


BRITISH ENGINEERING SERVICES LIMITED

Terms of Business Agreement For the Provision of Engineering Inspection Services

 SINCE 1859

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THIS AGREEMENT IS MADE:

Governing the conduct of Engineering Inspection Services business between:

PARTIES:

- (1) **BRITISH ENGINEERING SERVICES LIMITED**, registered in England and Wales with company no. 9299724 and whose registered office is at 5 New York Street, Manchester, M1 4JB ("**BES**"); and
 - (2) **The Intermediary**, registered in England and Wales with a company no and registered address,
- together referred to as "**the Parties**" and each a "**Party**"

RECITALS

- A. The Intermediary is an FCA authorised insurance intermediary and provides and arranges various services for its customers.
- B. BES provides various engineering inspection services.
- C. The Intermediary wishes to arrange for BES to provide engineering inspection services for the Intermediary's customers.
- D. The Parties have entered into this Agreement to record and formalise the contractual arrangements in relation to the provision of the engineering inspection services.

IT AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The Parties agree that the following terms shall have the following meanings for the purposes of this Agreement:

"Commission"	means the commission payable by BES to the Intermediary as described in clause 6;
"Control"	shall mean the ability of a person to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise
"Customers"	means the customers of the Intermediary for whom BES performs Inspection Services;
"Effective Date"	Means commencement date;
"Group Company"	shall have the meaning given in s1159 Companies Act 2006 (and for the purposes of the membership requirement in s1159(1)(b) and s1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee, or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
"Inspection Services"	means any inspection and/or performance management services provided by BES to the Customers;

"Inspection Fee"	means the fee and/or expenses to be paid by each of the Customers for the Inspection Services;
"Intellectual Property Rights"	means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.
"Online Tool"	means any software or other online tool provided by BES to the Intermediary in connection with the provision of the Inspection Services;
"BES Standard Terms and Conditions"	means BES's standard terms and conditions for the provision of engineering inspection services (as amended or updated by BES from time to time) which are available on the BES website http://www.britishengineeringservices.co.uk
"Year"	means the period 12 months from the Effective Date and each subsequent period of 12 months during the term of the Agreement

1.2 In this Agreement (except where the context otherwise requires):

- 1.2.1 use of the singular includes the plural (and vice versa) and use of any gender includes the other genders;
- 1.2.2 a reference to a Party is to a party to this Agreement and includes that Party's personal representatives, successors or permitted assignees;
- 1.2.3 a reference to persons includes individuals, corporations, and unincorporated bodies or associations that are recognised at law (whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and
- 1.2.4 a reference to a Clause is to the relevant recital or clause of this Agreement; a reference to a Schedule is to the relevant Schedule to this Agreement; and a reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.

1.3 Any Addendums form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the Addendums.

1.3 The headings in this Agreement are included for convenience only and will not affect its interpretation.

2. TERM

This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with clause 8 or earlier if agreed in writing between the Parties.

3. APPOINTMENT AND AUTHORITY

- 3.1 Where applicable, BES hereby appoints and authorises the Intermediary to enter into contracts for Inspection Services on behalf of BES from the Effective Date in accordance with the terms of this Agreement. For the avoidance of doubt, the Inspection Services shall be provided to the Customer by BES.
- 3.2 The Intermediary shall not use BES trademarks, logos or data, or any part of them, in any advertising (including without limit on the Intermediary's website or links from its websites) on its own behalf or for any other reason without BES's prior written consent.

4. OBLIGATIONS OF THE INTERMEDIARY

- 4.1 The Intermediary undertakes and agrees with BES at all times during the term of this Agreement:
- 4.1.1 to perform its duties in accordance with:
 - 4.1.1.1 the terms of this Agreement including, without limitation, any Addendums that may apply 1; and
 - 4.1.1.2 the procedures outlined in any manual for any online tool;
 - 4.1.2 to not enter into contracts for Inspection Services for an Inspection Fee lower than that quoted by BES without the written consent of BES;
 - 4.1.3 to only produce quotes for Inspection Services using a BES online tool or BES pricing team and to not conclude any contract for Inspection Services on behalf of BES unless authorisation has been given by BES;
 - 4.1.4 to act towards BES conscientiously and in good faith and to negotiate, conclude and enter into contracts for Inspection Services in the name of and on behalf of BES;
 - 4.1.5 to not amend, vary supplement or waive any of the BES Standard Terms and Conditions, nor make any representations nor give any warranties to any Customer on behalf of BES other than as expressly set out in this Agreement;
 - 4.1.6 except as authorised by BES in this Agreement, not to act in a way which will incur any liabilities on behalf of BES nor to pledge the credit of BES;
 - 4.1.7 to comply with all reasonable and lawful instructions of BES from time to time concerning its obligations, and generally to carry out its obligations in such manner as it thinks best to promote the interests of BES;
 - 4.1.8 to employ a sufficient number of suitably trained personnel to ensure the proper fulfilment of the Intermediary's obligations under this Agreement;

