

	Scheme Document	Doc No:	SD 401
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BREEAM-NOR Licence Agreement	Date:	31 August 2016	
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	BREEAM[®] NOR		

This Licence Agreement is made between the Norwegian Green Building Council NGBC (registered in Norway (Brønnøysundsregisteret, Org.nr. 996 347 133), whose registered office is at Kongens gate 1, 0153 Oslo, Norway, hereinafter referred to as “NGBC” and the Licensee.

NGBC and the Licensee are, together, the “Parties” and either of them shall be a “Party”.

Whereas:

- A. NGBC has developed the BREEAM-NOR methodologies in collaboration with BRE Global;
- B. NGBC owns the copyright and the Intellectual Property Rights (IPR) in the BREEAM-NOR methodologies, scheme documents, supporting tools for the schemes, and certificates (except for that Intellectual Property that is disclosed and supplied to them by BRE Global for the purposes of scheme development);
- C. The Licensee wishes to provide assessments in the built environment using BREEAM-NOR.

Rights Granted

1. NGBC grants the Licensee a non-exclusive, non-transferable licence to carry out assessments against the methodology on the basis set out in:
 - 1.1. This Licence Agreement and the terms and conditions contained herein;
 - 1.2. The Licence letter;

in exchange for fees as detailed in Fee Sheet (PL 201), provided that the Licensee has at least one Registered Assessor for the BREEAM-NOR Scheme.
2. Assessments against the BREEAM-NOR Scheme can only be carried out by Registered Assessors named in the Licence letter.
3. The Licensee may propose other qualified assessors for inclusion in the Licence letter as Registered Assessors by completing a Licence Application.

Geographical Limits

This Licence covers the use of BREEAM-NOR to carry out assessments in Norway only.

The definitions listed at the end of this document shall apply to this document.

1. Throughout this document where phrases “to the satisfaction of NGBC” or “with the agreement of NGBC” OR “with the approval of NGBC” or similar are used, it shall be taken to mean that such satisfaction, agreement, or approval shall not be unreasonably withheld or delayed.
2. Assessments will be carried out using the relevant Assessment Tools provided by NGBC via the extranet for assessors or third party tools although NGBC cannot guarantee the submissions will be acceptable for use in such latter cases.
3. Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended or re-enacted.

Roles and Responsibilities

4. The Licensee shall:
 - 4.1. Notify any changes in the Assessor, Technical or Operational scheme requirements, their Services and or fees to their customers;
 - 4.2. Register assessments and provide all information as required by NGBC;
 - 4.3. Perform the Services using reasonable skill and care in accordance with the requirements of the latest versions of the BREEAM-NOR Scheme and Associated Documentation and any other instructions given by NGBC using the named persons listed on the licence letter;
 - 4.4. Inform NGBC immediately should the Licensee become aware of any shortfall in the performance of the Services, and take all steps that NGBC shall reasonably require to rectify such shortfall as soon as reasonably practicable;
 - 4.5. Notify NGBC immediately of any complaints and appeals made against the Licensee and take steps to ensure that any complaints are dealt with fairly and promptly (IS 403);
 - 4.6. Ensure that those Registered Assessors who fail to carry out assessments properly are prevented from carrying out further assessments until they meet sufficient standards of competence and that where incorrect assessments come to light the assessments are corrected at no additional cost to the Registered Assessor's client;
 - 4.7. Permit periodic audits and assessments of the performance of the Services by NGBC/BRE Global and shall rectify any non-conformities within a reasonable time;
 - 4.8. Keep proper records for ten years covering the full assessment Service and such records shall be open at all reasonable times to inspection by NGBC/BRE Global;
 - 4.9. Supply NGBC and BRE Global with copies of all documents, materials, information and data reasonably necessary to assess or audit the performance of the Services. NGBC/BRE Global shall have no liability for any loss or damage, however, caused to this information including due to negligence;
 - 4.10. Provide NGBC/BRE Global with unhindered and safe access at all reasonable times to all relevant parts of the premises necessary to enable NGBC/BRE Global to assess or audit the performance of the Services and to also provide any necessary personal protective equipment. During any such assessment or audit visit the Licensee shall ensure that NGBC/ BRE Global is accompanied at all times by a representative of the Licensee. The Licensee's representative shall operate their own equipment or machinery including computer terminals to access information;
 - 4.11. Promote the Scheme(s) and their Services provided that this is carried out without fees. Where fees are charged NGBC reserve the right to claim additional royalties;
 - 4.12. Keep all of NGBC and BRE Global intellectual property safely;
 - 4.13. Keep as confidential all Associated Documentation provided by NGBC other than as necessary to perform the Services or unless otherwise agreed in writing or required by law.
5. The Licensee shall not:
 - 5.1. Not do anything which may bring NGBC or BRE Global into disrepute;
 - 5.2. Make nor issue any public release or other public document or make or release any public statement or otherwise disclose to any person who is not a party to this Licence Agreement, without the prior written approval of NGBC (such approval not to be unreasonably withheld or delayed), the terms of this Licence Agreement or the content and the manner and extent of its provisions;
 - 5.3. Copy or reproduce any of the NGBC/BRE Global copyrighted materials (except as may be explicitly permitted);
 - 5.4. Remove, change or obscure any of the NGBC/BRE Global trade or certification marks or other identification notices of proprietary rights;
 - 5.5. Grant sub-licences to use the copyrighted materials;

