
Building
a sustainable
future

Green Star Certification Agreement

Date

Project

[Insert Project Name]

Project Number

[Insert Project GS Number]

**Green Building Council of Australia
(GBCA)**

and

[Applicant Company]

(Applicant)

CERTIFICATION AGREEMENT

Agreement Dated

PARTIES

1. **Green Building Council of Australia ACN 100 789 937**, a company taken to be registered in the Australian Capital Territory of Level 15, 179 Elizabeth Street, Sydney NSW 2000 ("**GBCA**"); and
2. **Insert Company Name, ACN, Physical address of applicant** ("**Applicant**").

RECITALS

- A. The Green Star – Performance v1 rating tool ("**Rating Tool**") has been developed by the GBCA to evaluate the environmental operational performance of buildings.
- B. To earn a Certified Rating, the Applicant must satisfy specified prerequisites as defined in the Rating Tool and be awarded a minimum number of points to attain a Green Star Rating of one to six stars.
- C. The Applicant wishes to apply for a Green Star Rating of the building ("**the Premises**") on the land at **[address of building]**.
- D. The GBCA has agreed to commission one or more Certified Assessors to carry out an Independent Assessment of the Premises against the criteria set out in the Rating Tool.
- E. Subject to full compliance by the Applicant with its obligations under this Agreement, the Certified Assessor(s) will, after completing the Independent Assessment, recommend the number of points to be awarded to the Applicant. These points are then used to determine the Premises' Green Star Rating.
- F. A rating of one to six stars will constitute a Certified Rating entitling the Applicant to a limited licence to use the Trade Mark and publicise the Applicant's Certified Rating.
- G. This Agreement sets out the terms on which the certification will take place and the basis on which the Applicant may promote the Certified Rating for the Premises, and use the Trade Mark and associated logos.
- H. The GBCA is in the process of applying for, but has not yet been granted, registration of certification trade marks (as defined in the *Trade Marks Act 1995* (Cth)) in respect of its Certified Rating system. A right to use a trade mark under this Agreement is a right to use an unregistered trade mark.

The Parties agree as follows:

1. INTERPRETATION

1.1 Special Definitions

Meanings shall apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires:

“Agreement” means this Agreement;

“Assessment Fee” means the fee payable to the GBCA for the Independent Assessment;

“Business Day” means a day which is not a Saturday, Sunday or a public holiday in Sydney;

“Case Manager” means the GBCA employee designated by the GBCA to project manage an Independent Assessment;

“Certification Date” means the date of issue of a Certified Rating Certificate to the Applicant (if any);

“Certified Assessor” means a person or persons, independent of the GBCA, nominated by the GBCA who has passed the “Green Star Accredited Professional” examination and/or who has such other appropriate assessment qualifications as the GBCA may from time to time determine;

“Certified Rating” means a rating of one to six stars that may be awarded by the GBCA under this Agreement;

“Certified Rating Certificate” means a certificate to be awarded to the Applicant by the GBCA to provide confirmation of the Certified Rating achieved;

“Confidential Information” means any information relating to the operations, affairs

or business of either party to this Agreement which is provided to the other party to this Agreement or on the other party’s behalf or of which either party becomes aware pursuant to this Agreement;

“Credit” means a measurable indicator or an attribute or initiative that improves, or has the potential to improve, a building’s environmental performance, and comprises a specified number of Points;

“Credit Interpretation” means consideration and determination of the requirements for an Applicant to obtain a Credit where that Credit aim can be achieved but compliance cannot be demonstrated by the Applicant in the way set out in the Rating Tool;

“Credit Interpretation Request” means a request for Credit Interpretation, lodged by the Applicant in accordance with clause 5.2(b)(ii);

“Credit Interpretation Request Fee” means any fee charged by the GBCA pursuant to clause 5.2;

“Eligibility Requirements” means the conditions which must be met to qualify the Premises for a Certified Rating and which are set out on the Website.

