

# ASSOCIATE MEMBERSHIP TERMS AND CONDITIONS

BESA standard contract

1st EDITION | November 2020

These Terms and Conditions ("**Terms and Conditions**") set out the terms of membership of the Associate Membership Scheme ("**Associate Membership**") by an Associate Member. In consideration of the BESA accepting your Application for Associate Membership, the Associate 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 Associate Member shall be entitled to describe itself as a BESA Associate Member. The Associate 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 Associate Member.

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 Associate Members). Changes will be notified through the BESA Website or may be (but are not required to be) communicated by e-mail. Continued participation in the Associate Member Scheme and/or use of the BESA Associate Logo following any change constitutes acceptance of the change. These Terms and Conditions came into force on 3 November 2020.

## 1. About us

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

## 2. The Associate Member Scheme

- 2.1. The Associate Member Scheme is provided by us to individuals who have common interests with the BESA but do not qualify to be a full member of the BESA. The Associate Member Scheme is to allow Associate Members to promote and support good practice and the exchange of information and opinion in building engineering services. The Associate Member Scheme permits approved Associate Members access to certain benefits and discounts, the use of the BESA Associate Logo and access to specialist events and networking opportunities ("**Associate Member Scheme**"). A more detailed description of the Associate 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 Associate Member Scheme is provided on an application basis. Applications are for a period of 12 months ("**Membership Term**"). Please note that any features and materials offered as part of the Associate 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 above to submit an Application for Associate 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 Associate 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. Associate Member undertakings and conduct

- 4.1. You shall represent and promote the interests of BESA.
- 4.2. You shall enhance relations with full members and/or Affiliates of the BESA and increase the perception and professionalism of the building engineering services industry. You shall be mindful when carrying out activities in the building engineering services industry 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).
- 4.3. 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 Associate 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 Associate Member.

- 4.4. Associate 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 Associate Member's personal or other commercial objectives. Participation in a BESA event will be by invitation only and the BESA has the right to rescind an invitation to participate in a BESA event at any time for any reason.
- 4.5. Associate 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 specialist group or committee is subject to the relevant terms of reference or equivalent rules. Participation in any BESA committee or specialist group will be by invitation only and the BESA has 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 a full member 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.

## 5. BESA Associate 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 licence to use the BESA Associate Logo in relation to your involvement in the building engineering sector and the promotion of the Associate Member Scheme in accordance with these Terms and Conditions for the duration of the Membership Term.
- 5.2. You shall not use the BESA Associate 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 Associate 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 Associate 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 10, each Membership Term commences on the date set out in the written acceptance of your Application by us ("**Commencement Date**"). All fees are payable as set out on the BESA website ("**Membership Fees**"). Membership Fees are annual and payable in advance or monthly by direct debit. If you choose to pay the Membership Fee in advance, payment must be received within 30 days of the date of our invoice.
- 6.2. You agree to automatic renewal of your current Membership Term at the then current Membership Fees unless otherwise notified by you in accordance with clause 11.
- 6.3. All amounts and fees stated or referred to in these Terms and Conditions
  - 6.3.1. shall be payable in pounds sterling
  - 6.3.2. are non-cancellable and non-refundable
  - 6.3.3. are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.
- 6.4. 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
  - 6.4.1. suspend your Associate Membership until all overdue amounts (including interest) are paid in full, and/or
  - 6.4.2. 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 judgment.

## 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 Associate Member Scheme and the BESA Associate 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 Associate Member Scheme or BESA Associate Logo.

## 8. Conflict of Interest

You shall take appropriate steps to ensure that you are not 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 personal 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 Associate Member Scheme and/or the use of the BESA Associate Logo.

## 10. Limitation of liability

10.1. This clause 10 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:

10.1.1. any breach of these Terms and Conditions

10.1.2. any participation by you in the Associate Member Scheme and/or the use of the BESA Associate Logo, and

10.1.3. 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:

10.2.1. you assume sole responsibility for your participation in the Associate Member Scheme and for your use of the BESA Associate Logo; and

10.2.2. 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:

10.3.1. death or personal injury caused by our negligence, or

10.3.2. fraud or fraudulent misrepresentation, or

10.3.3. any other matter the liability for which cannot be restricted or excluded by law.

10.4. Subject to clause 10.2 and clause 10.3:

10.4.1. 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

10.4.2. 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. Without prejudice to any other rights or remedies to which you might be entitled, you have the right to withdraw from this agreement within 14 calendar days of us notifying you of your acceptance into the Associate Membership Scheme. If you cancel in accordance with this clause 11.1, we will reimburse you all payment received from you within 14 days after the day on which you informed us about your decision to cancel this agreement.

11.2. Your Associate 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 Membership Term. Your continued participation in the Associate Member Scheme and/or use of the BESA Associate Logo after receipt of a renewal invoice confirms your acceptance of the subsequent Membership Term contained therein.

11.3. Without limiting clauses 11.1 or 11.2, you may terminate your Associate 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.

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

- 11.4.1. you breach any of these Terms and Conditions, or
- 11.4.2. any payment due to us under this agreement is not paid in full by its due date for payment
- 11.4.3. we reasonably believe you are in breach of the provisions of clause 4.

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

## 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.
- 12.2. Without limitation to clause 12.1 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, to the extent permitted by law, supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.4. To the extent permitted by law, 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

Only you, and us, can take action to enforce the terms of this agreement. 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. You agree that we may contact you using the telephone or mobile numbers, and send you notices to the postal and email addresses, provided by you from time to time (if any). 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.

## 22. Complaints

22.1. All complaints will be handled in accordance with BESA's Complaints Policy, a copy of which can be found on the BESA Website.

## 23. Privacy Policy

23.1. We shall at all times comply with our Privacy Policy available on the BESA Website, as such Privacy Policy may be amended from time to time by us at our sole discretion.