- 5.6. Distribute, rent, loan, lease, sell or give or otherwise deal in the NGBC or BRE Global copyrighted materials or any of the intellectual property rights vested therein or otherwise make available to any third party any part of the copyrighted materials without the express permission of NGBC;
- 5.7. Use the NGBC/BRE Global copyrighted materials or any part thereof in any way or for any purpose other than that permitted under this Licence;
- 5.8. Make changes which may affect the quality or performance of the Services unless notice of the proposed change has been given to, and written authorisation obtained from NGBC;
- 5.9. Offer products and services, which compete with those of NGBC/BRE Global, whether using the Scheme and Associated Documentation or otherwise;
- 5.10. Copy or reproduce the Software except that it may make up to two copies for normal security and back-up purposes;
- 5.11. Attempt to list the source code of the Software or attempt to amend, alter, adapt, merge, modify or translate the Software in any way for any purpose, including for error correction;
- 5.12. Use or copy the Software or any part of the Software except as permitted by this Licence Agreement;
- 5.13. Reverse-engineer, disassemble or decompile the Software except to the extent permissible by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Software or with another program and such information is not readily available from NGBC or elsewhere;
- 5.14. Remove, change or obscure any of the BREEAM family of logos or any product identification or notices of proprietary rights and restrictions in the Software;
- 5.15. Grant sub-licences to use the Software;
- 5.16. Distribute, rent, loan, lease, sell, give or otherwise deal in the Software or otherwise make the Software or any part of the Software available for the use of any third party without the express written permission of NGBC;
- 5.17. Use the Software or any part of the Software in any way or for any purpose other than that related to the Schemes.

Fees

6. Licences are granted on an annual automatic renewal basis. Where renewal is not required licences must be discontinued by giving 30 days notice to NGBC prior to the anniversary date to avoid applicable Licence Fees becoming due. The renewal licence fee (s) is invoiced annually.
7. All Licence Fee(s) are non-refundable and are due within 14 days.

Audits

8. The quality of assessments carried out by trained Registered Assessors can be checked on a regular basis by NGBC or its duly authorised representatives.
9. The quality standards required by NGBC are set out in the BREEAM-NOR Operations Manual (SD 601). A step-by-step approach for undertaking assessments is described in the Operations Manual. If the quality of an assessment falls below the standard required by NGBC/BRE Global, NGBC/BRE Global will either:
 - 9.1. Notify the Licensee of such a failure of performance with a view to termination pursuant to Clause 25 (i) of these Terms; or
 - 9.2. Withdraw the licence in accordance with Clause 27 of these Terms.

Intellectual Property Rights

10. NGBC has developed, written and owns the intellectual property rights to the BREEAM-NOR Scheme(s) (except for that Intellectual Property that is disclosed and supplied to them by BRE Global for the purposes of scheme development) and the Licensee neither has nor acquires a proprietary interest in the Standard(s) through this Agreement.
11. NGBC and BRE Global own various marks and logos and the publication (IS 402) defines which logos and marks may be used by the Licensee and how these may be used.