“Fee” means:

- a) the Assessment Fee;
- b) fees payable by the Applicant for inquiries which do not fall within clauses 5.1(a) or 5.1(e) of this Agreement;
- c) any Credit Interpretation Request Fee;

in each case being the amount in respect of the relevant fee specified by the GBCA on the Website from time to time;

“First Round” means the initial submission by the Applicant of documentation to demonstrate compliance with the Rating Tool;

“Green Star Rating” means a Green Star rating of one to six stars under the Rating Tool;

“GST” includes any state or federal goods and services tax, value added tax, consumption tax, gross receipt tax or any other tax or charge of a similar nature including such tax under A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time;

“Independent Assessment” means an independent assessment by a Certified Assessor of the Premises;

“Law” includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise;

“Payment Claim” means any written claim made, or to be made, by the GBCA to the Applicant requiring any Fee to be paid under clause 3;

“Payment Date” means the due date for payment of any Fee by the Applicant to the GBCA under clause 3, being:

- a) in relation to the Assessment Fee, the date of execution of this Agreement by the parties; and
- b) in relation to any other Fee, 28 days after the date of issue of the Payment Claim by the GBCA;

“Performance Period” means the 12 month period against which the Premises are rated and which must commence no more than 12 months prior to the Registration Date;

“Points” means points available in each Credit and which count towards the total score used to determine a Green Star Rating;

“Premises” has the meaning given in recital C;

“Rating Tool” has the meaning given in recital A, and includes all updated versions thereof at each relevant time, and includes without limitation all of the GBCA’s Confidential Information therein;

“Registered Certification Trade Mark” means a certification trade mark registered in accordance with the *Trade Marks Act 1995* (Cth);

“Registration Date” means the date designated as such by the GBCA which will be on or about the date the GBCA receives both a copy of this Agreement executed by the Applicant and the Assessment Fee;

“Second Round” means the submission by the Applicant of further documentation to demonstrate compliance with the Rating Tool and clause 4(a)(vi) in response to the initial determination of the Certified Assessor(s) in respect of the Premises issued prior to the GBCA awarding the Certified Rating in accordance with clause 4(c)(iii);

“Services” means:

- a) the Independent Assessment;
- b) any Credit Interpretations; and
- c) all other obligations and services to be performed by the GBCA under this Agreement;

“Style Guide” means the guide for use of the Trade Mark published by the GBCA from time to time;

“Tax Invoice” means an invoice in the format required by A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as otherwise required by Law;

“Taxable Supply” has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as

amended from time to time;

“**Technical Advisory Panel**” means an advisory panel convened by the GBCA and designated as the “Technical Advisory Panel”;

“**Trade Mark**” means the GBCA’s trade mark or marks set out in the Annexure to this Agreement, including all one to six star variants;

“**Validity Period**” means the period commencing on the Certification Date and ending 3 years and 90 days after the Certification Date;

“**Website**” means the website of the GBCA located at www.gbca.org.au; and

“**Yearly Performance Data**” means data that is required to be submitted to the GBCA to retain the Certified Rating for the Validity Period.

1.2 Interpretational Rules

Rules of interpretation shall apply to this Agreement as specified in this provision, unless the context otherwise requires:

- a) **(headings)**: headings and subheadings are for convenience only and shall not affect interpretation, except for specified cross-references;
- b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- c) **(gender)**: words denoting any gender include all genders;
- d) **(parties)**: any reference to a party to any agreement or document includes its successors and permitted assigns and substitutes by way of assignment or novation;
- e) **(amendments)**: any reference to any agreement or document includes that

agreement or document as amended at any time;

- f) **(provisions)**: any reference to a provision is a reference to a clause of, or schedule or annexure, to, this Agreement including each sub clause, paragraph and subparagraph of that provision;
- g) **(references)**: any reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement;
- h) **(cross-references)**: any reference to a provision described, prefaced or qualified by the name, heading or caption of a provision of this Agreement means a cross-reference to that provision; and
- i) **(specifics)**: any specific reference to or listing of agreements, documents, actions, facts, liabilities or any other items following the word “**including**” by way of illustration, example, particularity or specification of or in relation to any preceding words or provision of generality shall be without limitation and shall not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items.

2. SERVICES SUPPLY

2.1 Supply and Acceptance

- a) **(GBCA’s supply of services)**: At the request of the Applicant, and in consideration of receipt of the Fees, the GBCA has agreed to arrange for an Independent Assessment of the Premises and to provide the other Services as set out in this Agreement.
- b) **(Applicant’s acceptance of services)**: The Applicant has agreed to submit the Premises to the GBCA for an Independent Assessment and to pay the Fees.

2.2 Contractual Relationship

- a) **(Independent contractor):** The GBCA and its employees, agents and contractors shall act in the capacity of an independent contractor, as between the GBCA and the Applicant, in the performance of any liability under this Agreement.
- b) **(Exclusions):** This Agreement shall not create, or be construed to create, any express or implied relationship between the GBCA, its employees, agents and contractors and the Applicant of:
- (i) employment;
 - (ii) principal and agency;
 - (iii) partnership; or
 - (iv) joint venture.
- c) **(Contractual freedom):** This Agreement shall not prohibit the GBCA from executing any agreement with any third person relating to the supply or acquisition of services or goods and/or services, whether in the nature of or similar to the services to be provided under this Agreement or otherwise, as decided by the GBCA, subject to compliance with any liability of the GBCA under any other provision of this Agreement.