- 4.1.9 to inform BES promptly of any complaint concerning the Inspection Services received by the Intermediary;
- 4.1.10 to provide BES with all necessary paperwork and documentation in order for it to provide the Inspection Services to the Customer;
- 4.1.11 to ensure that the Inspection Services are subject to the BES Standard Terms and Conditions;
- 4.1.12 to ensure that the Customer is provided with a copy of the BES Standard Terms and Conditions and any associated documents that BES may stipulate from time to time;
- 4.1.13 to take such action as BES may from time to time request to seek to collect the debts owing to BES by Customers or to assist BES in taking such action, but not to take any such action without BES's prior written instructions; and
- 4.1.14 to fully indemnify and hold harmless BES against any liabilities incurred by BES as a result of the Intermediary exceeding the scope of its authority granted under this Agreement.

5. INSPECTION FEES

- 5.1 The Intermediary shall collect the Inspection Fee from the Customers and pay it to BES in accordance with this Clause 5.
- 5.2 BES will raise an invoice in relation to the fees due to BES. The Intermediary shall make payment of such Inspection Fees (subject to Clause 6.2) within your agreed credit terms.
- 5.3 Without prejudice to any other right or remedy that it may have, if the Intermediary fails to pay BES when due, BES may:
 - 5.3.1 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Intermediary shall pay the interest immediately on demand; and/or
 - 5.3.2 suspend all Inspection Services until payment has been made in full.
- 5.4 BES may, without prejudice to any other rights it may have, set off any liability of the Intermediary to BES against any liability of BES to the Intermediary.

6. COMMISSION

- 6.1 Commission will be charged by the Intermediary to the Customer in addition to the Inspection Fee at a rate of the Inspection Fee (the "Rate of Commission") as agreed with BES.
- 6.2 The Intermediary shall be entitled to retain the Commission provided that the agreed net Inspection Fee has been paid in full to BES by the Intermediary. The Intermediary hereby confirms that the rate of the Commission shall be transparent and it shall provide BES with details of the Rate of Commission

for all Inspection Services. The Intermediary agrees that it shall resolve any dispute over payment of the Commission with its Customers and will fully indemnify BES in respect of any such dispute.

7. LIABILITY

7.1 BES's liability to the Intermediary, whether arising in contract, tort (including negligence) or otherwise shall be limited to the amount of Commission payable by BES to the Intermediary.

7.2 Nothing in this Agreement will limit either Party's liability for:

7.2.1 death or personal injury resulting from the negligence of that Party or its officers, agents, employees or sub-contractors; or

7.2.2 fraud or fraudulent misrepresentation; or

7.2.3 any other matter in respect of which liability cannot by applicable law be limited.

8. TERMINATION

8.1 Either Party may terminate this Agreement by giving the other Party 90 days' notice in writing (unless the Parties agree otherwise in writing).

8.2 Either Party ("the First Party") may give the other ("the Second Party") written notice to terminate this Agreement immediately if:

8.2.1 the Second Party has committed a material breach of this Agreement, which if capable of remedy, has not been remedied within 30 days of the First Party giving the Second Party a written notice identifying the breach and requiring its remedy; or

8.2.2 if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Second Party or if the Second Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the Second Party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Second Party or if the Second Party ceases or threatens to cease to carry on business; or

8.2.3 the Second Party or its employees or agents has any relevant licence, or permission or authorisation to conduct business suspended, removed or impaired by an order or decree or any judicial or regulatory authority or fails to obtain any relevant licence, or permission or authorisation; or

8.2.4 the Second Party is subject to a change of Control; or

- 8.2.5 the continuation of this Agreement materially affects the ability of the First Party to satisfy its obligations to any regulatory body.
- 8.3 Upon termination or expiry of this Agreement for whatever reason, the Intermediary shall pay to BES forthwith all Inspection Fees due from Customers pursuant to clause 5.1 in respect of Inspection Services which BES has provided for the Customer which have not already been forwarded to BES.
- 8.4 The termination or expiry of this Agreement for whatever reason, will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry, or any provision of this Agreement which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.
- 8.5 Upon termination or expiry of this Agreement for whatever reason, the Intermediary agrees to return all confidential information to BES.

9. FORCE MAJEURE

No Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this clause 9 shall excuse the Intermediary from any payment obligations under this Agreement.

10. RECORDS AND AUDIT

- 10.1 During this Agreement the Intermediary shall keep true, accurate and up-to-date records relating to its obligations under this Agreement and shall provide accounts to BES upon request.
- 10.2 During the course of this Agreement and for a period of three (3) years after its termination for any reason, BES (or its authorised representatives) shall be entitled, on reasonable notice being given to the Intermediary, to enter the registered office and/or principal place of business for the time being of the Intermediary during normal office hours and to carry out an audit of the Intermediary for the purpose of investigating its compliance with its obligations under this Agreement. The Intermediary shall provide BES (or its authorised representatives) with every assistance reasonably required by BES (or its authorised representatives) and shall provide such assistance without charge to BES (or its authorised representatives). The Intermediary shall allow BES to inspect and photocopy without charge any information which BES (or its authorised representatives) reasonably deems to be relevant to the audit.

