

# AFFILIATE MEMBERSHIP TERMS AND CONDITIONS

2nd EDITION | Jan2020



These Terms and Conditions ("**Terms and Conditions**") set out the terms of membership of the Affiliate Membership Scheme ("**Affiliate Membership**") by an Affiliate Member. In consideration of the BESA accepting your Application for Affiliate Membership, the Affiliate Member agrees to be bound by these Terms and Conditions. The BESA Code of Conduct, in force from time to time, together with the terms of the BESA Constitution (16<sup>th</sup> edition) insofar as applicable to Affiliate Members form part of these Terms and Conditions.

Subject to these Terms and Conditions the Affiliate Member shall be entitled to describe itself as a BESA Affiliate Member. The Affiliate Member Scheme is an alternative to full membership of the BESA and does not confer the rights of full membership of the BESA on any Affiliate Member. If you are accepting these Terms and Conditions on behalf of a company or other organisation, you represent that you have the authority to bind that company or organisation to these Terms and Conditions, and the terms "**you**", "**your**" and "**Affiliate Member**" will refer to that company or organisation.

Please note that we may change these Terms and Conditions from time to time. Unless otherwise specified by us, all changes to the Terms and Conditions come into force on the date that the changes are posted to [www.thebesa.com](http://www.thebesa.com) ("**BESA Website**") (including for existing Affiliate Members). Changes will be notified through the BESA Website or may be (but are not required to be) communicated by e-mail. These Terms and Conditions came into force on 1 July 2019.

## 1. About us

The BESA Affiliate Member Scheme is provided by the Building Engineering Services Association whose main office of business is at Rotherwick House, 3 Thomas More Street, St Katherine's and Wapping, London, E1W 1YZ ("**BESA**", "**we**", "**us**" or "**our**").

## 2. The Affiliate Member Scheme

- 2.1 The Affiliate Member Scheme is provided by us to companies and partnerships who have common interests with the BESA but do not qualify to be a full member of the BESA. The Affiliate Member Scheme is to allow Affiliate members to promote and support good practice and the exchange of information and opinion in building engineering services. The Affiliate Member Scheme permits approved Affiliate Members access to certain benefits and discounts, the use of the BESA Affiliate Logo and access to specialist events and networking opportunities ("**Affiliate Member Scheme**"). A more detailed description of the Affiliate Member Scheme is available on the BESA Website and/or in any other documentation or materials provided by us through the BESA Website or otherwise. BESA reserve the right to vary the benefits and discounts, which will be reviewed on an annual basis.
- 2.2 The Affiliate Member Scheme is provided on an application basis. Applications are for a period of 12 months ("**Membership Term**"). Please note that features and materials offered as part of the Affiliate Member Scheme may be added to, withdrawn or changed without notice at any time.

## 3. How to apply

- 3.1 You must use the Application form to submit an Application for Affiliate Membership ("**Application**"). We are not obliged to accept any Application but if we do, we will communicate our acceptance in writing (which may be by email). Your accepted Application together with these Terms and Conditions shall be the contract between us for your acceptance as an Affiliate Member.
- 3.2 These Terms and Conditions apply to your contract with us to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 4. Affiliate Member undertakings and conduct

- 4.1 You shall enhance relations with full members of the BESA and increase the perception and professionalism of the building engineering services industry. You shall be mindful when carrying out commercial and business activities of the BESA Vision and Mission statements and the Objects of the BESA as set out in the BESA Constitution (16<sup>th</sup> edition).
- 4.2 You shall not bring the BESA into disrepute or take action which, in the reasonable opinion of the BESA, would denigrate the BESA. BESA reserves the right to suspend any Affiliate Member who, in the reasonable opinion of the BESA, breaches the above provision until such time as the action complained of is ceased by the Affiliate Member.
- 4.3 Affiliate Members who participate in any BESA event are expected to provide specialist information, knowledge, advice and expertise for the benefit of the BESA and not purely for the furtherance of the Affiliate Members commercial objectives. Participation in a BESA event will be by invitation only and the BESA have the right to rescind an invitation

to participate in a BESA event at any time for any reason.

- 4.4 Invitations to sponsor any BESA event will be made on a first come first serve basis and multiple sponsors may be appointed dependant on the event at the sole discretion of the BESA.
- 4.5 Affiliate Members who participate in any specialist group or committee are expected to provide specialist technical input and expertise for the benefit of the BESA. Participation in any BESA committee or specialist group will be by invitation only and the BESA have the right to rescind an invitation to any specialist group or committee at any time for any reason.
- 4.6 You shall not hold yourself out to be full members of the BESA.
- 4.7 You acknowledge that you do not have the voting rights of full members of the BESA and you agree to abide by the terms of the BESA Constitution (16<sup>th</sup> edition) as applicable to Affiliate Members.