3. PAYMENT

3.1 Applicant Liability

The Applicant shall be liable to pay to the GBCA:

- a) **(Assessment Fee):** the Assessment Fee for the Independent Assessment;
- b) **(Inquiry Fees):** fees payable by the Applicant for inquiries and Credit Interpretation Requests as specified on the Website.

3.2 Payment Procedure

- a) **(Payment claim):** The GBCA shall deliver to the Applicant a Payment Claim for any Fee due by the Applicant to the

GBCA under this Agreement.

- b) **(Claim details):** Any Payment Claim shall specify:
 - (i) that it is a Tax Invoice;
 - (ii) the ABN of the GBCA;
 - (iii) the Services for which the Fee is due;
 - (iv) the date of supply for those Services;
 - (v) the aggregate total amount of the claim for the Fee;
 - (vi) any other amount then due and payable to the GBCA; and
 - (vii) the GST amount comprised in the total amount of the Payment Claim.
- c) **(Tax invoice compliance):** The Payment Claim shall comply with any GST Law relating to the form or content of Tax Invoices, in addition to any other requirement of this provision

3.3 Fee Payment

- a) **(Payment):** The Applicant shall pay any Fee on or before the Payment Date.
- b) **(Interest):** The Applicant shall pay interest on any Fee or other amount that is not paid on or prior to the due date for that Fee determined in accordance with clause 3.3(a), at the rate of 12% per annum, to accrue from day to day from the due date down to and including the actual date of payment in full.
- c) **(Withholding of Assessment):** The GBCA may withhold the final results of the Independent Assessment until all Fees due and owing by the Applicant to the GBCA have been paid.
- d) **(Rights Cumulative):** The Applicant acknowledges that any charging of interest pursuant to paragraph (b) or withholding of the final results of the Independent Assessment pursuant to paragraph (c) by the GBCA is in addition to and is not to the exclusion of any other rights or remedies the GBCA may have against the Applicant for failure to pay

any Fee when due pursuant to clause 3.3(a).

- e) **(Method):** Any payment to be made by any party under this Agreement shall be made in clear funds or any other manner agreed between the parties.

4. INDEPENDENT ASSESSMENT

- a) **(Applicant's undertakings):** The Applicant agrees that:

- (i) it has complied with the Eligibility Requirements;
- (ii) it will notify the GBCA of the Performance Period within 90 days of the date of Registration Date;
- (iii) it will submit First Round documentation for assessment within 90 days of the end of the Performance Period;
- (iv) it will submit Second Round documentation within 90 days of receiving results of the First Round assessment;
- (v) it will submit Yearly Performance Data within 90 days of each of the first and second anniversary of the award of a Certified Rating;
- (vi) it will either register for recertification or cease use of the Trade Mark prior to the end of the Validity Period;
- (vii) it will provide the Certified Assessor(s) with all information reasonably requested by the Certified Assessor(s) in order to complete the Independent Assessment;
- (viii) should the GBCA so elect, it will provide access to the Certified Assessor(s) to the Premises, upon not less than 24 hours' notice by the GBCA to the Applicant, for the purposes of verifying information

included in the First Round or Second Round documentation;

- (ix) at the earliest possible time the Applicant will provide all site staff, consultants and contractors involved in the operations and management of the Premises with written notice of the Applicant's commitments under this Agreement;
 - (x) the GBCA has the right to conduct audits of the Applicant's advice to its site staff, consultants and contractors involved in the operations and management of the Premises regarding the Applicant's commitment to this Agreement; and
 - (xi) it will comply with all the terms and conditions contained in the Rating Tool and any additional eligibility criteria relevant to the Rating Tool specified on the Website at the date of this Agreement, together with such Credit Interpretation rulings and Green Star technical clarifications in respect of such criteria as may be displayed on the Website from time to time.
- b) **(Recertification):** For the purpose of clause 4(a)(vi), if the Applicant registers for recertification and if, at that time, the Trade Mark is the subject of a Registered Certification Trade Mark, then the Applicant's application for recertification will be made and assessed in accordance with the rules governing the use of the Registered Certification Trade Mark filed with the Trade Marks Office.
- c) **(GBCA's undertakings):** The GBCA agrees that it will:
- (i) provide the Applicant with a summary of the documentation required for the Independent Assessment;
 - (ii) provide a Case Manager to project manage the Independent

Assessment;

- (iii) upon receiving and considering the recommendation of the Certified Assessor, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement, the GBCA will award the Applicant a Certified Rating evidenced by a Certified Rating Certificate and an email confirming the Certified Rating;
- (iv) upon receiving and considering Yearly Performance Data, if all relevant criteria has been fulfilled and the Applicant is not in breach of this Agreement, the GBCA will issue a new Certified Rating Certificate and an email confirming the Certified Rating; and
- (v) use all reasonable endeavours to comply with the timeframes set out on the Website under "Certification Process".

