certification granted by LICENSOR for such Assessment Services may be temporarily invalidated (depending on the circumstances for the suspension), until such time as LICENSOR determines, in its sole discretion, that LICENSEE has cured any such unsatisfactory performance or non-conformity.
- 4.4 Suspension or withdrawal by LICENSOR of any certification granted by LICENSOR for any Assessment Services conducted by LICENSEE, for whatever reason, shall not affect the rights and obligations of the Parties accrued under these Terms as of the date of suspension or invalidation, including but not limited to the right to recover damages against the other Party.
- 4.5 The provisions of Sections 1.7, 1.11, 1.12, 2.3, 3.3, 3.4, 3.5, 3.6, 4, 5 and 7 of these Terms shall survive any termination of the License Agreement.

## 5. Assignment

Any certifications granted by LICENSOR for any Assessment Services conducted by LICENSEE shall remain the property of LICENSOR.

## 6. Notices

- 6.1 Any notice to be given pursuant to these Terms or the License Agreement shall be in writing and, in the case of notices to LICENSEE, may be delivered personally or by sending the notice via pre-paid, first class mail or via e-mail to LICENSEE's address provided in connection with the License Agreement, or to any other address supplied by LICENSEE to LICENSOR for the purposes of notice pursuant to these Terms. Notices to LICENSOR shall be sent only by email to

licensing@breamerica.com, or such other address as LICENSOR may notify LICENSEE from time to time.

- 6.2 In the event LICENSEE wishes to change any of its addresses, it will so notify LICENSOR by email sent to licensing@breamerica.com.
- 6.3 A notice to either Party delivered personally shall be deemed to have been given on delivery. A notice sent by mail shall be deemed to have been given three (3) business days after being deposited with the U.S. Postal Service. Where notice is given by e-mail, such notice shall be deemed to have been effected upon receipt.

## 7. Governing Law

The construction and performance of the License Agreement and these Terms will be governed by the internal, substantive laws of the State of California without regard to its choice of law rules. Each Party hereby irrevocably consents and submits to the exclusive personal jurisdiction of the state and federal courts located in San Francisco, California in any legal action, equitable suit or other proceeding arising out of or related to these Terms. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the state and federal courts located in San Francisco, California shall have in personam jurisdiction and venue over each of them for the purposes of litigating any dispute, controversy or proceeding arising out of or related to the License Agreement or these Terms.