General Responsibilities of NGBC

12. NGBC and BRE Global shall provide all such training, documentation and guidance to the Licensee as is necessary to ensure that they can perform the Services satisfactorily.
13. NGBC and BRE Global shall audit the Licensee to ensure that it and its registered assessors are performing the Services to an acceptable quality.
14. NGBC shall from time to time make changes to the Scheme and Associated Documentation which are necessary to reflect changes in technology, standards or any applicable safety or other statutory requirements. NGBC shall advise the Licensee of such changes and provide all relevant documentation free of charge. Where additional training is required this shall be charged at the prevailing rate.
15. NGBC shall take action against any Licensee who misuses the Scheme or brings the Scheme, NGBC/BRE Global and its brands into disrepute.

Warranties and Liability

16. Except in respect of death or personal injury caused by NGBC's negligence, fraud, or as expressly provided in these Terms, NGBC shall not be liable to the Licensee by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of NGBC, its servants or agents or otherwise) which arise out of or in connection with the licence or provision of the Services by the Licensee and the entire liability of NGBC under or in connection with the Agreement shall not exceed the greater of NOK 90,000 or 115% of the amount which has actually been paid by the Licensee to NGBC for the provision of the Licence.
17. Except in respect of death or personal injury, the Licensee will look only to NGBC (and not to any individual engaged by NGBC, including any directors of NGBC for redress if the Licensee considers that there has been any breach of this Agreement. The Licensee agrees not to pursue any claims in contract, tort (including negligence) or for breach of statutory duty against any individuals working for and on behalf of NGBC in carrying out its obligation under the Agreement at any time, whether named expressly in the Agreement or not.
18. NGBC shall use reasonable endeavours to meet the timescales set out in the Agreement and shall not be liable for any losses arising from any delay.
19. Unless otherwise specified in the Schedule, the Licensee shall not sub-contract, transfer or assign any part of this Agreement to any other party.
20. Neither party shall be responsible to the other party for any non-performance due to causes beyond their reasonable control. However, they shall inform the other party in writing of the reasons and take all reasonable steps to comply with this agreement as fully and promptly as possible.
21. Unless otherwise specified in the Schedule, or agreed in writing with NGBC, the Licensee shall (without prejudice to its obligations to fully indemnify NGBC under these terms and conditions) take out and maintain an insurance policy in respect of professional indemnity to cover the period from the grant of the licence and remain in effect for twelve years following its discontinuation with a limit of indemnity of no less than NOK 9,000,000 for any one claim and in the aggregate provided such insurance is available at commercially reasonable rates without regard to the Licensee's claim history.

Suspension or termination

22. Either party may terminate this Licence Agreement by giving 30 days' notice in writing to the other.
23. At the date of suspension or termination of this Licence Agreement for whatever reason any licence granted hereby shall immediately cease to be valid.
24. NGBC may immediately suspend or terminate any licence granted due to unsatisfactory performance , unsatisfactory results in meeting requirements of re-examination, or breach or non-conformity with any part of this Licence Agreement.
25. Either party may terminate the Agreement immediately by notice in writing to the other if the other:
 - i) commits a breach of the Agreement which is irremediable or in the case of a remediable breach capable of remedy, shall not have been remedied within 14 days of the receipt of a notice from the innocent party identifying the breach and requiring its remedy;
 - ii) undergoes a change of control;
 - iii) has a petition presented for its bankruptcy or has a criminal bankruptcy order made against it (or any partner in the case of a partnership);
 - iv) makes any composition or arrangement with or for the benefit of creditors;
 - v) makes any conveyance or assignment with or for the benefit of its creditors;
 - vi) passes a resolution for winding up or dissolution or has a winding-up order made against it;
 - vii) has an administrator, receiver, manager or supervisor appointed to manage its affairs or has an application is made for, or any meeting of its directors or members resolves to make an application for, an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it;
 - viii) has possession taken of any of its property under the terms of a fixed or floating charge;
 - ix) is unable to pay its debts; or
 - x) is subject of any similar event as above under the law of any other jurisdiction to which the party is subject.
26. Termination of the Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement as at the date of termination and, in particular, but without limitation, the right to recover damages against the other and the provisions of Clauses 16 to 21 inclusive and Clause 33 shall remain in force and effect.
27. The licence (and consequently, for the avoidance of doubt, the right to carry out the Services) may be suspended immediately until such time as the event is resolved to the reasonable satisfaction of NGBC and BRE Global or the Agreement is terminated in accordance with Clause 25:
 - i) if the Licensee fails any audit conducted by NGBC/BRE Global in respect of its business operations;
 - ii) for unsatisfactory performance in provision of Services;
 - iii) for unsatisfactory results in meeting requirements of any examination or re-examination relating to the licence;
 - iv) if the Licensee fails to resolve any serious complaint which is reasonably capable of resolution;
 - v) if any payments are not made within 30 days of the date of a NGBC invoice; or
 - vi) if the Licensee is abusive or acts in an unprofessional manner towards NGBC or BRE Global personnel.
28. In any event of termination or suspension of the licence under Clauses 25 to 27 inclusive, NGBC may without prejudice to any other of its rights, complete and outstanding Services or have them completed by a third party and shall be entitled to recover any amount due from the Licensee. At NGBC's request the Licensee shall assign or novate (on substantially same terms) any agreements for the Services to NGBC or a designated third party to the extent required to enable completion of any of the Services.