5. INQUIRIES AND CREDIT INTERPRETATION REQUESTS

5.1 Inquiries

- a) **(Mode of Inquiry):** The Applicant must make all inquiries via the Green Star Project Manager on the Website;
- b) **(Calculation of Inquiries):** Regardless of whether the Applicant makes an inquiry by email pursuant to clause 5.1(a), by telephone, fax or in person, or using any other mode of communication, the GBCA will take account of each inquiry in calculating the number of inquiries for the purposes of clause 3.1(b).

5.2 Credit Interpretation Requests

- a) **(Request by Applicant):** In some cases an Applicant may have clearly satisfied the stated intent of a Credit through a solution that does not allow that requirement to be demonstrated through

the stated compliance requirements in the Rating Tool and in such cases the Applicant may request a Credit Interpretation.

- b) **(Credit Interpretation procedure):** Any request for a Credit Interpretation must be in accordance with the following procedure:
 - (i) the Applicant must first consult the Rating Tool for guidance on compliance requirements and review the Green Star rulings on the Website;
 - (ii) if the Rating Tool does not adequately address the issue, then the Applicant may lodge a Credit Interpretation Request with the GBCA via the Green Star Project Manager on the Website;
 - (iii) Each Credit Interpretation Request must be accompanied by the Credit Interpretation Request Fee;
 - (iv) determination of the Credit Interpretation Request will be made by the Technical Advisory Panel and will be made solely on the information provided by the Applicant in the Credit Interpretation Request; and
 - (v) any further information submitted by the Applicant following a determination of the Technical Advisory Panel will constitute a new Credit Interpretation Request and the Applicant will be liable for a further Credit Interpretation Request Fee.

6. WARRANTIES, UNDERTAKINGS AND INDEMNITIES BY THE APPLICANT

6.1 Applicant's Warranties, Undertakings and Indemnities

The Applicant warrants and undertakes that:

- a) **(no interference with Trade Mark):** it shall not represent that it owns any part of the Trade Mark nor apply for ownership of the Trade Mark, or oppose any application by the GBCA for registration of the Trade Mark or the maintenance of that registration;
- b) **(protection of GBCA's title):** it shall not do or cause to be done any act or thing which may impair the GBCA's right, title and interest in the Trade Mark;
- c) **(accurate information):** the information the Applicant provides to the Certified Assessor, the GBCA, its employees, agents and independent contractors (if any) under this Agreement is true, accurate and complete in all respects;
- d) **(relevant authority):** it has the authority of all relevant persons to enter into this Agreement and to apply for the Independent Assessment;
- e) **(Premises only):** should a Certified Rating of the Premises be awarded, it will not promote or use the Certified Rating for the Premises in any way so that it may be considered (or the GBCA notifies the Applicant) that the Certified Rating applies to any other building apart from the Premises;
- f) **(release and indemnity):** upon signing this Agreement, it releases and indemnifies the GBCA, its officers, employees, agents, contractors (including any Certified Assessor, any member of the Technical Advisory Panel and members and agrees to keep them indemnified from and against any claims, demands, liabilities, losses, damages, costs or expenses arising out of its application, the GBCA's assessment of its application, the Independent Assessment or any use it may make of these, or any exercise of its rights (if any) to publicise information under this Agreement and causes of action for any injury, loss, destruction or damage (including, without limitation, equitable

relief and economic loss) that the Applicant may now or hereafter have a right to assert against such parties as a result of the Applicant's use of, or reliance on, the Rating Tool or any related documentation; and

6.2 Survival

Clause 6.1 shall continue to apply after the termination of this Agreement.

7. PUBLICITY

7.1 Compliance with Style Guide

The Applicant agrees to comply with the Style Guide in relation to its promotion of the Certified Rating in respect of the Premises.