## 5. BESA Affiliate Logo

- 5.1 Subject to you complying with these Terms and Conditions and paying all Membership Fees due, we hereby grant you a non-exclusive, non-transferable fully revocable licence to use the BESA Affiliate Logo in relation to your business activities and the promotion of the Affiliate Member Scheme in accordance with these Terms and Conditions for the duration of the Membership Term.
- 5.2 You shall not use the BESA Affiliate Logo for any purpose other than that detailed above in clause 5.1 and you acknowledge that you shall not acquire any rights in the BESA Affiliate Logo other than that of a licence for the duration of the Membership Term.
- 5.3 You shall use all reasonable endeavours to prevent any unauthorised use of the BESA Affiliate Logo and, in the event of any such unauthorised use, promptly notify us.

## 6. Charges and payment

- 6.1 Unless stated otherwise in any Application and subject to clause 12, each Membership Term commences on the date set out in the written acceptance of your Application by us ("**Commencement Date**"). Membership fees, set out on the BESA website ("**Membership Fees**") are annual and payable in advance. We accept payment by direct debit, cheque or direct bank transfer within 30 days of the date of our invoice.
- 6.2 If you pay on direct debit, you may agree to automatic renewal of your current Membership Term at the then current Membership Fees. Otherwise prior to the expiry of the current Membership Term, we may notify you that you can renew the Membership Term or terminate the agreement in accordance with clause 12.1. If you wish to renew the Membership Term, the Membership Fee shall be the then current rates notified by us to you.
- 6.3 All amounts and fees stated or referred to in these Terms and Conditions
  - a) shall be payable in pounds sterling
  - b) are non-cancellable and non-refundable
  - c) are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.
- 6.4 We shall be entitled to vary the Membership Fees at any time during a Membership Term upon 14 days' prior notice to you at any time. Such changes shall take effect from the date of your next payment (which may be the second instalment of a current Membership Fee) and we shall be entitled to or collect any additional payment by direct debit or invoice you for any additional payment required from you and you shall pay such sum within 30 days of the date of our invoice. If, as a result of the increase in the Membership Fee or any other fees, you do not wish to pay the additional amount, you may terminate your Affiliate Membership on 10 day's written notice to us. No refunds will be given.
- 6.5 Without prejudice to our other rights and remedies, if you fail to pay the Membership Fee (or any instalment of the Membership Fee) or any other fee due and payable under these Terms and Conditions by the due date for payment, we may
  - a) suspend your Affiliate Membership until all overdue amounts (including interest) are paid in full, and/or
  - b) charge interest on the overdue amount at the rate of 8% per annum above the base rate of the Bank of England from the due date for payment until the date the payment is made in full, whether before or after judgement.

## 7. Intellectual property rights

You acknowledge and agree that we own all right, title and interest to and all intellectual property rights (including all copyright, patent, trade mark and other intellectual property rights) in the Affiliate Member Scheme and the BESA Affiliate Logo, including the BESA Website, any related software, any databases, data, technology, reports, templates, models and documentation. Except as expressly stated herein, these Terms and Conditions do not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Affiliate Member Scheme or BESA Affiliate Logo.

## 8. Conflict of Interest

You shall take appropriate steps to ensure that neither you nor any of your employees, agents or sub-contractors is placed in a position where, in the reasonable opinion of the BESA, there is or may be any actual or potential conflict between your financial or commercial interests and the obligations owed by you to the BESA under this agreement. You agree to disclose the full details of any actual or potential conflict of interest to the BESA promptly upon becoming aware of the same. The BESA Association Secretary shall keep a record of all such disclosures.

## 9. Indemnity

You shall defend and indemnify us and keep us indemnified against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your membership of the BESA Affiliate Member Scheme and/or the use of the BESA Affiliate Logo.

## 10. Limitation of liability

10.1 This clause 11 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

- a) any breach of these Terms and Conditions
- b) any participation by you in the Affiliate Member Scheme and/or the use of the BESA Affiliate Logo, and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions.

10.2 Except as expressly and specifically provided in these Terms and Conditions:

- a) you assume sole responsibility for your participation in the Affiliate Member Scheme and for use of the BESA Affiliate Logo by you and your employees, agents and sub-contractors, and
- b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and Conditions.