Third Parties

29. Save as expressly provided in this agreement, no term shall be enforceable by a third party (being any person other than the parties, their permitted successors and assignees other than BRE Global).

Entire Agreement

30. The Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of the Agreement. Neither party shall be entitled to rely on any understanding or arrangement, which is not expressly set forth in the Agreement.

Waiver

31. No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement or any single or partial exercise of any such right or remedy shall be construed or shall operate as a waiver thereof.

Severability

32. If any provision of the Agreement is held to be invalid or unenforceable such provision shall be deemed to be severed from the Agreement and the remaining provisions shall remain in force.

Governing Law

33. This Agreement shall be governed by and construed in accordance with Norwegian Law and the parties hereby submit to the exclusive jurisdiction of the Norwegian courts.

Definitions

1. 'Agreement' means the contract for the licence (normally consisting of the Schedule, the Fee Sheet and these terms.
2. 'Assessment Tools' means calculator tools and guidance documents available to Registered Assessors to carry out an assessment.
3. 'Assessor Technical Manual(s)' means the controlled document(s) that is maintained by NGBC with revisions distributed to all Licensees. The Assessor Technical manual sets out the assessment criteria and provides guidance on interpretation and compliance.
4. 'Associated Documentation' means any software, drawing, procedures, forms, certificates, guidance, presentations or any other material which can be helped to deliver the Service.
5. 'BRE Global' means BRE Global Limited (registered in England with company No. 8961297), hereinafter referred to as "BRE Global" , whose registered office is at, Garston, Watford, Hertfordshire, WD25 9XX). BRE Global owns all Intellectual Property Rights (IPR) for the International Code for a Sustainable Built Environment, the BREEAM Standards, any BRE Global Schemes and any supporting documentation, tools and systems. BRE Global has approved the development by NGBC of the BREEAM-NOR Scheme that is compliant with the BREEAM Standards and adapted appropriately for use within Norway.
6. 'BREEAM-NOR Certificate' means a document issued by BRE Global through NGBC which certifies the results of a BREEAM-NOR assessment.
7. 'BREEAM-NOR Operations Manual' (SD 601) means the controlled document that is maintained by NGBC distributed to all Licensees. The guidance sets out the licensing and assessment procedures, protocols and other standard information for undertaking assessments.
8. 'BREEAM-NOR Rating Scores' means a system for measuring the environmental, social and/or economic impacts of buildings and the wider built environment using a simple single scale to rate performance.
9. 'Fee Sheet' means the current fees payable to NGBC for the licence.
10. 'Licensee' means the person, company, firm or other body which has been licensed by NGBC/BRE to use the Standard for the purpose of delivering 'Services'.
11. 'Registered Assessors' means the individual(s) named in a licence letter, working on behalf of the Licensee who, subject to satisfactory completion of training and an appropriate classroom examination or/and test assessment, will be qualified by NGBC/BRE Global . They have the right to undertake assessments for those building types as listed in the licence letter subject to payment of the fees set out in fee sheet. They will be required to maintain an appropriate level of competence as defined by NGBC.
12. 'Scheme' means the assessment methodologies developed for application to buildings and the wider built environment and which are proprietary to the NGBC.
13. 'Services' means inspection, calculation, training, assessment, testing, certification or any other service provided by the Licensee under this Agreement.
14. 'Terms' means the terms and conditions contained herein, together with any additional terms and conditions set out in the licence letter.