7.2 Reciprocal Publicity Rights

Either party may, if a Certified Rating is awarded to the Applicant,

- a) **(articles or papers):** engage in the publication of articles or papers to publicise the Applicant's entry into this Agreement and the outcome of the Independent Assessment;
- b) **(commercial promotions):** engage in commercial promotions relating to the Applicant's participation in the Independent Assessment;
- c) **(publicity relating to outcome):** publicise the outcome of the Independent Assessment.

7.3 GBCA Publicity Rights

Subject to clause 7.4, the Applicant agrees that the GBCA may provide special recognition for the Premises if, in the GBCA's opinion, the Premises achieves outstanding or otherwise notable results in the Independent Assessment.

7.4 Approval of Publicity and Promotions

The parties agree that they will not engage in publicity or promotion of the nature specified in this clause 7 unless the other party to this Agreement has given its prior written approval to the content of any publication or other form of publicity or promotion, provided that such approval shall not be unreasonably withheld.

8. TRANSFER OF RIGHTS IN THE PREMISES

8.1 Pre Certification Transfers

In the event that the GBCA has not yet awarded a Certified Rating and the Applicant sells, transfers or otherwise disposes of its rights in relation to the Premises ("**Rights**"), the Applicant must:

- a) (**notification of transfer**): notify the GBCA in writing of the transfer of Rights;
- b) (**notification of Agreement**): notify all the parties to which the transfer of Rights may apply, of this Agreement; and
- c) (**information to Purchaser**): inform the purchaser of the Rights (the "**Purchaser**") that the Purchaser acquires the Rights, subject to the obligations, under this Agreement by:
 - (i) the Applicant assigning or novating the relevant rights and obligations to the Purchaser subject to the GBCA's written consent; or
 - (ii) negotiating a new agreement with the GBCA;

and the GBCA may in its discretion:

- d) (**consent to assignment**): consent to an assignment or novation of this Agreement to the Purchaser subject to the Purchaser agreeing in writing in advance to such conditions (if any) as the GBCA may, in its discretion, impose on the Purchaser or;

- e) (**new agreement**): negotiate a new certification agreement with the Purchaser; and
- f) (**termination of Agreement**): if the Purchaser fails to agree to all the conditions imposed by the GBCA pursuant to clause 8.1(d) above, or a new certification agreement is not entered into between the GBCA and the Purchaser within 60 days of the GBCA notifying the Applicant and the Purchaser of its decision to assign or enter into a new agreement under clauses 8.1(d) or 8.1(e) respectively, terminate this Agreement; and

may make a public notice of any of the above actions.

8.2 Post Certification Transfers

In the event the GBCA has awarded a Certified Rating and the Applicant has sold, transferred or otherwise disposed of its Rights, the Applicant must notify the GBCA of such disposition including providing the GBCA with a consent from the Purchaser to be bound by this Agreement. Provided the GBCA is satisfied in its reasonable discretion, that the consent supplied by the Applicant is legally effective to bind the Purchaser to comply with the Applicant's obligations under this Agreement, the Purchaser will be taken to be the Applicant under this Agreement from the date of such consent.

9. LICENCE OF TRADE MARK

9.1 Applicability

This clause 9 only applies if the Applicant is awarded a Certified Rating by the GBCA.

9.2 Trade Mark Licence

The GBCA grants to the Applicant, for the duration of the Validity Period, a non-exclusive, non-transferrable licence to use the Trade Mark showing the Certified Rating solely in relation to:

- a) the Premises; and

b) the display, promotion and advertisement of the Premises in accordance with the Style Guide.

9.3 Non-Transferability

This licence may not be sub-licensed. In particular, the Applicant may not permit any third party, including without limitation any contractor or consultant or any related body corporate of the Applicant, to use the Trade Mark to promote its association with the Certified Rating, except with the prior written consent of the GBCA.

9.4 Cessation of use of Trade Mark

- a) If, during the Validity Period, an allegation or claim is made by a third person, on an arm's length basis, that the use by the Applicant of the Trade Mark in accordance with this Agreement infringes the rights of a third person or is misleading or deceptive or is otherwise contrary to Law, the GBCA will be entitled to:
- (i) give the Applicant notice of that fact; and
 - (ii) require the Applicant to cease using the Trade Mark.
- b) Upon receipt by the Applicant of a notice of the type referred to in clause 9.4(a) the Applicant must cease using the Trade Mark.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Retention of all rights

The Applicant agrees that the GBCA retains all copyright and other proprietary rights in the Rating Tool, GBCA's Confidential Information and the Trade Mark and agrees not to use the Trade Mark except in accordance with this Agreement and the Style Guide.