10.3 Nothing in these Terms and Conditions excludes or restricts our liability for:

- a) death or personal injury caused by our negligence, or
- b) fraud or fraudulent misrepresentation, or
- c) any other matter the liability for which cannot be restricted or excluded by law.

10.4 Subject to clause 11.2 and clause 11.3:

- a) we 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 pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms and Conditions, and
- b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and Conditions shall be limited to the total Membership Fees paid by you during the 12 months immediately preceding the date on which the claim arose.

## 11. Term and termination

11.1 Your Affiliate Membership shall, unless otherwise terminated in accordance with these Terms and Conditions, commence on the Commencement Date and continue for the Membership Term. Subject to alternative agreement set out in the Application, in the event that no notice of termination has been received by BESA prior to 30 days before expiry of the Membership Term, this agreement shall continue for a further period equal to the initial Term. Your continued participation in the Affiliate Member Scheme and/or use of the BESA Logo after receipt of a renewal invoice confirms your acceptance of the subsequent Membership Term contained therein. In such circumstance, you will be liable for the relevant Membership Fees together with the fees for any relevant additional services, and so on for subsequent Membership Term's. This agreement may be changed from time to time by BESA immediately upon notice as described below or by written agreement. Continued participation in the Affiliate Member Scheme and/or use of the BESA Affiliate Logo following any change constitutes acceptance of the change.

11.2 You may terminate your Affiliate Membership at any time on 60 days' notice in writing to us. No refunds of any Membership Fees or any other fees or charges shall be made to you by us and you will remain liable for the full cost of your unpaid Membership Fees for the remainder of the Membership Term.

11.3 Without prejudice to any other rights or remedies to which we might be entitled we may terminate your Affiliate Membership and your use of the BESA Affiliate Logo without liability to you, if:

- a) you breach any of these Terms and Conditions, or
- b) any payment due to us under this agreement is not paid in full by its due date for payment
- c) we receive complaints about your use of the BESA Service

d) we reasonably believe you are in breach of the provisions of clause 4.

11.4 On termination or expiry of your Affiliate Membership for any reason all licences granted under these Terms and Conditions and your right to participate in the Affiliate Member Scheme and use the BESA Affiliate Logo shall immediately terminate.

11.5 On termination or expiry of your Affiliate Membership for any reason, the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 12. Anti-Bribery and Corruption

12.1 You shall comply with the Bribery Act 2010 and all other applicable UK legislation, regulations and codes in relation to bribery or corruption ("**Bribery Laws**") including ensuring that you have in place adequate procedures to ensure compliance with Bribery Laws. You shall ensure that all of your employees, agents and sub-contractors also comply with all Bribery Laws. The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it.

12.2 Without limitation to clause 13.1 you shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on your behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on your behalf.

## 13. Force majeure

We shall have no liability to you if we are prevented from or delayed in performing our obligations under these Terms and Conditions, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control

## 14. Waiver

14.1 A waiver of any right under these Terms and Conditions is only effective if it is in writing and signed by the waiving part and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

14.2 No single or partial exercise, or failure or delay in exercising, any right, power or remedy by any party shall constitute a waiver by that party of any right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

## 15. Severance

15.1 If any provision (or part of a provision) of these Terms and Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 16. Entire Agreement

16.1 The headings used herein are for ease of reference only and are not to be used as a means of interpretation or construction of this agreement.

16.2 All documents expressly referred to in these Terms and Conditions are hereby to be incorporated herein and are to be regarded as having the same effect as if they were set out in full in the text of these Terms and Conditions.

16.3 These Terms and Conditions, and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

16.4 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

## 17. Assignment

17.1 You shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under these Terms and Conditions.

17.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms and Conditions.

18. **No partnership or agency**

Nothing in these Terms and Conditions 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).

19. **Third party rights**

These Terms and Conditions do not confer any rights on any person or party (other than the parties to these Terms and Conditions and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. **Notices**

Except as otherwise provided herein, all notices and other communications to you shall be in writing or displayed electronically on the BESA Website by us. Notices to you shall be deemed to have been properly given on the date posted, if posted; on the date first made available, if displayed on the BESA Website; or on the date received, if delivered in any other manner. Notices to us should be sent to BESA at the contact address shown on the BESA website.

21. **Governing law and jurisdiction**

21.1 These Terms and Conditions and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and Wales.

21.2 The courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions or their subject matter or formation (including non-contractual disputes or claims) save that we have the express right (at our sole discretion) to bring an action against you in a court or courts where you are resident or where you have your principal place of business or central administration.

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