11. REVIEW MEETINGS

- 11.1 The Parties may each nominate an account manager from their business from time to time to act as their representative in relation to this Agreement and shall provide the other Party with details of this person.

12. DISPUTE RESOLUTION

- 12.1 In the event of a dispute as a result of this Agreement, the dispute shall be referred to the nominated representative of BES and the Intermediary, notified by each Party from time to time, in the first instance.
- 12.2 If the dispute cannot be resolved by the Parties' nominated representative under Clause 12.1 within maximum of fourteen (14) days after it has been referred to them under Clause 12.1 the dispute shall be escalated to the respective senior directors of the Parties.

13. DATA PROTECTION

- 13.1 The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of such processing as a Controller.
- 13.2 In respect of the Personal Data a Party processes under or in connection with this Agreement, the Party:
- (a) shall comply at all times with its obligations under the Data Protection Law;
 - (b) shall notify the other Party without undue delay after, and in any event within 24 hours of becoming aware of a Personal Data Breach; and
 - (c) shall assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under Data Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.
- 13.3 The Parties shall work together to ensure that each of them is able to process the Personal Data if processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.
- 13.4 For the purposes of clause 13:
- “Controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;
- “Data Protection Law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data;
- “Data Subject” means the identified or identifiable natural living person to whom the Personal Data relates;
- “Personal Data” means any information relating to the Data Subject; and

“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

14. INTELLECTUAL PROPERTY

14.1 Where BES provides the Intermediary with access to an Online Tool, all Intellectual Property Rights in any Online Tools shall be owned by BES and BES agrees to grant to the Intermediary a licence to use the Online Tools in accordance with this Agreement.

14.2 If this Agreement is terminated for any reason the licence to use such Online Tools will automatically terminate and BES shall be entitled to block the Intermediary's access to the Online Tools.

14.3 BES agrees to provide the Intermediary with individual usernames and passwords which will provide named employees (each a "User") with access to the Online Tools. The Intermediary agrees that access granted to a User to use the Online Tools is granted solely and exclusively for that User and no other employee shall be entitled to make use of a User's access without the prior written consent of BES. The Intermediary agrees to procure that each User complies in full with the terms of this Agreement (and in particular the obligation not to disclose and confidential information contained in Clause 20) and that it shall (and shall procure that each User shall) only use the Online Tool for the purposes of fulfilling its obligations under this Agreement.

15. VARIATION

No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each of the Parties.

16. WAIVER

No forbearance or delay by either Party in enforcing its rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

17. SEVERANCE

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.

18. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the Parties and neither Party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other Party in any way except as expressly provided for in this Agreement.

19. ASSIGNMENT

The Intermediary may not sub-license, assign or transfer in any way any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to any third party without the prior written consent of BES. BES shall have the right to assign, transfer or novate any of its rights, liabilities and/or obligations under this Agreement to a Group Company.

20. CONFIDENTIALITY

20.1 The Parties recognise that under this Agreement they may receive each other's trade secrets and/or confidential or proprietary information of the other Party. All information belonging to or relating to a Party including without limitation information concerning business plans, customers, supplies, services, intellectual property and/or financial results received by the other Party as a result of entering into or performing this Agreement which is designated as confidential by the disclosing Party or is otherwise clearly confidential in nature constitutes "confidential information".

20.2 Each Party agrees not to use confidential information for any purpose other than the purpose for which it is supplied under this Agreement and agrees not to divulge confidential information received from the other Party to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing Party except to its professional advisers or as may be required by law or any legal or regulatory authority.

20.3 Each Party will use a reasonable degree of care which in any event will not be less than the same degree of care which the receiving Party uses to protect its own confidential information to keep and ensure its employees and agents keep any and all such information confidential. This obligation will survive the termination of this Agreement for a period of 2 years or, in respect of a particular item of confidential information, until such earlier time as that item of confidential reaches the public domain other than through the receiving Party's own default.

21. FURTHER ASSURANCE

Each Party will, at the request of the other Party and at its own cost, do (or procure others to do) everything necessary to give the other Party the full benefit of this Agreement.

22. SERVICE OF NOTICES

22.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice at the address specified by the relevant Party from time to time by written notice to the other Party or, in the absence of such notice, the relevant registered office address set out at the head of this Agreement marked for the attention of the relevant party's Company Secretary.

22.2 Any notice shall be deemed to have been duly received:

- 22.2.1 if delivered personally, when left at the address and for the contact referred to in this Clause 22; or
 - 22.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or
 - 22.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 22.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 22.4 The provisions of this Clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single agreement.

24. COSTS AND EXPENSES

Each Party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.

25. ENTIRE AGREEMENT

- 25.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes any previous agreement between the Parties relating to such matters.
- 25.2 Each of the Parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

26. GOVERNING LAW AND JURISDICTION

- 26.1 This Agreement will be governed and construed in accordance with the law of England and Wales.
- 26.2 Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

27. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act.