10.2 No Unauthorised Display of Documents

The Applicant agrees that it will not reproduce, display or distribute any documents provided to it in connection with this Agreement or the Rating Tool in any way

for any public or commercial purpose, including display on a website or in a networked environment unless expressly authorised to do so under this Agreement or the Rating Tool.

10.3 Unauthorised Use

Use of the Trade Mark without a licence by the GBCA is prohibited. All text, graphics, layout and other elements of content contained in the Rating Tool and the Trade Mark are owned by the GBCA and are protected by intellectual property and other Laws.

10.4 Co-operation and Assistance

The Applicant, if it suspects any infringement or threatened infringement of the Trade Mark or any misleading or deceptive conduct relating to the Trade Mark, must immediately notify the GBCA giving full particulars of all relevant circumstances. The Applicant will provide all information and assistance the GBCA may reasonably require in any proceedings regarding the Trade Mark.

11. TERMINATION

11.1 Termination by the GBCA

The GBCA may immediately terminate this Agreement and all the Applicant's rights arising under it, by written notice to the Applicant, if the Applicant:

- a) **(misleading and deceptive conduct):** engages in any conduct in relation to the Rating Tool, the Independent Assessment or the Trade Mark which in the GBCA's reasonable opinion is likely to, or does, mislead or deceive;
- b) **(transfer without approval):** sells, transfers, assigns or otherwise disposes of the Rights other than in accordance with clause 8;
- c) **(delay by Applicant):** in the sole opinion of the GBCA, has delayed the Independent Assessment by any one or more acts or omissions which results in

the Independent Assessment not being completed by:

- (i) the date occurring 90 days following the date on which the GBCA notifies the Applicant the outcome of the First Round; or
- (ii) the date occurring 3 years from the date of this agreement;

- d) **(non compliance with Yearly Performance Data requirements):** fails to submit the Yearly Performance Data within 90 days of either the first or second year anniversaries of the award of the Certified Rating;

or any of the following events occur by or in relation to the Applicant:

- e) **(performance default):** any default under this Agreement resulting from failure by the Applicant to perform any provision of, or liability under, this Agreement, except for a rectifiable default, which is rectified within 30 days following written notice from the GBCA requiring rectification;
- f) **(misrepresentation):** material non-compliance by the Applicant with or the fact of material inaccuracy of any representation made or deemed to be made or repeated by the Applicant in this Agreement, or in any document delivered to the GBCA under or in connection with this Agreement;
- g) **(administration):** the appointment of any administrator of the Applicant;
- h) **(liquidation):** any legal action, not being in the reasonable decision of the GBCA a disputed action, being commenced, judicial order made or resolution passed for the liquidation of the Applicant;
- i) **(business cessation):** the cessation or proposal for cessation of business generally by the Applicant;

- j) **(Part X of Bankruptcy Act):** the Applicant, if a natural person, becoming the subject of a sequestration order or entering into a composition, deed of assignment or deed of arrangement pursuant to Part X of the *Bankruptcy Act 1966* (Cth) with his or her creditors.

11.2 Termination by the Applicant

The Applicant may terminate this Agreement at any time by giving 30 days written notice to the GBCA.

11.3 Consequences of termination

The following provisions shall apply on termination:

- a) **(GBCA's rights reserved):** Any termination of this Agreement will not prejudice the GBCA's rights to seek and obtain damages for any breach of this Agreement. The GBCA shall not be liable to the Applicant for any sum in the event of termination under this Agreement. Clauses 1, 2.2, 3, 6 and 10 to 20 of this Agreement survive termination.
- b) **(No refund):** The GBCA will be entitled to retain all Fees received by it at the date of termination and the Applicant will remain liable for any Fees due to the GBCA but unpaid by the Applicant at the date of termination.

11.4 Applicant's responsibilities on termination

Upon termination of this Agreement or the expiry of the Validity Period, the Applicant shall:

- a) immediately cease any and all use of the Trade Mark;
- b) remove the Certified Rating Certificate (if any) from public display;

- c) cease to promote or otherwise refer to the Certified Rating; and
 - d) do such further things as may be reasonably required by the GBCA to protect the GBCA's right, title and interest in the Trade Mark and/or the Rating Tool.
- (i) the resupply of the Services or thing; or
 - (ii) payment of the cost to the Applicant for the resupply of the Services or thing.

11.5 Reciprocal responsibilities on termination

On termination of this Agreement for any reason, each party agrees to promptly deliver to the other party in the manner and at the time as specified in any written notice by that other party all Confidential Information in its possession at the date of termination.

12. LIMITATION OF LIABILITY

- a) **(Exclusion of liability):** To the maximum extent permitted by law, the GBCA excludes responsibility, including without limitation for negligence, for any inaccuracy within the Rating Tool, the Rating Tool or any related documentation and makes no warranty, expressed or implied, including any warranty of merchantability and fitness for a particular purpose, nor assumes any legal liability or responsibility to the Applicant or any third parties for the accuracy, completeness, or use of, or reliance on, any information contained in the Rating Tool, the Rating Tool or any related documentation, or for any injuries, losses or damages (including, without limitation, equitable relief and economic loss) arising out of such use or reliance.
- b) **(Limitation of damages):** In no event will the GBCA be liable for any indirect, special, incidental, non natural, tort, economic or consequential damage or damages for negligence or any loss of profit, however arising, and the liability of the GBCA for any default in the performance of its obligations to supply any Services or thing under this Agreement shall be limited, in the discretion of the GBCA to:

- c) **(Statutory protection):** Nothing in this clause 12 operates to exclude, restrict or modify the application of any provision of the Competition and Consumer Act 2010 (Cth) or any equivalent legislation in any State or Territory, or any rights conferred or liability implied by such provisions.
- d) **(Monetary Limit):** If, notwithstanding this clause 12, the Applicant is proven at law to have a valid claim for damages against the GBCA (it being the intention that no such damages may be recovered) then, to the maximum extent permitted by law, the GBCA's total liability to the Applicant under this Agreement will be limited to ten times the Fees paid by the Applicant at the date such claim is notified to the GBCA.

13. CONFIDENTIALITY

13.1 Confidentiality

Subject to any other provision of this Agreement, each party will keep confidential all the Confidential Information provided to it.

13.2 Limited Disclosure

The GBCA and the Applicant may disclose Confidential Information of the other, if:

- a) such disclosure is required by Law;
- b) such disclosure is necessary to perform the obligations under this Agreement and provided the recipient of the Confidential Information agrees to keep it confidential;
- c) the Confidential Information is or becomes generally available in the public domain; or
- d) the GBCA or the Applicant can demonstrate that it knew the Confidential Information before the other party to this

Agreement disclosed such Confidential Information.

13.3 Survival

This clause 13 shall continue to apply after the termination of this Agreement.

14. GST

14.1 Fees exclusive of GST

The Applicant acknowledges that unless expressly stated to the contrary in this Agreement, the Fees and all other monetary sums referred to or calculated in accordance with this Agreement are exclusive of GST and the Applicant must pay GST in addition to the Fees and other monetary sums referred to or calculated in accordance with this Agreement.

14.2 Taxable Supply

The Applicant must pay to the GBCA any GST payable or which may become payable as a result of any Taxable Supply made by, under or in connection with this Agreement.

14.3 Payment of Goods and Services Tax

The Applicant must pay the GST to the GBCA at the same time as the Applicant is required to make payment for the relevant supply at the rate prescribed by Law from time to time for GST.

15. COSTS

The Applicant shall pay the costs of the GBCA in relation to the negotiation or amendment of this Agreement, or any agreement or document executed or effected under this Agreement.

16. DUTIES

The Applicant shall promptly within the initial applicable period prescribed by Law pay any duty payable in relation to the execution and performance of this Agreement, or any agreement or document executed or effected

under this Agreement.

17. ASSIGNMENT

The Applicant shall not transfer any right or liability under this Agreement without the prior written consent of the GBCA.

18. NOTICES

18.1 Form

All notices, demands and other communications to or by a party under this Agreement will be in writing and addressed to the parties at the addresses listed below.

18.2 Service Method

Service of communication by mail will be deemed to have been effected on the second Business Day after posting. Service by personal delivery will be deemed to have been effected at the time of such delivery.

18.3 Change of Address

Either party may change the address to which communications are to be directed by giving written notice to the other party of such change.

18.4 Email

A communication will be sufficiently served for the purposes of this Agreement if such communication is sent by email and in either case will be deemed to be duly given or made, when email is opened has been completed and receipt acknowledged except where the time of dispatch is not between 09:00 am and 5:00 pm on a day on which business is generally carried on in the place to which such notice is sent, in which case the notice will be deemed to have been received at the commencement of business on the next such day in that place.

18.5 Addresses

The addresses referred to in clauses 18.1 are as follows:

To the GBCA: The Executive Director of
 Green Star Certification
 The Green Building Council of
 Australia
 Level 15
 179 Elizabeth Street
 Sydney NSW 2000
 Fax: (02) 8552 8223
 Email: greenstar@gbca.org.au

To Applicant: [Applicant Name]
 [Applicant Address]
 Facsimile: [Applicant Fax]
 Email: [Email]

19. DISPUTE RESOLUTION

19.1 Negotiation

If there is a dispute or difference between the parties arising out of or in connection with this Agreement ('Dispute'), then within five Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

19.2 Mediation

a) If the Dispute is not resolved within 10 Business Days of notification under clause 19.1, either party may refer the Dispute to mediation in accordance with this clause 19.2 and the other party must submit to the mediation.

- b) The mediation will be administered by Lawyers Engaged in Alternative Dispute Resolution ('LEADR').
- c) The mediator will be a person who is independent of the parties and who is appointed by agreement of the parties or, failing agreement within five Business Days from the day on which the matters has been referred to mediation, by a person appointed by the Chair of LEADR or the Chair's designated representative.
- c) Any mediation meetings or proceedings under this clause must be held in Sydney.
- d) The LEADR Mediation Rules (as amended from time to time) will apply to the mediation.
- e) Unless otherwise stated in the LEADR Mediation Rules (as amended from time to time) the remuneration of the mediator will be borne equally by the parties. Each party must pay its own costs of the mediation.
- f) All communications during the mediation are confidential and must be treated as made in the course of compromise and settlement negotiations for the purposes of the applicable rules of evidence any professional secrecy protections provided by applicable law.
- g) It is a condition precedent to the right of either party to commence arbitration or litigation, that it has first offered to submit the dispute to mediation.

19.3 Commencing Proceedings

A party must not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 19, unless the party seeks injunctive or other interlocutory relief.

19.4 Continuation of Rights and Obligations

Despite the existence of a Dispute, each party must continue to perform this Agreement.

20. GOVERNING LAW

This Agreement shall be governed by and construed under the law of the State of New South Wales.

20.1 Jurisdiction

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

20.2 Submission

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in relation to both itself and its property.

21. GENERAL PROVISION

21.1 Amendments

Any amendment of this Agreement shall have no force or effect, unless effected by a document executed by the parties.

21.2 Third Parties

This Agreement shall confer rights only upon a person expressed to be a party or expressed to benefit from this Agreement, and not upon any other person.

21.3 Pre-Contractual Negotiation

- a) This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior agreements, arrangements and understandings relating to the subject. It sets out the only conduct, representations, warranties, covenants, conditions or understandings (collectively, the **'Conduct'**) relied on by the parties and supersedes all earlier Conduct between the parties and in connection with its subject matter.
- b) Neither party has relied on or is relying on any other Conduct in entering into this

Agreement and completing the transactions contemplated by it.

21.4 Further Assurance

Each party shall execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

21.5 Waivers

Any failure or delay by any party to exercise any right under this Agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

21.6 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by Law.

21.7 Severability

Any provision of this Agreement which is invalid in any jurisdiction shall be invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

21.8 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

21.9 Joint and Several Liability

Any agreement in this Agreement by two or more persons named as the same separate party to this Agreement shall be a joint and several liability of each named person.

Executed as an agreement

GBCA:

SIGNED for and on behalf of
Green Building Council of Australia
ACN 100 789 937 by
Its duly authorised officers:

Duly authorised officer

Title:

Full Name:

Duly authorised officer

Title:

Full Name:

Applicant:

(Delete non-applicable execution clause)

[USE FOR EXECUTION BY TWO
DIRECTORS
/ ONE DIRECTOR & ONE SECRETARY]

SIGNED for and on behalf of
INSERT NAME AND ACN
by its duly authorised officer:

Duly authorised officer

Title:

Full Name:

SIGNED by []

in the presence of:

Witness

Title:

Full Name:

[USE FOR EXECUTION BY POWER OF ATTORNEY]



Signed, sealed and delivered for [] ACN []
by:
[] as sole Attorney
or by:
[] and []

) **Signature of joint Attorney (if required)**
) By executing this document the sole Attorney
) states (or the joint Attorneys severally state)
) that the Attorney has received no notice of
) revocation of the power of attorney

Signature of Attorney

as joint Attorneys under power of attorney
dated
INSERT DATE in the presence of:))

Witness

Title:
Full Name:

[USE FOR EXECUTION BY GOVERNMENT ENTITIES]

SIGNED for and on behalf of [] ABN []
by its duly authorised officer or delegate in the
presence of:

Duly authorised officer or delegate

Title:
Full Name:

SIGNED by []
in the presence of:

Witness

Title:
Full Name:

Annexure

GREEN STAR TRADE MARKS



* Upon certification, the year of certification will be displayed in the Green Star Trade Mark.

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